4/15/83

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
VIRGINIA ELECTRIC AND POWER COMPANY	)	Docket Nos. 50-338/339-OLA-1 -OLA-2
	)	

(North Anna Power Station, Units 1 and 2)

Applicant's Reply Brief In Response to Board Order

Introduction

This Reply Brief is submitted by the Applicant (Virginia Electric and Power Company) in response to briefs filed by Louisa County and the Board of Supervisors of Louisa County (Louisa) and Concerned Citizens of Louisa County (CCLC), as ordered by the Board at the February 16, 1983 special prehearing conference.

DS03

I. The Board May Not Consider The Health, Safety and Environmental Impacts Of The Transshipment of Spent Fuel From Surry To North Anna

As will be discussed more fully below, the health and safety aspects of the transshipment of spent fuel from Surry to North Anna are beyond the Board's jurisdiction. And, although the Board has jurisdiction to consider the environmental impacts of transshipment, these were considered at the time Surry was licensed and are not subject to relitigation in this proceeding.

A. The Board Has No Jurisdiction Over Health and Safety Impacts

As noted in Vepco's opening brief, the jurisdiction of a Licensing Board is limited by the terms of the notice of hearing published by the Commission. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-619, 12 NRC 558, 565 (1980).[1] The Federal Register notice in proceeding OLA-1 provides that the proceeding will consider an amendment to the

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[1] Louisa's brief says that a Licensing Board may hear any issue "fairly raised" by the applications it has been convened to consider, citing Consolidated Edison Co. (Zion Station, Units 1 and 2), ALAB-616, 12 NRC 419 (1980). Louisa Br. at 3. That case in addition points out that a Board's jurisdiction is "limited by the Commission's notice of hearing." 12 NRC at 426.

North Anna operating licenses to permit the "receipt and storage" of 500 spent fuel assemblies from Surry, 47 Fed. Reg. 41892 (Sept. 22, 1982). The notice in proceeding OLA-2 covers "the expansion of fuel storage capacity for North Anna Units 1 and 2." 47 Fed. Reg. 41893 (Sept. 22, 1982). The transportation of spent fuel from Surry to North Anna is not within the scope of the activities to be considered as part of these amendment proceedings. Thus, the health and safety aspects of transshipment of spent fuel from Surry to North Anna are beyond the Board's jurisdiction.[2]

Despite Louisa County's assertions to the contrary, the health and safety aspects of Vepco's transshipment plan shall have been adequately addressed before Vepco begins to ship. Shipments of spent fuel must comply with the safety requirements that have been prescribed by the Commission (10 C.F.R. Parts 71 and 73). Spent fuel shipments must also comply with Department of Transportation requirements covering the packaging and movement of radioactive materials. 49 C.F.R. Parts 171-79. With respect to the possible sabotage of a spent fuel shipment, the Commission has imposed by rule routing

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[2]Indeed, CCLC agrees with Vepco that the Board may not consider the health and safety impacts of the proposed shipments. CCLC Br. at 2 and n.1.

and physical security requirements on spent fuel shipments. 10 C.F.R. § 73.37. The authority of this Board does not, however, extend to determinations of compliance with Parts 71 and 73 and DOT regulations. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), Memorandum and Order at 7 (July 8, 1982).

Moreover, a licensee is not, of course, "free to ship without first obtaining NRC approval." Louisa Br. at 14. Vepco has merely obtained all the NRC approvals it needs in order to transship. Vepco obtained route approvals for the proposed shipments under 10 C.F.R. § 73.37(b)(7) on July 28, 1982. And, Vepco has a general license under 10 C.F.R. § 71.12(b) to deliver the fuel to a carrier if it uses a licensed cask, and that is what it plans to do. Pursuant to 10 C.F.R. § 70.42(b)(5), Vepco already has authority to transship spent fuel to any facility authorized to receive it.[3]

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[3] While the authority to transship is beyond the Board's jurisdiction, since transshipment of spent fuel from Surry to North Anna is a reasonably foreseeable outcome of authorization to store spent fuel at North Anna, the Board does have jurisdiction under NEPA to consider the environmental impacts of such transportation. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414, Memorandum and Order at 6 (July 8, 1982). The cases cited by Louisa County do not support the Board's jurisdiction to consider health and safety impacts.

