

November 4, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ARIZONA PUBLIC SERVICE COMPANY, et al.) Docket No. 50-528
)
(Palo Verde Nuclear Generating)
Station, Unit 1))

NRC STAFF'S RESPONSE TO
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE
FILED BY THE NATIONAL ENVIRONMENTAL PROTECTION CENTER

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby responds to the Request for Hearing and Petition for Leave to Intervene ("Petition") filed by the National Environmental Protection Center ("NEPC") on October 14, 2002.¹ For the reasons set forth below, the Staff submits that the Petition should be denied (a) to the extent it is based on a finding of exigent circumstances, on grounds of mootness, (b) for failing to demonstrate that NEPC or any individuals affiliated with NEPC possesses the requisite standing to intervene in this matter, and (c) to the extent that it challenges the Staff's proposed "no significant hazards consideration" ("NSHC") finding, it fails to provide a permissible basis for intervention. Accordingly, the Staff opposes the Petition and recommends that it be denied.

BACKGROUND

On September 26, 2002, as supplemented on October 23, 2002, Arizona Public Service Company ("APS" or "Licensee") applied for an amendment to the technical specifications ("TS") for Palo Verde Nuclear Generating Station ("Palo Verde" or "PVNGS"), Unit 1, pertaining to the

¹ See Letter from Thomas Saporito, Executive Director (NEPC), to NRC Secretary, dated October 14, 2002.

inspection of steam generator ("SG") tubes. More specifically, APS requested an amendment to TS 5.5.9 ("Steam Generator Tube Surveillance Program") for Palo Verde Unit 1, to revise the definition of SG tube inspection in TS 5.5.9.4 ("Acceptance Criteria)," to more clearly delineate the scope of the SG tube inspection required in the tubesheet region. In effect, the proposed amendment (as modified on October 23, 2002) would revise the scope of the required inspection of tubes in the tubesheet region, to specify that inspections are not required in the portion of the tube that is more than seven inches below the bottom of the expansion transition ("BET").

In its application, APS stated that the amendment is needed to support the restart of Palo Verde Unit 1 from its October 2002 refueling outage, based on its "understanding of the issue" from discussions with other NRC licensees and the Staff. Letter of September 26, 2002, at 1. APS stated that the Westinghouse WCAP-15947 report, which is the basis for the proposed amendment, could not be completed in time to avoid the exigent circumstances. *Id.* APS further stated that entry into Mode 4 was scheduled for October 26, 2002, and that the amendment was needed on an exigent basis by October 24, 2002, so as to avert delay to the startup of Unit 1 following the completion of the October refueling outage. *Id.* at 2.

On October 3, 2002, the Commission published a "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing" ("Notice"), concerning the APS application. 67 Fed. Reg. 62079 (2002). The Notice stated, *inter alia*, that by November 4, 2002, "the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene."

In addition, the Notice indicated that APS had concluded the proposed amendment presents no significant hazards consideration under the standards in 10 C.F.R. § 50.92(c), and accordingly,

a NSHC finding is justified. The Notice further stated that the NRC Staff had reviewed the licensee's analysis and, "based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied." Accordingly, the Notice stated that "the NRC staff proposes to determine that the amendment request involves no significant hazards consideration." 67 Fed. Reg. at 62080. The Notice indicated that the Commission is seeking public comments on this proposed determination, and that comments received by the close of business on October 25, 2002, would be considered in making any final NSHC determination. *Id.*

On October 14, 2002, NEPC filed the instant Petition. Therein, NEPC asserted, *inter alia*, that it is "a non-profit educational organization"; that it "maintains business offices within an approximate 10-mile radius" of Palo Verde Unit 1; that "Petitioners. . . therefore live and work within the NRC's requisite 'Zone of Interest' to PVNGS"; and that "Petitioners have real property and interests which would be adversely affected should the proposed licensing amendment result in or cause a release of radioactive particles or substances from the PVNGS into the environment." Petition at 1, 2. NEPC challenged the proposed NSHC finding, and requested that the Atomic Safety and Licensing Board "issue an Order of Injunction prohibiting NRC from considering or finding of [sic] 'no significant hazards consideration' until any public hearing convened by the ASLB is concluded and proper determinations and adjudications are made." *Id.* at 2.

