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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC
SAFETY AND LICENSING BOARD

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

APPLICANT'S RESPONSE TO
THE BOARD'S QUESTIONS ON TABLE S-4

I.

Background

At the September 7, 1984 Supplemental Special Prehearing Conference, the Board asked the parties

whether there have been any licensing board, appeal board, Commission, federal court rulings on the question of whether Table S-4 applies only in construction permit proceedings, or whether that table is applicable in amendments to operating license cases. (Ts. 168)

The Board also invited the parties to submit any additional arguments they might think necessary on the applicability of Table S-4. This is Vepco's response to the request and invitation.

II.

Authorities Involving Table S-4

Vepco's counsel has conferred with counsel for the applicant in the Catawba case, Duke Power Co. (Catawba Nuclear Station,

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Units 1 and 2), LBP-83-8B, 17 NRC 291 (1983), LBP-82-16, 15 NRC 566 (1982), and inquired whether any party to the Catawba proceeding argued that Table S-4 was inapplicable because it is to be used only at the construction permit stage of a proceeding. Vepco was advised that that argument was not presented to the Board in Catawba.

In addition, Vepco has discovered two other case reports that reflect the application of Table S-4 beyond the construction permit stage.¹ In Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1501 (1982) - an operating license proceeding - the ASLB rejected an intervenor's argument that Table S-4 was inapplicable. There is, however, no indication that the intervenor's argument was based on the construction permit-operating license distinction.

In Carolina Power and Light Co. (Shearon Harris Nuclear Power Plant, Units 1 and 2), LBP-82-119A, 16 NRC 2069 (1982), the applicant sought authorization in its operating license proceeding to receive spent fuel shipped from its other reactors. The intervenor argued that Table S-4 was inapplicable, although, as in Limerick, there is no evidence that the argument was based on the construction permit-operating license distinction. The Board postponed a final decision on the matter pending completion of the Staff's EIS, but it said:

¹In light of the discussion in Part III of this brief, it is safe to assume that Table S-4 has been applied beyond the construction permit stage in a great many proceedings in recent
(Footnote Continued)

Without canvassing all of the arguments, pro and con, it is our tentative view on this legal question that the S-4 Table, or some multiple thereof, can be applied to this situation. (At 2081.)

Vepco has discovered no reported proceeding in which an argument based on the stage of the proceeding has been made or in which the question has been decided. As the following discussion will show, however, the stage of the proceeding is entirely irrelevant to the applicability of Table S-4.

III.

The Staff's Obligations Under 10 Part 51

Section 51.52 of the NRC's regulations does not govern the Staff's NEPA obligations. The Staff's obligations are governed by other provisions of Part 51, and these other provisions authorize the application of Table S-4 in this proceeding.

A. General requirements imposed on the Staff by Part 51

CCLC's Contentions 1 and 5 in OLA-1 attack the Staff's discharge of its NEPA obligations. Thus, the prior emphasis on § 51.52 in this proceeding has been misplaced. Section 51.52, on its face, deals only with the treatment of spent fuel transportation in "environmental reports." "Environment report" is defined in § 51.14(a)(3) as a "document submitted to the Commission by an

(Footnote Continued)

years. But that fact would appear from the case reports only if Table S-4's applicability was challenged, as it was in Limerick and Shearon Harris.

applicant for a permit, license, or other form of permission, or an amendment to or renewal of a permit, license or other form of permission" Section 51.52, therefore, imposes obligations only on the applicant.

By contrast, the Staff's obligations in connection with particular types of applications are defined in a general way in §§ 51.20 through 51.22 and in more detail in subsequent sections of Part 51. As for the general requirements, § 51.20 requires the preparation of an environmental impact statement in certain specified cases that obviously pose significant threats to the environment. Section 51.22, on the other hand, provides categorical exclusions from the requirements of Part 51 for licensing and regulatory actions that are likely to pose negligible threats, if any. The Vepco operating license amendment proposed in OLA-1 is not included under either § 51.20 or 51.22; it is dealt with in § 51.21, which covers the middle ground and provides that

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement and those identified in § 51.22(c) as categorical exclusions.

Section 51.1, which sets out the scope of Part 51, states that the Part contains environmental protection regulations applicable, with only limited exceptions not applicable here, to all of NRC's domestic licensing and related regulatory functions. Thus, there can be no doubt that the Staff's treatment of Vepco's operating license amendment application is subject to § 51.21.

The requirements for environmental assessments are set out briefly in § 51.30. They are quite general. The section merely says that an environmental assessment shall (a) identify the proposed action, (b) discuss briefly the need for the proposed action, alternatives as required by § 102(2)(E) of NEPA and the environmental impacts of the proposed action and "alternatives as appropriate" and (c) include a list of agencies and persons consulted and sources used. This is all that Part 51 says about the content of an environmental assessment. Thus, the Staff is left with a great deal of discretion in drafting an environmental assessment.

Virtually all of the other requirements of Part 51 deal with the content of environmental impact statements. This is not surprising, because those projects requiring environmental impact statements necessarily pose the possibility of significant effects on the environment. It follows that for guidance as to the content of an environmental assessment, the Staff may look to the requirements for environmental impact statements. For if the evaluation of environmental effects is adequate for purposes of a major project that necessarily poses significant threats to the environment, then a fortiori the same evaluation would be adequate for an environmental assessment. We therefore turn to the requirements set out in Part 51 for the treatment of transportation-related effects in environmental impact statements.