Finally, the conclusion that this Board has no jurisdiction over the health and safety aspects of Vepco's shipment plans is amply supported by the cases. See, e.g., Duke Power Co., supra, Memorandum and Order at 7; Carolina Power and Light Co., (Shearon Harris Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-400 OL, 50-401 OL, Memorandum and Order at 57 (September 22, 1982).

B. The Environmental Impacts Of Surry Spent Fuel Transportation Were Considered At Surry's Operating License Stage And Are Not Subject To Relitigation In This Proceeding

Intervenors argue that transshipment is an issue "fairly raised" by Vepco's proposals, and that the Board must therefore consider transshipment in the context of this proceeding. Indeed, Intervenors maintain that the Board must consider the environmental impacts of transshipment of spent fuel from Surry to North Anna, even though the environmental impacts of spent fuel transportation from Surry were considered when Surry was licensed, and regardless of the existence of Table S-4. Intervenors cite many cases, none of which, as will be shown below, ultimately prove their point.

The cases cited by CCLC in support of the argument that the Board must consider the environmental impacts of transshipment of spent fuel from Surry to North Anna are

inapposite. In the Duke transshipment proceeding, the notice published in the Federal Register was far broader than the notice in this case, which was limited to receipt and storage of 500 spent fuel assemblies from Surry and expansion of the North Anna spent fuel. In Duke, the proposed amendment was not only to authorize the receipt and storage of Oconee spent fuel at McGuire, but also the "transport of the Oconee spent fuel by truck between the two sites." Opportunity for Public Participation in Proposed NRC Licensing Action for Amendment to Materials License SNM-1773 for Oconee Nuclear Station Spent Fuel Transportation and Storage at McGuire Nuclear Station, 43 Fed. Reg. 32905 (July 28, 1978).

And, although the environmental impacts of transshipment of spent fuel were reconsidered in the Oconee-McGuire proceeding (they had, of course, been considered when Oconee was licensed), the Duke transshipment proposal entailed a substantially greater number of annual spent fuel shipments from Oconee (300 for 3 Oconee units) than had been assumed in the environmental analysis of spent fuel shipments performed when Oconee was originally licensed (approximately 90 shipments for 3 Oconee units). See NRC Staff Position On Applicability of Table S-4 To Transshipment of Spent Fuel

From Oconee and McGuire To Catawba at 11 n.14 (Dec. 13, 1982). No such discrepancy exists here.[4]

Moreover, although the Licensing Board in Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-400 OL, 50-401 OL, Memorandum and Order (September 22, 1982), said that the environmental impacts of the transportation of spent fuel from other CP&L reactors to Shearon Harris should be factored into the NEPA analysis in the operating license proceeding for Shearon Harris, the Board went on to say that Table S-4, or some multiple thereof, should be applied. Memorandum and Order at 20, 70.

The cases cited by Louisa County do not advance Intervenors' argument that the Board must consider environmental impacts here. Vepco does not in any event dispute that the Board has jurisdiction to consider the environmental impacts of transshipment. Vepco Br. at 6. The environmental impacts of the transshipment of spent fuel from Surry were, however, considered at the time Surry received its operating license, and for that reason may not be relitigated in this proceeding. See Duke

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[4] Vepco's proposal contemplates 30-90 shipments per year. The environmental analysis performed when Surry was licensed assumed 104 shipments per year. See, e.g., Final Environmental Statement, Surry Power Station Unit 1 at 129 (May 1972).

Power Co. (Catawba Nuclear Station, Units 1 and 2), Docket Nos. 50-413, 50-414, Memorandum and Order (February 25, 1983).

The very question in Catawba--a case ignored by Louisa County and mischaracterized by CCLC--was whether environmental impacts associated with shipments of spent fuel from the already licensed Oconee and McGuire plants could be reconsidered in the Catawba operating license proceeding. The Board said that the environmental costs associated with the shipments of spent fuel from Oconee and McGuire had already been taken into account and balanced against the benefits those facilities would provide. For Oconee, this was done in the March 1972 FES, prior to the existence of Table S-4. For McGuire, this was done by the application of Table S-4. Accordingly, the Board said that "[t]hose environmental costs should not now be counted a second time." Memorandum and Order at 5.