Subsequently, on October 25, 2002, the Staff transmitted a letter to APS,² in which it concluded, based on its review of the Licensee's letters of September 26 and October 23, 2002, that it has no objection to the Licensee's "inspection of the SG tubes under the current TSs prior to restart of Unit 1 from the current refueling outage," and that "the proposed amendment is not needed on an exigent basis prior to restart of the plant." The letter further stated that the Staff may request further information from the Licensee in order to complete its review of the license

² See Letter from Stephen Dembek (NRC) to Gregg R. Overbeck (APS), dated October 25, 2002 (Attachment 1 hereto).

amendment request, and that the Staff would address the appropriate use of probes in SG tube inspections on a generic basis.

Finally, on November 4, 2002, the Staff transmitted for publication in the Federal Register, a second "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing" ("Notice"), concerning this license amendment application.³ This second Notice included reference to the Licensee's letter of October 23, 2002, *Id.* at 1; provided a proposed no significant hazards consideration finding, *Id.* at 1-3; and stated that it "supercedes and replaces the exigent circumstances TS amendment notice of October 3, 2002." *Id.* at 3.⁴

DISCUSSION

A. To the Extent that the Petition Challenges a Finding of Exigent Circumstances, It Should Be Denied On Grounds of Mootness.

As set forth above, the Staff has determined that the requested TS amendment need not and will not be issued on an exigent basis. Further, the Staff has transmitted a second Notice for publication in the Federal Register, which supersedes and replaces the notice of an exigent circumstances TS amendment issued on October 3, 2002, and will provide a further period of 30 days for the filing of public comments and petitions for leave to intervene.

These developments warrant that NEPC's Petition be denied as moot, to the extent that it challenges the finding of exigent circumstances. In this regard, the Staff has since determined that the amendment need not be issued on an exigent basis, and the requested amendment will be

³ See "Memorandum" to NRC Biweekly Notice Coordinator, from Jack Donohew (Senior Project Manager), dated November 4, 2002 ("Request for Publication in Biweekly FR Notice -- Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing") (Attachment 2 hereto). The Staff expects this Notice to be published in the Federal Register in the near future.

⁴ As a biweekly Federal Register notice, this second Notice will establish a 30-day period for public comments on the proposed NSHC finding and a 30-day period for filing petitions for leave to intervene on the proposed amendment. See 10 C.F.R. §§ 2.105(d) and 50.91(a)(2).

reviewed in accordance with the established procedures for consideration and issuance of a non-exigent circumstances license amendment. See 10 C.F.R. § 50.91(a)(2). Further, the initial exigent circumstances determination, which is challenged in the NEPC Petition, is no longer in effect; and additional time is being provided for filing public comments on the proposed NSHC finding and for petitions to intervene on the proposed license amendment. Moreover, the Licensee has amended its TS amendment request by letter dated October 23, 2002, such that the original Federal Register Notice of October 3, 2002, does not correctly describe the current license amendment request. For these reasons, the original Notice is no longer operative, and any request for hearing or petition to intervene based on the exigent circumstances determination stated in that Notice is now moot.⁵

B. The Petitioner Fails to Demonstrate that It Possesses Cognizable Interests Which Could Be Adversely Affected by This Proceeding.

1. Legal Requirements for Intervention.

It is fundamental that any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a(1) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a) (“the Act” or “AEA”), provides:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interest may be affected by the proceeding*, and shall admit any such person as a party to such proceeding.”

Id.; emphasis added.

The Commission’s regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, *inter alia*, “shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner

⁵ NEPC may file a request for hearing and petition to intervene on the license amendment as described in the second Notice, within the time period stated therein.

should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)].” Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene, the presiding officer or Licensing Board is to consider:

- (i) The nature of the petitioner’s right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner’s property, financial, or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner’s interest.

Finally, a petition for leave to intervene must set forth “the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene,” 10 C.F.R. § 2.714(a)(2); and a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding. 10 C.F.R. § 2.714(b).

In determining whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Gulf States Utilities Co. (River Bend Station, Unit 1), CLI-94-10, 40 NRC 43, 47 (1994)*. In order to establish standing, a petitioner must show that the proposed action will cause “injury in fact” to the petitioner’s interest and that the injury is arguably within the “zone of interests” protected by the statutes governing the proceeding. *See, e.g., Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), CLI-93-16, 38 NRC 25, 32 (1993)*. In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act (“NEPA”). *Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-85-2, 21 NRC 282, 316 (1985)*.

