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RELATED CORRESPONDENCE

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)

POTOMAC ALLIANCE SECOND SUPPLEMENTAL ANSWER
TO VEPCO'S MOTION FOR SUMMARY DISPOSITION

On May 5, 1979 the Virginia Electric and Power Co. (VEPCO) filed a motion for summary disposition in this proceeding. While initially granting this motion with respect to several contentions by Order dated June 18, 1979, the Atomic Safety and Licensing Board (the Board) subsequently announced that it would reconsider that Order, thereby reopening for resolution all of the contentions designated in its Order of April 21, 1979. The Potomac Alliance (the Alliance), on its own behalf and on behalf of Citizens Energy Forum, Inc., hereby asks that VEPCO's motion be denied. As will be shown below, VEPCO has not met its burden of showing

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that there is no genuine issue as to many of the key factual questions raised by the Intervenor, nor that it is entitled to judgment as a matter of law.

Applicable Legal Standards

When considering motions for summary disposition under 10 CFR §2.749, licensing boards are to apply the same legal principles governing motions for summary judgment filed in the federal courts pursuant to Fed R. Civ. P. 56. ^{1/} The purpose of the procedures are the same in both contexts: it is to identify and distill those factual issues which were raised in the initial pleadings but are so clearly not subject to reasonable dispute that they should not be pursued in a trial or formal hearing. ^{2/} In this proceeding, the contentions put into controversy by the Intervenor have already been sifted in two separate stages. First, through negotiation and stipulations between the parties the Intervenor agreed narrow their contentions from an initial group of more than 60 to 15, 12 of which were subject to unanimous agreement as to their admissibility as matters in controversy. On April 21, 1979, the Board further pared this list to seven contentions. In these two steps all contentions which were not

^{1/} Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1), LBP-77-45, 6 NRC 159, 163 (1977).

^{2/} Wright, Federal Courts §99 at 494 (3d ed. 1976).

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the subject of genuine dispute were weeded out.

The burden of proof which must be sustained by the proponent of a motion for summary disposition is a formidable one. To show the lack of a genuine issue on a given factual question the movant must prove the lack of any "reasonable doubt" as to the certainty of the question. ^{1/} Indeed, some courts have declared summary judgment improper where there is even the "slightest doubt" as to the factual issues. ^{2/} It is crucial that the Board recognize that if it has the slightest doubt as to the veracity of any of the alleged facts submitted by VEPCO as essential to its case, the Board may not rule in VEPCO's favor on the grounds that its affidavits appear somewhat more persuasive than those presented by the Intervenor, or because the Intervenor have not submitted affidavits from experts competent to testify in a hearing. This would constitute "trial by affidavit" and is clearly improper for purposes of ruling on a motion for summary judgment. ^{3/} The function of the Board in the immediate context is not to resolve issues of fact, but to identify

^{1/} U.S. v. Farmers Mutual Ins. Ass'n, 288 F. 2d 560, 562 (8th Cir. 1961).

^{2/} See, e.g., Tomalewski v. State Farm Life Ins. Co., 494 F. 2d 882, 884 (3d Cir. 1974).

^{3/} Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 473 (1962). See also 10 Wright and Miller, Federal Practice and Procedure, Civil §2725.

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them. If it appears from the pleadings that the Intervenor have shown doubt as to the certainty of VEPCO's naked assertions, then summary judgment must be denied as to all such issues. It is clear from the foregoing that the standards adverted to in 10 CFR §50.91, contrary to the suggestion in VEPCO's motion at p. 4, are totally inapposite here.

Summary judgment is an extraordinary remedy which may not be granted simply because it appears certain that the moving party will ultimately prevail, or in this case, that VEPCO will ultimately obtain the Board's approval for its proposed modification. This is one instance in which the rules are sharply tilted in the Intervenor's favor. VEPCO is not entitled to rely on inferences which might be reasonably be drawn from its pleadings; rather, the factual and legal situation must be viewed by the Board in the light most favorable to the Intervenor.^{1/}

The Alliance, in its ANSWER TO VEPCO's MOTION FOR SUMMARY JUDGMENT dated June 5, 1979, identified those "facts" as to which VEPCO had asserted that there is no controversy but as to which the Intervenor assert there remains a legitimate dispute. In addition to the above, each of the seven contentions will be discussed briefly to demonstrate

^{1/} 10 Wright & Miller, Federal Practice and Procedure Civil §2727.

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the existence of reasonable factual uncertainty.