So too, the environmental impacts associated with shipments of spent fuel from Surry were taken into account when Surry was licensed, see Final Environmental Statement, Surry Power Station Unit 1 at 128-139 (May 1972), Final Environmental Statement, Surry Power Station

Unit 2 at 128-139 (June 1972), and may not be reconsidered now.[5]

In order for environmental impacts to be reconsidered in this proceeding, a showing must be made that new intervening circumstances arising from the North Anna application bring into question the validity of the environmental impacts already determined for fuel transport when Surry was licensed. See Catawba, Memorandum and Order of February 25, 1983 at 6-7. No such circumstances have been shown here.

The fact that the review of the environmental impacts in the Surry FES was based upon the assumption that the spent fuel would go to a reprocessing plant in Barnwell, South Carolina, e.g., Final Environmental Statement, Surry Power Station Unit 1 &. 128 (May 1972), rather than to another reactor for intermediate storage, is not such a new circumstance. Catawba makes it clear that this would not alter the conclusion that the

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[5]Louisa County alleges that the Surry Environmental Statements do not adequately account for all the environmental impacts of transshipment since they fail to consider the "effect on Louisa's recreation industry and its ability to attract other non-nuclear industries." Br. at 10. The Environmental Statements conclude, however, that the radiological effects of the transshipment of spent fuel would be minimal enough so as not to exceed acceptable limitations. A fortiori, there should be no such negative effect on the quality of life as Louisa conjures up.

environmental impacts of Surry spent fuel transshipment have been adequately accounted for. For, the fact that in Catawba the environmental costs factored into the earlier operating license proceedings were estimated on the basis of the full span of time and distance from when the fuel left the reactor where generated until it reached a reprocessing plant did not change the Board's conclusion that the Table S-4 analysis for McGuire and the FES review for Oconee[6] adequately accounted for the environmental impacts of shipping spent fuel from Oconee and McGuire for intermediate storage at Catawba. Memorandum and Order at 5-6.[7]

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[6]The Oconee FES did not, of course, consider the specific routes proposed by Duke's transshipment scheme.

[7]In its discussion of Catawba, CCLC omits some crucial language. The full text of what the Board said is as follows:

> Having said [that the environmental costs of spent fuel shipment from Oconee and McGuire may not be reconsidered], it must be recognized that the environmental costs which were factored into those earlier proceedings were estimated on the basis of the full span of time and distance from when the fuel leaves the "home" reactor until it reaches a fuel reprocessing plant. The trip to Catawba represents only the first segment of the full journey. If the temporary diversion of the fuel to Catawba causes the total environmental impact for the full journey to be greater than that of a one-step direct trip to a reprocessing plant, and if the impact of the diverted two-step trip is appreciably greater

Thus, CCLC mischaracterizes Catawba when its says that the reason a contention concerning environmental impacts of transshipment was ultimately excluded by the Board was because "the concerns it raised had been addressed fully by the EIS for the Catawba operating license, which included Table S-4 as well as a special supplement dealing with transshipment." Br. at 9 n.6. In fact, no separate additional consideration of impacts of fuel transshipment from Oconee and McGuire to Catawba was included in the EIS for Catawba.

When Palmetto Alliance attempted in its original contention to require a full and detailed analysis of the environmental effects of transportation of spent fuel

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> than that previously taken into account (by use of Table S-4), then the new additional costs should be considered in the Catawba OL proceedings now before us.
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> . . . we believe that Table S-4 and the March 1972 FES for Oconee adequately account for the environmental impacts of shipping spent fuel from Oconee and McGuire to a fuel reprocessing plant (or some other form of authorized disposal), including intermediate shipment to Catawba.