B. Environmental Impact Statements - Construction Permit Stage

Section 51.52 requires that the environmental report submitted by an applicant at the construction permit stage apply Table S-4 if the parameters in § 51.52(a)(1)-(5) are met. All of those parameters are, of course, met in this case.

What are the Staff's obligations under Part 51 in dealing with the environmental effects of spent fuel shipment? They are set out in § 51.71(a). That section says, among other things:

[T]he draft statement will address the . . .
matters specified in . . . [§] 51.52

Thus, if Table S-4 is in terms applicable for purposes of § 51.52, it is to be applied by the Staff in its construction permit stage draft environmental impact statement pursuant to § 51.71. Table S-4 is, in short, a "matter specified in . . . [§] 51.52" within the meaning of § 51.71.

The Commission said when it adopted Table S-4 that

The proposed amendment would allow applicants in their environmental reports, and the Commission in its detailed environmental statements, to account for the environmental effects of transportation of fuel and waste by using specific numeric values contained in an appended Summary Table. 40 Fed. Reg. 1005 (January 6, 1975) (Emphasis added).

C. Environmental Impact Statement - Operating License Stage

Section 51.53 deals with the applicant's obligations at the operating license stage. It says that the applicant is to file a supplement to its environmental report.

In this report, the applicant shall discuss the same matters described in . . . 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit.

The Staff is guided at the operating license stage by § 51.95, which states that

the NRC Staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. . . . The supplement will only cover matters which differ from, or which reflect significant new information concerning matters discussed in the final environmental impact statement.

The "prior environmental review," of course, is the construction permit review in which the Staff is explicitly required by § 51.71(a) to address the transportation matters dealt with in § 51.52. Thus, if questions about the environmental effects of spent fuel transportation were first raised at the operating license stage (and if the five parameters were met), the Staff would be authorized to use Table S-4 to assess those effects.

D. Environmental Assessment - Operating License Amendment Stage

This leaves only the question of how the Staff is to deal with operating license amendments that pose environmental questions involving spent fuel shipments. As was pointed out in the discussion in Section IIA above, Part 51 does not specify explicitly that the Staff is to use Table S-4 in assessing a proposal such as the one embodied in OLA-1. The Part 51 guide-

lines for environmental assessments are, to be sure, sketchy. But if the use of Table S-4 would be dictated by Part 51 for an EIS involving the North Anna operating license, the Staff is quite clearly justified in using it here.

For example, assume (a) that Table S-4 had been used (in fact, it was not) at North Anna's construction permit stage to assess transportation related effects of spent fuel shipments away from North Anna, and (b) that Vepco had applied at the North Anna operating license stage for a license condition authorizing storage of Surry fuel. Under these circumstances the applicant would be required under § 51.53 to discuss in his North Anna operating license environmental report the added environmental effects of the incoming shipments from Surry, because they would be "matters described in . . . § 51.52" that differ from those discussed at the construction permit stage. And the Applicant would be required by § 51.52, which is not limited to outgoing shipments from the station under consideration, to use Table S-4 if the parameters are met. The Staff, pursuant to § 51.95, would be required to evaluate these same matters in its operating license EIS and to apply Table S-4. That is precisely what the Staff has done in this proceeding, albeit at the operating license amendment stage, this being the first point at which Vepco has sought such permission.

The Staff could hardly do otherwise. In WASH-1238, which provides the analytical underpinnings for Table S-4, the Staff said

This is a general analysis of the impact on the environment from the transportation of

nuclear fuel and solid radioactive wastes to and from a light-water-cooled nuclear power reactor in accordance with the present regulatory standards and requirements . . .

It is anticipated that this "generic" analysis will provide the basis for the applicant's and the Commission's analysis of the impact on the environment of the transportation of fuel and solid radioactive waste under normal conditions of transportation and the design basis accident, i.e., accident damage test conditions specified in the regulations. (At 3.)

Nothing in this description of the purposes for which the generic analysis was performed suggests that it is to be ignored in environmental assessments. Quite the contrary. The Commission stated in adopting Table S-4:

The Environmental Survey [WASH-1238], which serves as a primary data base for the amendment, considers and assesses the contribution of environmental effects from transportation of fuel and solid wastes for a "typical" light-water-cooled nuclear power reactor. The Survey also contains an analysis of the probabilities of occurrences of transportation accidents, the expected consequences of such accidents, and an analysis of the potential radiation exposures to transportation workers and the general public under normal conditions of transport. 40 Fed. Reg. 1005 (January 6, 1975).

One could scarcely imagine a clearer direction to the Staff to use Table S-4 where the parameters are met, regardless of the licensing stage involved in the particular proceeding.

To summarize, then, § 51.52 simply does not set out the Staff's obligations. Still less does it limit in any way the Staff's freedom to use Table S-4 when the parameters that govern the applicability of that Table are present, as they are here.

On the contrary, it is the provisions of § 51.21, 51.30, 51.71 and 51.95 that govern the Staff's obligations. Those provisions make it crystal clear that, in environmental impact statements, the Staff is to use Table S-4 when the parameters are met. In light of the Commission's guidance, the Staff could hardly be expected to follow a different course when an environment assessment is appropriate, still less required to do so. The Staff has acted properly in relying on Table S-4 in connection with OLA-1, the CCLC's challenge is nothing more than a challenge to the Table and that challenge is not permitted under 20 C.F.R. § 2.758.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served Applicant's Response to the Board's Questions on Table S-4 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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