

NRC PUBLIC DOCUMENT ROOM May 30, 1979

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

VEPCO'S RESPONSE TO MOTIONS BY  
NRC STAFF AND INTERVENORS  
TO RESCHEDULE HEARING

In its Notice of Hearing, which was issued May 4, 1979, the Board scheduled a prehearing conference and evidentiary hearing in this matter to begin on June 2, 1979. In separate motions the NRC Staff, the Citizen's Energy Forum, Inc. (CEF), and the Potomac Alliance have asked that this hearing be rescheduled; the Staff asks that the hearing be postponed until the week of July 9-13, CEF asks that it begin no earlier than July 24, and the Potomac Alliance proposes a schedule that would call for a hearing sometime late in August. For the reasons set out below, Vepco opposes these motions.

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Vepco's principal objection to postponing the hearing is that any delay will make it virtually impossible for the NRC to act on Vepco's request prior to the first refueling of North Anna Unit 1 in September of this year. Assuming the NRC acts favorably on Vepco's request, it is important that the new racks be installed before any irradiated fuel is stored in the spent fuel pool. As discussed in the attached affidavit of E. Ashby Baum, Vepco's Executive Manager of Licensing and Quality Assurance, there are several disadvantages to installing the new racks after irradiated fuel has been stored in the pool. First, the new racks would have to be installed while there is water in the pool. Second, the workers would be exposed to approximately 13 man-rem of radiation.<sup>\*/</sup> Third, the old racks would have to be disposed of as radioactive waste rather than as ordinary scrap.<sup>\*\*/</sup>

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<sup>\*/</sup>The NRC Staff's Environmental Impact Appraisal states that the Staff expects that such exposure would be less than 20 man-rem. Environmental Impact Appraisal, page 11.

<sup>\*\*/</sup>The Staff's Environmental Impact Analysis points out that if the old racks are not removed prior to the storage of irradiated fuel, approximately 2,695 cubic feet of low-level radioactive waste will be generated when those racks are removed. Environmental Impact Appraisal, page 10.

Finally, such a delay could increase the cost of this work to Vepco and its customers by as much as \$400,000.

In order to avoid storing irradiated fuel in the existing spent fuel storage racks, Vepco has submitted an interim proposal for review by the other parties. If the other parties agree and the Board approves, Vepco may be able to go ahead and install the new racks prior to resolution of the issues to be litigated in this proceeding, but subject to certain restrictions on the amount and spacing of the fuel to be stored in the spent fuel pool. To date the other parties have not responded to Vepco's proposal. If the other parties and the Board find Vepco's proposal acceptable, Vepco will withdraw its opposition to a reasonable postponement of the hearing in this matter. In the meantime Vepco believes it must resist any further delay and asks the Board to proceed with a hearing in this matter in accordance with the schedule contained in the Notice of Hearing.

If the Board decides nevertheless to postpone the hearing, Vepco asks that it be rescheduled to begin no later than July 9, the starting date sought

by the Staff. As we show below, the intervenors have failed to demonstrate any compelling reason why the hearing should be rescheduled to begin any later than July 9.

Both intervenors cite their need to conduct discovery as one reason for postponing the hearing. Vepco finds this a curious basis for the intervenors to seek a delay. The NRC Staff and Vepco both submitted discovery requests shortly after the Board issued its Notice of Hearing.<sup>\*/</sup> The intervenors have now had almost a month to submit their discovery requests, but Vepco has not received a formal request<sup>\*\*/</sup> from either of the intervenors and, so far as we know, neither has the Staff. The intervenors own lack of diligence is a poor reason to delay this proceeding. The Potomac Alliance points out, however, that even if it had submitted a request for documents on the day the Notice of Hearing was published in the Federal

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<sup>\*/</sup>The Staff submitted interrogatories to both intervenors on May 8, 1979. Vepco's interrogatories were submitted on May 17, 1979.

<sup>\*\*/</sup>Vepco has received informal inquiries from both intervenors and has responded by providing them with documents.

Register, a response would not be due until the same day the intervenors' testimony is due to be filed. The Potomac Alliance therefore argues that the Board's schedule would deny the intervenors an opportunity to examine documents obtained through discovery and to prepare testimony on them.<sup>\*/</sup> This argument has little force. If the intervenors had sought the production of documents and the normal time for response (30 days) did not provide them with enough time to prepare testimony, they were free to ask the Board to shorten the period for Vepco and the NRC Staff to respond.<sup>\*\*/</sup> See 10 CFR § 2.711(a). Indeed they were free to ask Vepco and the Staff to shorten this time.

The Potomac Alliance also says that there should be time in the schedule to allow for a second round of discovery. The basis for this argument appears to be

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<sup>\*/</sup>The Potomac Alliance also argues that the present hearing schedule is wholly inadequate "in light of the suggestion in 10 CFR § 2.752(a) that the prehearing conference be held 60 days following the close of discovery." (Emphasis added.) We believe the intervenor has misread this regulation. It merely says that "[a] prehearing conference. . . shall be held within sixty (60) days after discovery has been completed, or such other time as the Commission or the presiding officer may specify." 10 CFR § 2.752(a)(emphasis added).

<sup>\*\*/</sup>In fact, in its motion the Potomac Alliance proposes an accelerated schedule for responding to requests for production of documents.

the Potomac Alliance's concern that the responses of Vepco and the NRC Staff to the intervenors' discovery requests will be "inadequate." The Potomac Alliance says that a second round of discovery would promote candor and assure the integrity of the discovery process. But this is hardly a basis for delaying the hearing. Vepco and the NRC Staff are required by NRC regulations to be responsive to the intervenors' discovery requests, and if they fail to do so, the regulations provide adequate remedies for the intervenors. See 10 CFR § 2.740(f). In a proceeding of limited scope such as this, where the parties have shown a willingness to proceed with discovery informally, Vepco sees no reason why one round of discovery is not sufficient.