Memorandum and Order at 5-6. (Emphasis added.) So too, the environmental analysis undertaken when Surry was licensed adequately accounts for the environmental impacts of shipping spent fuel from Surry for intermediate storage at North Anna.

from other Duke facilities to Catawba, the Staff countered that Table S-4 applied to the environmental impacts of spent fuel transportation and litigation of these impacts outside Table S-4 would be an impermissible challenge to Commission regulation. NRC Staff Response to Supplemental Statement of Contentions by Petitioners to Intervene, December 30, 1981, p. 20. The Licensing Board agreed, disallowing that contention because it sought "to avoid application of the Table S-4 values about transportation impacts solely on the ground that the spent fuel would be destined for the Catawba storage pool, instead of the hypothetical reprocessing plant referred to in the Table S-4 Rule . . . ." Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), LBP-82-16, 15 NRC 566, 579 (1982). The Board said that no basis for making such a distinction had been made and concluded that the impact would be substantially the same so that Table S-4 values should apply. Id. The Board reiterated this conclusion in its Memorandum and Order of July 8, 1982 at 6.

The Staff nevertheless issued a draft EIA for transshipment of spent fuel from Oconee and McGuire To Catawba as Appendix G to the Draft Environmental Statement for Catawba, NUREG-0921, in which the Staff undertook to evaluate the environmental impacts of spent fuel transshipment, without relying on Table S-4. The

Staff informed the Board that it had not relied upon Table S-4 for its evaluation of the environmental impact of the proposed shipment of Oconee and McGuire spent fuel to Catawba, because on the basis of information originally supplied by the Applicant about the potential volume of spent fuel shipments to Catawba, the Staff concluded that the assumptions used in WASH-1238 to arrive at the values published in Table S-4 would be substantially exceeded. See Catawba, Memorandum and Order of February 25, 1983 at 6.

Thereafter, the Applicant stipulated that all shipments would in fact be made so that their environmental impacts would in fact be encompassed by the Table S-4 values. Id. In response, the Staff revised its Appendix G to the DES so that no separate additional consideration of impacts of fuel transshipment from Oconee and McGuire to Catawba would be included in the Catawba environmental impact statement. The new Appendix to the Catawba FES stated that

> Because no new environmental impacts are introduced by the proposed transshipments and because the environmental impacts of transporting spent fuel from McGuire and Oconee have already been factored into the licensing of those facilities, no environmental impacts for spent fuel transport have been factored into the cost-benefit balancing for Catawba.

Id. Accepting the Staff's position as stated in the new Appendix G to the FES, the Board ultimately excluded the transshipment contention not for the reason fabricated by CCLC, but because the Table S-4 and the March 1972 FES for Oconee adequately accounted for the environmental impacts of shipping spent fuel from Oconee and McGuire to Catawba. Id.

In sum, no "new elements," Louisa Br. at 12, have been introduced into the environmental cost-benefit analysis struck at the Surry operating license stage. Intervenors have not shown that Vepco's proposal for transshipment falls outside of the scope of assumptions for fuel shipment previously analyzed at the time Surry was licensed. The environmental impacts associated with shipments of spent fuel from Surry have been adequately accounted for and may not now be counted a second time.

Even if there were some incremental environmental impacts associated with the transshipment proposal, such impacts would have to be identified in a contention with "reasonable specificity" Catawba, Memorandum and Order of February 25, 1983 at 7. As the Staff points out in its brief, no such contentions have been submitted here.

Moreover, if, because of the North Anna application, special circumstances justifying a reconsideration of Surry transshipment impacts are shown, Table S-4 values should be used to assess those impacts. As noted

previously, that is precisely what the Board in Shearon Harris did.

Although the Board in that case stated that the plans to store Robinson and Brunswick spent fuel at Shearon Harris could have some previously unanalyzed impacts, Memorandum and Order at 19-20, the Board went on to say that Table S-4 or some multiple thereof would apply to those impacts. Id. at 20, 70. The Board rejected the argument that Table S-4 was not applicable to the proposed shipment of spent fuel from Robinson and Brunswick to Harris, and, eventually, from Harris to somewhere else:

> For example, . . . it would appear that one might reasonably double some S-4 values on the theory that the fuel from Robinson and Brunswick is spent fuel on both legs of the trip, not just one. Even under that approach, however, the resulting impacts would be small.