To establish injury in fact and standing, the petitioner must establish (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed

by a favorable decision in the proceeding. *Dellums v. NRC*, 863 F.2d 968, 971 (D.C. Cir. 1988); *Vogtle, supra*, 38 NRC at 32.⁶ It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *Sequoyah Fuels, supra*, 40 NRC at 71-72. The injury must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan, supra*, 504 U.S. at 560. A petitioner must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing; while this stake need not be a "substantial" one, it must be "actual," "direct" or "genuine." *Houston Lighting and Power Co.* (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979).

A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power and Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied General Nuclear Services* (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 and 2), LBP-82-26, 15 NRC 742, 743 (1982). Similarly, an abstract, hypothetical injury is insufficient to establish standing to intervene. *Ohio Edison Co.* (Perry Nuclear Power Plant, Unit 1), LBP-91-38, 34 NRC 229, 252 (1991), *aff'd in part on other grounds*, CLI-92-11, 36 NRC 47 (1992).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. *Georgia*

⁶ A determination that the injury is fairly traceable to the challenged action does not depend "on whether the cause of the injury flows directly from the challenged action, but whether the chain of causation is plausible." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 (1994).

Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995).⁷ An organization may meet the injury in fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action, sufficient to confer upon it "derivative" or "representational" standing. *Houston Lighting and Power Co.* (South Texas Project Units 1 and 2), ALAB-549, 9 NRC 644, 646-47 (1979), *aff'g* LBP-79-10, 9 NRC 439, 447-48 (1979). An organization seeking to intervene in its own right must demonstrate a palpable injury in fact to its organizational interests that is within the zone of interests protected by the AEA or NEPA. *Florida Power and Light Co.* (Turkey Point Nuclear Generating Plant, Units 3 and 4), ALAB-952, 33 NRC 521, 528-30 1991). Where the organization relies upon the interests of its members, it must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Georgia Institute of Technology, supra*, 42 NRC at 115.

2. NEPC Has Failed to Establish Its Standing to Intervene in This Proceeding as of Right.

An application of these principles to the Petition filed by NEPC demonstrates that neither that organization nor any of its individual members have established their standing to intervene in this proceeding, in that they have not shown an "injury in fact" to their interests that is fairly traceable to the requested TS amendment. First, with respect to NEPC, no showing has been made that the organization possesses any "interest" of its own whatsoever -- much less that it has an interest that could be affected by the outcome of this proceeding. NEPC describes itself as "a

⁷ It is well established that a person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. See, e.g., *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329 (1989) (individual could not represent plant workers without their express authorization); *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (mother could not represent son attending university unless he is a minor or under legal disability); *Combustion Engineering, Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989) (legislator lacks standing to intervene on behalf of his constituents).

non-profit educational organization”; that it “maintains business offices within an approximate 10-mile radius” of Palo Verde Unit 1. Petition at 1. However, NEPC fails to explain how its interests as a non-profit educational organization could be adversely affected by the requested license amendment. Further, NEPC provides only a post office box address for itself (*Id.* at 1), and fails to specify the location of any office or other property in which it has a property interest within the area of the facility. In sum, in the absence of any further information, NEPC has not shown how any of its interests would be adversely affected by the proposed amendment. Accordingly, NEPC has not shown that it possesses organizational standing to intervene on its own behalf.

With respect to the standing of any individual members, NEPC has failed to identify a single member of the organization who possesses an interest that could be adversely affected by the requested amendment. To be sure, NEPC asserts that “Petitioners. . . live and work within the NRC’s requisite ‘Zone of Interest’ to PVNGS”; and that “Petitioners have real property and interests which would be adversely affected should the proposed licensing amendment result in or cause a release of radioactive particles or substances from the PVNGS into the environment.” *Id.* at 2. However, NEPC fails to identify any of these “Petitioners,” nor does it provide any information that would permit the Licensing Board to determine whether they indeed have interests that could be affected by this proceeding, sufficient to confer upon them standing to intervene in this matter.

NEPC has not identified any close, regular, or frequent contacts in the vicinity of the facility. NEPC’s assertion that it has “real property and interests which would be adversely affected” by the requested amendment is too vague and generalized to confer standing upon it, and its assertion that (unnamed) “Petitioners live and work within the NRC’s requisite ‘Zone of Interest’ is similarly too vague and generalized to support the organization’s standing to intervene. The Petitioner’s failure to specify the precise locations of its property or activities in the vicinity of the proposed site, or to show how any of its interests could be affected by an order entered in this proceeding, makes it impossible to conclude that it may suffer a “distinct and palpable” or “concrete” harm, as is

required to demonstrate injury in fact. Thus, the Petitioner has not shown that it would suffer any injury in fact that is "fairly traceable to the proposed action."