THERMAL EFFECTS

If it were assumed that (1) the proposed modification were permitted by the Board and (2) the spent fuel pool (SFP) at all times were to function exactly as planned by VEPCO, the Intervenor would concede that the increased thermal discharges from the plant would not be environmentally significant during the term of the plant's operating license. There has been no presentation, however, as to the modification's likely environmental effects past the expiration date for the operating license, as is required under Minnesota v. NRC, No. 78-1269 (D.C. Cir. 1979). There are thus obviously questions of fact to be pursued regarding this contention.

This contention focuses equally an adverse thermal effects flowing from abnormal circumstances. When viewed in the light most favorable to VEPCO, its assertions seem to imply that there is no real possibility that the proposed modification will lead to the appearance of localized "hot spots" in the fuel array, or that significant leakage of SFP coolant may occur which threatens the safety of the pool and its contents. Yet the latter scenario has been ^{deemed} sufficiently probable and serious to warrant the preparation of a major study by Sandia Laboratories. ^{1/} CEF has outlined possible

1/ SAND-77-1372 (1978).

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causes of such a situation, but its position has not been responded to by VEPCO. It is incumbent upon the Board to receive assurances, in the form of evidence, that the risk of significant leakage is sufficiently low, that possible leakage can and will be mitigated with suitable response measures, or that the consequences of such leakage are estimable and acceptable.

RADIOACTIVE EMISSION

If the pleadings, circumstances, and relevant law are construed in the light most favorable to VEPCO, it has a good case that the increased radioactive emissions from the SFP can be maintained within acceptable limits. But if the permissible inferences are drawn in the Intervenor's favor, as they must be, there are genuine issues of fact concerning this contention. For example, VEPCO obviously places heavy reliance on the continuing ability of the plant's filtration systems to ^{reduce} radioactive emissions of the spent fuel. There has been no assertion by any party, however, that once the plant's operating license has expired that the plant will remain capable of performing this essential function. Analysis of such mid-to-long term questions has been commanded by the court in Minnesota v. NRC, supra. They must be the subject of factual presentation and rebuttal in an evidentiary or legislative hearing before the requested operating license

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amendment may be issued.

MISSILE ACCIDENTS

In its pleadings the Alliance has presented well supported arguments showing that the proposed modification will increase the likelihood of an accident in which a missile strikes one or more assemblies, as well as the consequences of such an accident should it occur. In response, VEPCO has submitted a series of studies, including its own independent research, which do not refute the Alliance's position, but tend to show only that the previous probability of missile accidents was low, and that the consequences of such an accident would not be substantial. VEPCO has recently amended its written testimony to reflect the discovery of possible accident scenarios which were hitherto thought by it to be incredible, but which now appear to present significant hazards. VEPCO's presentations on this contention have crystallized the need for a hearing on this contention. If nothing else, its considerable research in the area proves that the issues are in serious doubt, rather than non-existent. While the Board has ultimate power to find VEPCO's presentation more probative than the Intervenor's, it does not have that power now. Indeed, this would be the epitome of "trial by affidavit." It is essential that the technical positions

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of VEPCO and the NRC Staff be subjected to verification in the crucible of a public and adjudicatory hearing.

MATERIALS INTEGRITY

The continued long-term integrity of the materials in the SFP is clearly a key issue around which several other contentions revolve. The Intervenor has collected and presented to the parties numerous studies showing that fuel cladding is subject to a range of defects when stored in aqueous environments, including chemical corrosion. This contention is laden with factual issues which must be resolved by the Board before permitting the proposed modification of the SFP. VEPCO's motion misses the point when relying on the fact that other licensing boards have resolved the issue favorably to the applicants in other proceedings. The fact is that those boards have recognized that genuine questions of fact are involved and found it necessary or desirable to receive relevant evidence from the parties.

To the best of its knowledge, no one has responded to the Alliance's statement that the American Concrete Institute has established 150°F as an upper limit for concrete structures containing fluids.

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CORROSION

The Intervenor's position on the contention labelled Corrosion parallels its position on the contention labelled Materials Integrity.

OCCUPATIONAL EXPOSURE

The impacts of the proposed modification of the SFP on the workers at the North Anna station is an important question which might easily be resolved to the Board's and the parties' satisfaction, yet VEPCO has declined to address it meaningfully. To date its position has been based on largely irrelevant radiation measurements taken at the Surry SFP, with an inventory of 208 fuel assemblies. No serious attempt has been made to quantify the expected radiation levels at North Anna, or to show how the admitted increases in radiation will be borne by the work force. Some important factual questions, such as the doses involved in moving spent fuel through the compacted pool once it has been filled to capacity, have been overlooked entirely.