Memorandum and Order at 20. See also Catawba at 7, 8 & n.3.[8] As is apparent from Shearon Harris and Catawba,

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[8] In the context of assuming "for the sake of argument," that there could be some incremental environmental impacts associated with the transshipment of spent fuel from Oconee and McGuire to Catawba that were not accounted for in earlier reviews, the Board envisioned that Table S-4 would apply:

> In view of the fact that the Table S-4 values were based on an assumption that the spent fuel would travel 1000 miles in 3 days to a fuel reprocessing plant, we seriously doubt that a

Table S-4 would apply regardless of whether a reprocessing plant is in fact the destination of the spent fuel.[9]

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short trip--for example, of the less than 50 miles from McGuire to Catawba--could carry with it any significant increased risk of accidents. In adopting Table S-4, the Commission indicated that its values should be applied unless factors (e.g., distance) in a particular case were "much greater" than those used in developing the Table. 40 Fed. Reg. 1005, 1007 (1975). Similarly, it appears to us that Table S-4's value for exposures to transport workers would not be compromised by the short transshipments contemplated here. The only area of Table S-4 that appears to us to be impacted by the proposed transshipments is the dose to some individuals living close to the roadways that would carry the truck traffic. The chances of added exposure would especially increase for those individuals who live or work on portions of the highway used by truckers converging from both Oconee and McGuire. But as we read Table S-4 and its supporting documentation, even the members of the public who would be most exposed would receive only de minimis doses (e.g., at most a few millirem), doses that could not possibly affect an NEPA cost/benefit analysis. See Southern California Edison Co. (San Onofre Station), ALAB-308, 3 NRC 20, 28, n.9 (1976).

Memorandum and Order at 8 n.3.

[9]The Staff had pointed out in Catawba that Table S-4 was formulated without attributing any significance to the nature of the fuel's destination, and that in administering the rule, the unavailability of reprocessing facilities has had no impact on the application of Table S-4. NRC Staff Position On Applicability of Table S-4 To Transshipment Of Spent Fuel From Oconee And McGuire To Catawba (December 1, 1982) at 5.

In short, Louisa County's assertion that Table S-4 cannot "excuse this Board from its obligation to consider the environmental impacts of Vepco's transshipment plan," Br. at 10-11, is contravened by the caselaw and by the very purpose of Table S-4.[10] Table S-4 was designed to eliminate the need for case-by-case, site specific development of transshipment impacts absent a showing that the particular fuel transport contemplated involves distance, population exposures, accident probabilities or other factors much greater than those assumed in developing the Table S-4 impact values, such that a

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[10] Nowhere is it said that Table S-4's applicability is limited to the operating license stage. Louisa Br. at 11. Moreover, contrary to Louisa's assertions, the impacts addressed in the studies underlying Table S-4 are not exclusively radiological. Such non-radiological impacts as the heat and weight of shipments and the traffic density impacts of shipments are addressed. For example, the Summary and Conclusion of one such study states:

> The heat and weight in any one shipment and the total number of shipments from a typical light water reactor are small so there will be no appreciable effect on the environment from the shipping of the fuel and solid radiological waste due to heat, weight, or traffic density.

See Environmental Survey of Transportation of Radioactive Materials To and From Nuclear Power Plants, WASH-1238, December 1972 at 1.

The purpose of Table S-4 according to this study is broadly stated as giving generic treatment to "the environmental impact"--not the "radiological impact"--of nuclear waste transportation.

waiver of Table S-4 is warranted pursuant to 10 CFR § 2.758. Statement of Considerations, 40 Fed. Reg. 1005 (1975). See also Catawba, Memorandum and Order of February 25, 1983 at 7. Such a showing cannot be made here.

II. Section 102(2)(E) of NEPA Does Not Require Consideration of Alternatives Where, As Here, The Proposed Action Involves Negligible Environmental Impacts and Presents No Unresolved Conflict Concerning Alternative Uses of Available Resources

It bears initial emphasis that in connection with its alternatives argument, Louisa attaches a newspaper article suggesting that Vepco will not lose full core reserve when it says it will. In fact, the conclusion stated in that article is based upon a fundamental error. See Attachment A (affidavit of Marvin L. Smith).