Further, NEPC's claim that it maintains a business office within "an approximate 10-mile radius" of the facility, and that "Petitioners. . . therefore live and work within the NRC's requisite 'Zone of Interest'" does not automatically establish its standing to intervene. To be sure, in Commission proceedings involving initial power reactor licensing, a showing of geographic proximity within about 50 miles of the reactor has been presumed sufficient to satisfy the injury in fact requirement. *See, e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.21 (1977)*. In other proceedings, however, it has been held that a determination of how close a petitioner must live or engage in activities relative to the source of radioactivity to establish standing depends on the nature of the proposed action and the significance of the radioactive source.⁸ In the instant proceeding, NEPC has not shown any basis to apply a 50-mile or similar geographic distance presumption for standing, nor has NEPC shown that the requested license amendment has any "obvious potential for offsite consequences" that could affect its interests.

In sum, while NEPC may have an academic, professional or "educational" interest in this proceeding, it has failed to show that it has any health, safety, property, financial, or other personal interest that could be affected by the results of the proceeding. Accordingly, the Petition fails to show that NEPC or any of its members has a "real stake" in the outcome of the proceeding, as is required to establish injury in fact for standing to intervene. *See, e.g., South Texas, supra*, 9 NRC at 447-48. Similarly, no showing has been made that NEPC or any of its members may suffer a "distinct and palpable" harm that can fairly be traced to the challenged action, or any "concrete and

⁸ *See, e.g., Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989)* (petition for leave to intervene was denied, where no "obvious potential for offsite consequences" was alleged to result from the action at issue in the proceeding).

particularized" injury that is "actual or imminent" rather than "conjectural or hypothetical." The Petitioner's general or academic interest in the proceeding is simply insufficient to confer standing upon NEPC. *Barnwell, supra*, 3 NRC at 422; *Skagit/Hanford, supra*, 16 NRC at 983; *Skagit/Hanford, supra*, 15 NRC at 743.⁹ NEPC's petition to intervene should therefore be denied, for failing to meet the requirements of 10 C.F.R. § 2.714.

3. The Petition Fails to Show that Discretionary Intervention Should Be Afforded.

Where a petitioner lacks standing to intervene in a proceeding as of right, the Licensing Board may admit the petitioner as a party, as a matter of discretion, upon consideration of all the facts and circumstances of the case. *Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27*, 4 NRC 610, 616 (1977). In this regard, the Commission has indicated that the following factors should be considered (*Id.*):

(a) Weighing in favor of allowing intervention --

- (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention --

- (4) The availability of other means whereby petitioner's interest will be protected.
- (5) The extent to which the petitioner's interest will be represented by existing parties.

⁹ It has been held that the alleged injury-in-fact to the member must fall within the purposes of the organization. *Curators of the University of Missouri (TRUMP-S Project), LBP-90-18*, 31 NRC 559, 565 (1990). To the extent that any of NEPC's members may have a health and safety or other personal interest that could be adversely affected by this proceeding, that interest would appear to fall outside the stated "educational" purposes of the organization, and would not appear to support the organization's representational standing to intervene.

(6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

The Petition filed by NEPC here fails to address any of these criteria, and fails to identify any basis to conclude that these factors favor the grant of discretionary intervention. Accordingly, no basis has been shown to support discretionary intervention for NEPC in this proceeding.

C. The Petition Should Be Denied Insofar As It Seeks to Contest A No Significant Hazards Consideration Finding.

In its Petition, NEPC stated that "Petitioners contend that the licensee's analysis and the NRC's review of the licensee'[s] analysis of the proposed amendment does not appear to meet the standards of 10 CFR 50.92(c)"; that "they were not provided a 30-day notice" of the proposed license amendment; and that the Atomic Safety and Licensing Board should issue an injunction "prohibiting NRC from considering or finding . . . 'no significant hazards consideration' until any public hearing convened by the ASLB is concluded and proper determinations and adjudications are made." *Id.* at 2. In effect, NEPC's Petition challenges the Staff's proposed "no significant hazards consideration" ("NSHC") finding, and seeks to enjoin the agency from reaching a final NSHC finding prior to the conclusion of an adjudicatory proceeding.