The Potomac Alliance also argues that the prehearing conference should not be held on the first day of the hearing and that there should be a period of "breathing space" between the prehearing conference and the hearing. In support of this position the Alliance points out that the parties have a right to object to the order of the presiding officer that is

issued following such a conference. See 10 CFR § 2.752(c). The Potomac Alliance argues that if during the course of the prehearing conference the Board should act on any of the various motions that have been or may be submitted by the parties, the parties might require additional time to adjust their evidentiary presentations and might want to file objections. We believe the Potomac Alliance's concern is unfounded. The Board's Notice of Hearing did not specify any particular matters to be dealt with at the prehearing conference. The general matters to be handled during a prehearing conference are specified in 10 CFR § 2.752(a) and do not include rendering decisions on written motions filed previously by the parties. In fact, the disposition of written motions is governed by 10 CFR § 2.730(e), which states that "[a] written motion will be disposed of by written order and on notice to all parties." Since stipulations have been provided and the issues decided upon (with one exception), we assume the purpose of the prehearing conference will be simply to discuss procedural matters concerning the conduct of the hearing, such as the order of questioning, and we believe the parties and the Board will be able to agree on these matters.



Finally, both intervenors argue that they cannot respond to various motions and discovery requests posed by Vepco and the NRC Staff and at the same time conduct their own discovery and prepare testimony in time for a hearing on June 26. Vepco appreciates the intervenors' difficulty in this regard. But, as we discussed above, further delay in this proceeding may also impose serious hardship on Vepco. For that reason we were careful to emphasize to the Board and the parties at the last pre-hearing conference the importance of moving swiftly. If the intervenors have failed to do so, they should not now be accommodated at Vepco's expense.

In summary, Vepco opposes any delay in the date for beginning the hearing. If, despite this position, the Board is disposed to grant some delay, it should set the hearing to start no later than July 9, 1979.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

/s/ James M. Rinaca

James M. Rinaca, Counsel for  
Virginia Electric and Power  
Company



Of Counsel

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DATED: May 30, 1979

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	)	50-339 SP
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Units 1 and 2)	)	(Proposed Amendment to
	)	Operating License NPF-4)

AFFIDAVIT OF E. ASHBY BAUM

My name is E. Ashby Baum. A true statement of my professional qualifications is attached.

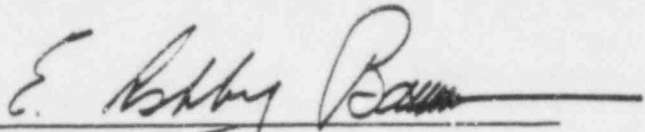
The purpose of this affidavit is to advise the Board and the other parties of Vepco's present schedule for refueling North Anna Unit 1 and of the importance of having the new racks installed in the North Anna Units 1 and 2 spent fuel pool prior to placing any irradiated fuel in the pool.

Vepco presently plans to take North Anna Unit 1 out of service on September 15, 1979, for its first refueling. (This date could move forward or backward in

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time by several days.) Vepco will be ready to begin moving spent fuel into the spent fuel storage pool 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 new 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 our experience with the replacement of the Surry spent fuel racks, Vepco expects these workers to receive 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, we estimate that the additional cost to Vepco and its customers could be as much as \$400,000.

  
E. Ashby Baum

DATED: May 30, 1979

Signed and sworn to and before me by E. Ashby Baum  
this 30 day of May, 1979.

  
Notary Public

My commission expires:

January 20, 1981

## PROFESSIONAL QUALIFICATIONS

E. ASHBY BAUM

EXECUTIVE MANAGER - LICENSING AND QUALITY ASSURANCE

VIRGINIA ELECTRIC AND POWER COMPANY

My name is E. Ashby Baum. I reside at 2833 Anwell Drive, Richmond, Virginia. I am Executive Manager - Licensing and Quality Assurance. In this capacity I am responsible for the licensing of all nuclear power projects on the Vepco system, and for the quality assurance programs the company maintains for all power station engineering, construction, and operating activities.

I received a B.S. Degree in Mechanical Engineering from Virginia Polytechnic Institute in 1959, at which time I accepted employment with Virginia Electric and Power Company. I have held engineering positions at various power stations within the Power Production Department, including Efficiency Engineer, Operating Supervisor, and Engineering Supervisor. In 1967, I was appointed Superintendent - Production Operations on the system level with lead responsibility for maintaining direct contact with all power stations at Vepco regarding system operations.

In 1970, I was responsible for coordinating the start-up operations through the system office for Unit 1 of the Surry Power Station. In July 1971 I was appointed Director - Nuclear Services and, in that capacity, I was responsible for technical management of nuclear project licensing for the company with the Atomic Energy Commission, now the Nuclear Regulatory Commission.

In November 1972, I was appointed to the position of Manager - Licensing and Quality Assurance, and in July, 1975 to my present position of Executive Manager - Licensing and Quality Assurance; in this capacity I report to the Senior Vice President - Power Operations,

CERTIFICATE OF SERVICE

I certify that I have served a copy of Vepco's Response to Motions by NRC Staff and Intervenor to Reschedule Hearing on each of the persons named below by first-class mail, postage prepaid.

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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BY /s/James M. Rinaca  
James M. Rinaca, Counsel  
for Virginia Electric  
and Power Company

DATED: May 30, 1979