As noted in Applicant's opening brief, the Appeal Board has repeatedly rejected the argument that § 102(2)(E) requires the NRC to consider alternatives to a proposed action where the proposal has only negligible environmental impacts. As will be discussed more fully below, while some federal cases hold that the obligation to consider alternatives is not limited to "major federal actions," that is not to say that § 102(2)(E) has no environmental threshold. More important, it is undisputed that where, as here, the proposed action does

not present an unresolved conflict over the alternative use of resources, § 102(2)(E) does not require the consideration of alternatives to the proposed action.

A. Alternatives Need Not Be Considered Where A Proposal Has Only Negligible Environmental Impacts

The cases cited by Intervenors suggest that § 102(2)(E) might require consideration of alternatives whether or not an EIS is required.[11] They do not say, however, that the NRC must consider alternatives where the environmental impacts of a proposed action are negligible.

In Aertsen v. Landrieu, 637 F.2d 12 (1st Cir. 1980), the court qualified its statement that the "obligation to describe alternatives is not limited to a proposed major

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[11] Intervenors also advance CEQ regulations in support of this position. First, these are not necessarily binding. CEQ's regulations purport to be binding on all federal agencies. 40 CFR § 1500.3, 1507.1. But whether or not this is so where they are not expressly adopted by the agency is unclear. See City of New York v. United States Dept. of Transportation, 539 F. Supp. 1237, 1277 (S.D. N.Y. 1982), comparing Hiram Clarke Civic Club, Inc. v. Lynn, 476 F.2d 421, 424 (5th Cir. 1973) (CEQ guidelines not binding) with Andrus v. Sierra Club, 442 U.S. 347, 358 (1979) (CEQ guidelines entitled to "substantial deference"). See also Gloucester County Concerned Citizens v. Goldschmidt, 533 F. Supp. 1222, 1232 (D.N.J. 1982). Second, NRC regulations make no mention of the necessity to include in an EIA a discussion of alternatives. See 10 CFR § 51.7(b).

action significantly affecting the human environment" with the following proviso:

> Yet the § 102(2)(E) obligation extends only to a proposal that has a certain magnitude, Trinity Episcopal Corporation v. Romney, supra,[12] and is controversial. The text of § 102(2)(E) confines the obligation to a "proposal which involves unresolved conflicts concerning alternative uses of available resources."

637 F.2d at 20. (Footnote omitted.)

Similarly, in the very excerpt cited by Louisa County as articulating the "prevailing view" of the courts on this issue, Br. at 16-17, the Fifth Circuit said:

> [Section 102(2)(E)] is supplemental to and more extensive in its commands than the requirement of § 102(2)(C)(iii). It was intended to emphasize an important part of NEPA's theme that all change was not progress and to insist that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing

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[12] Trinity Episcopal School Corp. v. Romney, 532 F.2d 88 (2d Cir. 1975), involved a federally financed urban renewal project covering a 20-block area in Manhattan and its more than 35,000 residents. The facts the Second Circuit had before it thus involved a "major federal project," 523 F.2d at 93, although the necessity was not seen for an EIS. As the First Circuit recognized in Aertsen, Trinity does not support the proposition that § 102(2)(E) applies to proposals regardless of the magnitude of environmental impacts.

> the same result by entirely different means.

Environmental Defense Fund, Inc. v. Corps of Engineers, 492 F.2d 1123, 1135 (5th Cir. 1974). (Emphasis added.) Furthermore, Louisa County cites the North Anna case but fails to note that while the Appeal Board stated that § 102(2)(E) is not expressly limited to "major federal actions," it went on to say that the § 102(2)(E) mandate does not come into play where a proposal "would have negligible environmental impact, and, additionally, would not present unresolved conflicts over the commitment of available resources . . . ." 11 NRC at 457. Thus, the very cases cited by Intervenors refute the notion that § 102(2)(E) requires consideration of alternatives irrespective of the magnitude of any environmental impact.[13]

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[13] CCLC cites Dairyland Power Cooperative (La Crosse Boiling Water Reactor), LBP-80-2, 11 NRC 44 (1980) to support its position. The portion of that case relied on has been vacated. See Dairyland Power Cooperative (La Crosse Boiling Water Reactor), ALAB-638, 13 NRC 374 (1981). In any event, the Licensing Board in Consumers Power Co. specifically found that the decisions relied on by intervenors in that case, including La Crosse, were not inconsistent with its holding that § 102(2)(E) requires studies of alternatives only if there are "unresolved conflicts." Initial Decision at 1.