NEPC's challenge to the Staff's proposed NSHC finding, and its attempt to prohibit any final NSHC finding *pendente lite*, is impermissible under the Commission's regulations. The Commission's regulations, in 10 C.F.R. § 50.58(b)(6), provide as follows:

No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

This principle has been recognized and applied on numerous occasions in Commission jurisprudence. *See, e.g., Carolina Power & Light Co.* (Shearon Harris Nuclear Power Plant), CLI-01-07, 53 NRC 113, 116, 118 (2001); *Yankee Atomic Electric Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 204 n.7 (1998). Accordingly, to the extent that NEPC's Petition

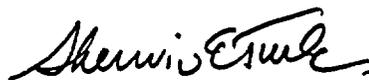
is founded on its challenge to the Staff's proposed NSHC finding or its effort to prevent the agency from reaching a final NSHC finding prior to the conclusion of adjudicatory hearings, the Petition constitutes an impermissible challenge to the Commission's regulations and fails to provide a cognizable basis for intervention.

Moreover, pursuant to 10 C.F.R. § 2.714(a)(2), a petition to intervene must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." Contrary to this requirement, nowhere in its Petition does NEPC identify any aspect of the proposed license amendment which it believes to be contrary or public health and safety, as to which it seeks to intervene. Rather, the sole concern identified by NEPC is its challenge to the Staff's proposed NSHC finding. Inasmuch as that matter fails to provide a basis that could support intervention, NEPC has failed to identify any cognizable aspect of the proceeding as to which its request to intervene may proceed. Accordingly, its Petition should be denied.

CONCLUSION

For the reasons set forth above, the petition for leave to intervene filed by NEPC (a) is moot, to the extent it is based on a finding of exigent circumstances; (b) fails to satisfy the requirements of 10 C.F.R. § 2.714; and (c) to the extent that it seeks to challenge the proposed "no significant hazards consideration" finding, it fails to establish a permissible basis for intervention. Accordingly, the Staff opposes the petition and recommends that it be denied.

Respectfully submitted,



Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of November 2002

October 25, 2002

Mr. Gregg R. Overbeck
Senior Vice President, Nuclear
Arizona Public Service Company
P. O. Box 52034
Phoenix, AZ 85072-2034

SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNIT 1 - REVIEW
RELATED TO STEAM GENERATOR TUBE INSPECTION (TAC NO. MB6378)

Dear Mr. Overbeck:

By letter dated September 26, 2002 (102-04844), as supplemented on October 23, 2002 (102-04856), you requested an amendment to the Technical Specifications (TSs) for the Palo Verde Nuclear Generating Station, Unit 1. The proposed amendment would revise the definition of steam generator tube inspection in TS Section 5.5.9, "Steam Generator (SG) Tube Surveillance Program." In your application, you also requested that the staff issue the amendment on an exigent basis before Unit 1 enters Mode 4 in the restart from the current refueling outage. These letters provided your justification for the extent and method of the inspection of the SG tubes in the tubesheet region.

Based on our review of your letters, which contain the justification of your use of the plus point coil, we have no objection to your inspection of the SG tubes under the current TSs prior to restart of Unit 1 from the current refueling outage, although we may request further information from you later in order to complete our review of your amendment request. We have also concluded that the proposed amendment is not needed on an exigent basis prior to restart of the plant

The appropriate use of probes in SG tube inspections, used to comply with TS 5.5.9, will be addressed on a generic basis, and may be the subject of future generic communications.

Sincerely,

/RA by William H. Ruland for/
Stephen Dembek, Chief, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-528

cc: See next page

October 25, 2002

Mr. Gregg R. Overbeck
Senior Vice President, Nuclear
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P. O. Box 52034
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SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNIT 1 - REVIEW
RELATED TO STEAM GENERATOR TUBE INSPECTION (TAC NO. MB6378)

Dear Mr. Overbeck:

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Based on our review of your letters, which contain the justification of your use of the plus point coil, we have no objection to your inspection of the SG tubes under the current TSs prior to restart of Unit 1 from the current refueling outage, although we may request further information from you later in order to complete our review of your amendment request. We have also concluded that the proposed amendment is not needed on an exigent basis prior to restart of the plant.

The appropriate use of probes in SG tube inspections, used to comply with TS 5.5.9, will be addressed on a generic basis, and may be the subject of future generic communications.