ALTERNATIVES

The National Environmental Policy Act requires the consideration of alternatives to actions such as the proposed modification, regardless whether it will significantly affect

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the environment. VEPCO's and the Staff's rough-hewn "estimates" of the costs and benefits of the alternatives propounded by the Alliance have been evaluated by a qualified economist and found inadequate to support a professional judgment as to their merit. See attached affidavit of Phillip M. Weitzman. There are many genuine issues of fact and law embodied in this contention.

SERVICE WATER COOLING SYSTEM

VEPCO has recently notified the parties of the discovery of new information to the effect that previous calculations relating to the ability of the service water cooling system to support the SFP cooling system were erroneous, and that it may now be impossible under certain circumstances to maintain the temperature of the SFP coolant below the limit set forth in the technical specifications for the plant. No clear explanation for this error has been offered. Instead of making necessary improvements in the cooling system, VEPCO has simply revised the design basis criteria in order to give the system the appearance of adequacy. Interrogatories directed to VEPCO have failed to illuminate the gaping questions which remain unanswered. It is essential that the Board understand the nature and implications of the recent developments before allowing VEPCO to add more spent fuel to the pool and thereby strain the cooling system even further.

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Similarly, it is essential that this contention be raised in an adversary hearing at which the Intervenor's can assist the Board in drawing out VEPCO's and the Staff's views on the matter. There are potentially grave issues of material fact here which must not be summarily dismissed at this premature stage.

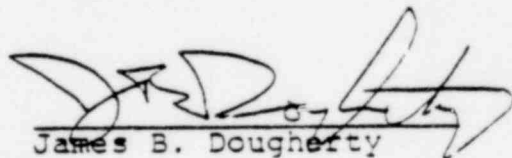
Conclusion

As shown above, VEPCO's submissions on each of the contentions in this proceeding is subject to major factual gaps. In several cases the factual issues to be resolved have been expanded by the recent opinion of the D.C. Circuit in Minnesota v. NRC, supra. It is imperative that the Board heed its duty to draw all permissible inferences in favor of the Intervenor's and withhold judgment on these complex questions until they have been explored in an adversary hearing. VEPCO's motion must be denied.

Respectfully submitted,

Of counsel:

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


James B. Dougherty

Counsel for the
Intervenor's

Dated this 23d day
of July, 1979

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



(North Anna Power
Station, Units 1 and 2)

(Proposed Amendment to
Operating License NPF-4)

My name is Phillip M. Weitzman. A statement of my professional qualifications is attached to this affidavit. I have examined, in relevant part, the following documents submitted by the Virginia Electric and Power Company (VEPCO) in the above-captioned proceeding:

1. Summary of Proposed Modifications to the Spent Fuel Storage Pool Associated with Increasing Storage Capacity for North Anna Power Station Units 1 and 2, Virginia Electric and Power Company (revision 1, May 1979) (Hereinafter cited as Summary; subsequent paragraph citations refer to this document).

2. Affidavit of H. Stephen McKay (May 11, 1979)

3. Affidavit of Dr. Morris Brehmer (May 11, 1979)

4. Affidavit of Robert W. Calder (May 11, 1979)

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4. Environmental Impact Appraisal of the Office of Nuclear Reactor Regulation Relative to a Proposed Increase in Storage Capacity of the Spent Fuel Pool, North Anna Power Station, Units 1 and 2 (April 2, 1979).

5. VEPCO'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE HEARD (May 11, 1979)

6. VEPCO'S ANSWERS TO POTOMAC ALLIANCE INTERROGATORIES (June 20, 1979)

7. NRC STAFF SUPPLEMENTAL RESPONSE TO INTERROGATORIES FROM CITIZENS' ENERGY FORUM AND POTOMAC ALLIANCE (July 13, 1979).

It is my professional opinion that the facts and analyses contained in the materials listed above provide an inadequate factual and analytical basis on which to determine whether VEPCO's proposed modification of the spent fuel pool at North Anna Units 1 and 2 is economically more advantageous than any of the three alternative proposals contained in the Potomac Alliance's contention labelled "Alternatives."

A thorough and professional analysis of the relative costs and benefits of the three alternative proposals is impossible because the conclusions presented and the underlying cost estimates are not documented or explained adequately. Economic and practical constraints which purportedly limit the viability of particular proposals have in some cases not been systematically demonstrated to be real or insurmountable. The conclusions reached are based on critical assumptions and

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methodologies which are not stated, or if stated, are not sufficiently justified.

Specifically, with respect to the proposed construction of a new storage pool, VEPCO has provided a cost "estimate" of "approximately \$25,000,000." (\$4.5) No support for or detailed evaluation of this figure is provided, nor are comparative design estimates provided. This figure therefore amounts to a bald assertion which lacks sufficient basis to be used in any professional analysis. In addition, the following calculation of \$22,007 per fuel assembly is apparently based on the assumption that the new pool would contain 1,136 fuel assemblies. VEPCO has provided no cost or engineering data which would permit an unquestioning acceptance of this assumption. It is not clear nor has any analysis been offered to determine whether a new spent fuel pool might not safely hold many times that number of assemblies and thereby lower substantially the per-assembly cost of this alternative.