B. The § 102(2)(E) Requirement To Consider Alternatives Is Not Triggered Absent A Substantial Resources Commitment Question

Regardless of whether § 102(2)(E) requires consideration of alternatives absent the need for an EIS, there is no escaping § 102(2)(E)'s threshold requirement that a proposal present a substantial resources commitment question. The cases--both NRC and federal--uniformly hold that § 102(2)(E) comes into play only when a proposal presents "unresolved conflicts concerning alternative uses of available resources." See Aertsen, supra; Duke Power Co. (Amendment to Materials License SNM-1773-Transportation of Spent Fuel From Oconee Nuclear Station at Storage at McGuire Nuclear Station), ALAB-651, 14 NRC 307, 321-22 (1981); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 NRC 263, 266 (1979); Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 457-58 (1980); Dairyland Power Cooperative (La Crosse Boiling Water Reactor) LBP-80-2, 11 NRC 44, 73 (1980); Consumers Power Co. (Big Rock Point Plant), Docket No. 50-155 Initial Decision at 1 (September 15, 1982). As will be shown below, no such "unresolved conflict" exists here.

The environmental impacts of spent fuel pool expansions have repeatedly been found to be negligible

and to involve the commitment of resources about which there are no unresolved conflicts. See, e.g., Consumers Power Co., supra, at 8; Portland General Electric Co., supra, at 266; Virginia Electric and Power Co., supra, at 458. In granting the Applicant's motion for summary disposition on the need for an EIS or consideration of alternatives in a spent fuel pool expansion proceeding, the Appeal Board in North Anna noted that:

> [T]he intervenors have never endeavored to explain why the installation of new racks in a spent fuel pool might engender a conflict concerning alternative uses of available resources. And it is just as difficult now as it was a year ago (when Trojan was decided) to fathom how such a conflict might arise.

11 NRC at 458. And, as the Appeal Board said in the Duke transshipment case:

> To our mind, it simply cannot be seriously contended that the transportation by motor carrier of 300 spent fuel assemblies over the 170-mile distance separating Oconee and McGuire presents a substantial national resources commitment question.

14 NRC at 322.

In short, cases involving proposals virtually identical to Vepco's have found § 102(2)(E) inapplicable by virtue of the fact that no "unresolved conflict" existed. Indeed, in Vepco's case, the Staff has said that no § 102(2)(E) type of conflict exists. See NRC

Staff Response To Proposed Contentions of Concerned Citizens of Louisa County, Virginia at 10; Transcript of Prehearing Conference at 61-62. Assuming that the Staff's EIA will in fact so conclude, "[i]f these Staff conclusions are supported by the evidence, there is no need for a discussion of alternatives under § 102(2)(E) of NEPA." See Consumers Power Co., supra, Initial Decision at 6.

Not surprisingly, Louisa County's brief never even addresses this point. And, although CCLC concedes that § 102(2)(E), by its own terms, applies only to actions that involve "unresolved conflicts," CCLC goes on to say that "virtually any federal action is covered by § 102(2)(E)." Br. at 15. Of course, the myriad cases finding § 102(2)(E) inapplicable for lack of an "unresolved conflict" prove CCLC wrong.