Sincerely,
/RA by William H. Ruland for/
Stephen Dembek, Chief, Section 2
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-528

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November 4, 2002

MEMORANDUM TO: Biweekly Notice Coordinator

FROM: Jack Donohew, Senior Project Manager, Section 2 /RA/
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

SUBJECT: REQUEST FOR PUBLICATION IN BIWEEKLY FR NOTICE -
NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENTS
TO FACILITY OPERATING LICENSES, PROPOSED NO
SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION,
AND OPPORTUNITY FOR A HEARING (TAC NOS MB6378)

Arizona Public Service Company, et al., Docket No STN 50-528, Palo Verde Nuclear
Generating Station, Unit 1, Maricopa County, Arizona

Date of amendment request: September 26, 2002, as supplemented by letter dated
October 23, 2002.

Description of amendment request The amendment would revise Technical Specification
(TS) 5.5.9, "Steam Generator (SG) Tube Surveillance Program," to clearly delineate the
scope of the tube inspection required in the SG tubesheet region TS 5.5.9 is in Section 5,
"Administration Controls," of the TSs.

Basis for proposed no significant hazards consideration determination: As required by
10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant
hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Arizona Public Service Company (APS) proposes to modify Palo Verde Nuclear Generating Station (PVNGS) Technical Specifications for Unit 1 to define the SG tube inspection scope. The PVNGS Unit 1 specific analysis takes into account the reinforcing effect the tubesheet has on the external

surface of an expanded SG tube. Tube-bundle integrity will not be adversely affected by the implementation of the revised tube inspection scope. SG tube burst or collapse cannot occur within the confines of the tubesheet; therefore, the tube burst and collapse criteria of NRC Regulatory Guide (RG) 1.121 (Bases for Plugging Degraded PWR Steam Generator Tubes) are inherently met. Any degradation below the TEA [Tube Engagement Area] length is shown by analyses and test results to be acceptable, thereby precluding an event with consequences similar to a postulated tube rupture event.

Tube burst is precluded for cracks within the tubesheet by the constraint provided by the tubesheet. Thus, structural integrity is maintained by the tubesheet constraint. However, a 360-degree circumferential crack or many axially oriented cracks could permit severing of the tube and tube pullout from the tubesheet under the axial forces on the tube from primary to secondary pressure differentials. Testing was performed to define the length of non-degraded tubing that is sufficient to compensate for the axial forces on the tube and thus prevent pullout. This proposed amendment would encompass that length of non-degraded tubing for inspection.

In conclusion, incorporation of the revised inspection scope into PVNGS Unit 1 Technical Specifications maintains existing design limits and therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Tube-bundle integrity is expected to be maintained during all plant conditions upon implementation of the proposed tube inspection scope. Use of this scope does not introduce a new mechanism that would result in a different kind of accident from those previously analyzed. Even with the limiting circumstances of a complete circumferential separation of a tube occurring below the TEA length, SG tube pullout is precluded and leakage is predicted to be maintained within the Updated Final Safety Analysis Report limits during all plant conditions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Upon implementation of the revised inspection scope, operation with potential cracking below the Inspection Extent length in the expansion region of the SG tubing meets the margin of safety as defined by RG 1.121 and RG 1.83 (Inservice Inspection of Pressurized Water Reactor Steam Generator Tubes) and the requirements of General Design Criteria 14, 15, 31, and 32 of 10 CFR [Part] 50. Accordingly, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above evaluation, APS concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

The above amendment was previously noticed in the *Federal Register* on October 3, 2002 (67 FR 62079), as an exigent circumstances TS amendment, based on the preliminary determination that the TS amendment was needed on or about October 25, 2002, to allow Unit 1 to restart from its refueling outage. On further consideration, it has been determined that the proposed TS amendment does not have to be issued before the restart of Unit 1. This notice supersedes and replaces the exigent circumstances TS amendment notice of October 3, 2002.

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999
NRC Section Chief: Stephen Dembek

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Response: No

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NRC Section Chief: Stephen Dembek

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* See previous concurrence

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

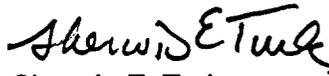
In the Matter of)
)
ARIZONA PUBLIC SERVICE COMPANY, et al.) Docket No. 50-528
)
(Palo Verde Nuclear Generating)
Station, Unit 1))

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(b), the following information is provided:

Name: Sherwin E. Turk
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Washington, D.C. 20555
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Admissions: United States Supreme Court
State of New Jersey
District of Columbia
Name of Party: NRC Staff

Respectfully submitted,


Sherwin E. Turk
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of November 2002