With respect to the alternative of physically expanding the existing spent fuel pool, the estimates provided by VEPCO are even less complete and precise than those described above. (\$4.9). It is impossible to form a professional opinion on the economic advantages or disadvantages of this alternative based upon the information provided.

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As to the alternative of using the currently uncompleted spent fuel at North Anna Units 3 and 4, VEPCO has stated simply that this pool will not be completed until it is "too late," and that it is "difficult" to accelerate the construction schedule. (§4.10). In response to interrogatories submitted by the Potomac Alliance, VEPCO stated that it was unable to estimate either the costs of or time required to accelerate the construction of this pool (answer to question #6). These statements contain inadequate information on which to render a meaningful opinion as to the economic justification, or lack thereof, for selecting this alternative.

In addition, it should be noted that no substantiation whatever was provided by VEPCO in support of its assertion that no additional operating costs will be incurred as a result of the proposed modification. (§4.1). This assertion should be explored more fully in light of the probable incremental costs arising from additional shipments of solid waste, increased maintenance activities, and increased occupational radiation exposures.

In conclusion, I have reviewed the relevant materials and have concluded that no credible analysis of the three alternatives raised by the Potomac Alliance has been undertaken nor is possible without the presentation and examination of a substantially greater body of facts, assumptions,

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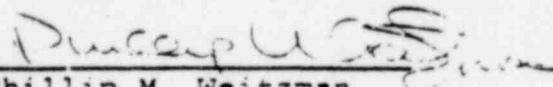
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and analysis.

Respectfully submitted,

Dated this 23d day of
July, 1979


Phillip M. Weitzman

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



Docket Nos. 50-338 SP
50-339 SP
(Proposed Amendment to
Operating License NPF-4)

My name is Phillip M. Weitzman. I reside at 1831 California St., NW, Washington, D.C. 20009. I am an independent economic consultant in the fields of research methodology and data analysis, housing and community development, and energy. I hold the following degrees in economics: B.A. (Tulane University 1964); M.A. and Ph.D. (University of Michigan 1967 and 1969). I have also received the J.D. degree (Fordham University 1975). I am a member of the American Economic Association and have been admitted to the Bar in New York State and the District of Columbia. I am the author of numerous publications in professional journals and have done research and consulting work in the areas of cost analysis and energy. I have testified before

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the Pennsylvania Public Utility Commission, the Philadelphia Gas Commission, and the Public Service Commission of West Virginia on matters concerning the setting of utility rate structures.

I now hold consulting contracts with the Legal Services Corporation and Rural America, Inc. I have formerly been employed as Assistant Professor of Economics at New York University and the City University of New York, Senior Research Associate with the National Social Science and Law Project in Washington, D.C., and Research Director with the National Citizens Monitoring Project on Community Development Block Grants in Washington, D.C.


Phillip M. Weitzman

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RELATED CORRESPONDENCE

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
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Docket Nos. 50-338 SP
50-339 SP
(Proposed Amendment to
Operating License NPF-4)

AFFIDAVIT OF PHILLIP M. WEITZMAN

I, Phillip M. Weitzman, hereby affirm that the
facts and opinions contained in the foregoing affidavit
and statement of qualifications are true and correct to
the best of my information and knowledge.

Phillip M. Weitzman

*Subscribed and sworn
to before me on the 23, 1979
— Susan G. B. Rive*

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CERTIFICATE OF SERVICE

I hereby affirm that the foregoing POTOMAC ALLIANCE SECOND SUPPLEMENTAL ANSWER TO VEPCO'S MOTION FOR SUMMARY DISPOSITION, AFFIDAVIT OF DR. PHILLIP M. WEITZMAN, STATEMENT OF PROFESSIONAL QUALIFICATIONS OF DR. PHILLIP M. WEITZMAN, and second AFFIDAVIT OF DR. PHILLIP M. WEITZMAN were served this 23d day of July, 1979, by deposit in the United States Mail, upon the following:

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Mr. Ernest Hill
Lawrence Livermore Laboratory
University of California
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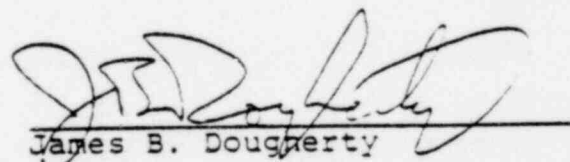
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