Respectfully submitted,

VIRGINIA ELECTRIC AND POWER COMPANY

Marcia R. Gelman

By /s/ Marcia R. Gelman
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Dated: April 15, 1983

CERTIFICATE OF SERVICE

I hereby certify that I have this day served Applicant's Reply Brief upon each of the persons named below by depositing a copy in the United States mail, properly stamped and addressed to him at the address set out with his name:

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Attention: Chief Docketing and Service Section

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Marcia R. Gelman

By /s/ Marcia R. Gelman
Marcia R. Gelman, Counsel
for Virginia Electric
and Power Company

Dated: April 15, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket Nos. 50-338/339-OLA-1
VIRGINIA ELECTRIC AND POWER COMPANY	)	OLA-2
	)	
(North Anna Power Station, Units 1 and 2)		

Affidavit of Marvin L. Smith

On April 15, 1983, there appeared before me Marvin L. Smith, who, first being sworn by me, stated and affied as follows:

1. I am Marvin L. Smith. I live at 5707 Hillview Drive, Mechanicsville, Virginia. I am employed by Virginia Electric and Power Company ("Vepco" or "the Company") as Supervisor, Nuclear Engineering. I am responsible for coordinating the activities that the Company is carrying out to provide interim storage for spent nuclear fuel from the reactors at the Company's Surry and North Anna Power Stations. I am familiar with the Company's nuclear fuel management plans, including its estimates of future spent fuel inventories, and with its plans for shipping spent fuel from Surry for storage at North Anna.

2. When I submitted my affidavit of December 21, 1982, which is attached to the Applicant's Answer to Motion of Intervenor Louisa County to Stay Proceedings, Vepco projected that it would lose full core reserve for

the Surry Power Station during a Surry Unit 2 refueling outage scheduled to begin in November 1984.

3. At the time I submitted the December 21, 1982 affidavit, Vepco projected that 60 spent fuel assemblies would be added to the spent fuel pool at Surry during the current Surry Unit 1 refueling outage, which began in February 1983. As a result of fuel performance problems in Surry Unit 1, an additional four spent fuel assemblies will be replaced during the current outage, and so a total of 64 spent fuel assemblies will be added to the Surry spent fuel pool.

4. Another change has occurred in refueling schedule plans that involves Surry Unit 2. The Company has decided to extend the current Surry Unit 2 operating cycle until late June 1983. After this late June refueling outage, Vepco plans to operate Surry Unit 2 until late 1984 or early 1985. The new refueling date is being determined now. The new date will depend on fuel performance and unit capacity factors, but it is likely that the new date will occur a month or two after the November 1984 date set out in my earlier affidavit.

5. Vepco continues to estimate that this late 1984 or early 1985 Surry Unit 2 refueling outage will be the outage during which Vepco will lose full core reserve at Surry if no additional storage space for Surry spent fuel can be obtained.

6. The precise number of assemblies that will have to be removed from the Surry pool prior to the late 1984 or early 1985 Surry Unit 2 refueling outage will depend on the length of the current Surry Unit 2 operating cycle, the lengths of the next Surry Unit 1 and Surry Unit 2 operating cycles, the fuel designs selected by the Company for these future cycles and fuel performance.

7. In light of the foregoing, the Company continues to hold the view set out in paragraph 6 of my December 21, 1982 affidavit. That is to say, in order to preserve full core reserve at Surry, Vepco must move at least seven and possibly as many as fifteen spent fuel assemblies out of the Surry pool prior to the beginning of the Surry Unit 2 refueling outage that will occur in late 1984 or early 1985.

8. In Attachment A to Louisa County's April 1, 1983 Memorandum in Response to Board Order, NRC representatives are quoted as saying that during the current Surry Unit 1 outage, Vepco will replace 60 assemblies rather than the 64 originally planned. In fact, Vepco will replace 64 assemblies rather than the 60 originally planned. Moreover, the statement in Attachment A that Vepco will have 159 spaces after the late 1984 or early 1985 Surry Unit 2 refueling is also wrong. Vepco estimates that it will have between 142 and 150 spaces at that time unless it attains more space prior to that

outage. Vepco needs 157 spaces to maintain full core reserve.

Marvin L. Smith

Marvin L. Smith

Commonwealth of Virginia)
) To wit:
City of Richmond)

Subscribed and sworn to before me in my jurisdiction aforesaid this 15th day of April 1983.

My commission expires: May 13, 1984

Notary Public