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November 19, 2002 (12:09PM)



NEPC

NATIONAL ENVIRONMENTAL PROTECTION CENTER

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

November 8th, 2002

Ann M. Young, Chair
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

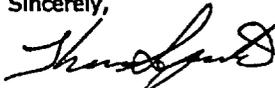
RE: ARIZONA PUBLIC SERVICE COMPANY, DOCKET NO. 50-528-OLA - REQUESTS FOR
HEARING AND PETITIONS TO INTERVENE FILED BY THE NATIONAL ENVIRONMENTAL
PROTECTION CENTER AND THOMAS SAPORITO

Dear Judge Young:

The undersigned Executive Director of the National Environmental Protection Center ("NEPC") is the legal representative of NEPC and is concurrently himself a petitioner separate and apart from NEPC. Thus Thomas Saporito will represent the interest of NEPC and its members including the interest of the undersigned as well. The undersigned is therefore serving his Notice of Appearance for NEPC, the membership of NEPC, and for himself who will be acting on behalf of NEPC in the above-styled matter.

In addition, NEPC and the membership of NEPC and the undersigned are cumulatively submitting a JOINT AMENDED PETITION pursuant to 10 C.F.R. 2.714(a)(3) which provides that any person who has filed an intervention petition has the right to amend such petition at any time up to fifteen days prior to the holding of a special prehearing or initial prehearing conference. Therefore please consider service to NEPC as service to all petitioners identified above.

Sincerely,



Thomas Saporito
Executive Director

C: Service Sheet

Template = SECY-037

SECY-02

NATIONAL ENVIRONMENTAL PROTECTION CENTER

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD**

ASLBP NO. 03-804-01-OLA

November 7, 2002

DOCKET NO. 50-258-OLA

In the Matter of

ARIZONA PUBLIC SERVICE COMPANY

**PALO VERDE NUCLEAR GENERATING STATION
(UNIT NO. 1)**

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned, a representative in good standing, enters an appearance on behalf of the National Environmental Protection Center, and on behalf of the membership of the National Environmental Protection Center, and on behalf of Thomas Saporito, in any proceeding relating to the above-styled matter. In accordance with 10 C.F.R. 2.713(b), the undersigned offers the following:

Name:	Thomas Saporito
Address:	Post Office Box 1021 Tonopah, Arizona 85354 NEPC@THEPOSTMASTER.NET (EMAIL)
Telephone Number:	623-386-6863
Facsimile Number:	309-294-1305
Admissions:	
Name of Party:	National Environmental Protection Center

Respectfully submitted,



Thomas Saporito
Executive Director, NEPC
Counsel for National Environmental Protection
Center

NATIONAL ENVIRONMENTAL PROTECTION CENTER

**UNITED STATES OF AMERICA
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In the Matter of

ARIZONA PUBLIC SERVICE COMPANY

PALO VERDE NUCLEAR GENERATING STATION
(UNIT NO. 1)

**PETITIONERS' JOINT AMENDED REQUEST FOR HEARING
AND PETITION FOR LEAVE TO INTERVENE**

I. INTRODUCTION

In accordance with 10 C.F.R. 2.714(a)(3), the National Environmental Protection Center (hereinafter "NEPC" or "Petitioner") and the membership of NEPC (hereinafter "NEPC" or "Petitioner") and Thomas Saporito (hereinafter "Petitioner") hereby jointly as (hereinafter "Petitioner") hereby amends its request for hearing and petition for leave to intervene. For the reasons set out below, Petitioner's request for hearing and petition for leave to intervene should be granted.

II. BACKGROUND

On September 26, 2002, the Arizona Public Service Company ("Licensee") submitted a request to the U.S. Nuclear Regulatory Commission ("NRC") for an amendment to the technical specifications ("TS") for the licensee's Palo Verde Nuclear Generating Station ("PVNGS"), Unit-1 for modification of the surveillance program requirements regarding the inspection of the steam generator ("SG") tubes. The licensee requested an amendment to TS 5.5.9 of the PVNGS Unit-1 Steam Generator Tube Surveillance Program ("SGTSP") and specifically 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 in the tubesheet region of the

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SG as required in the SGTSP. On October 23, 2002, the licensee modified their license amendment request to the NRC revising the scope of the required inspection of tubes in the tubesheet region and therein relaxing the safety inspection requirements of the SGTSP to not require the licensee to inspect tubes in the section of the SG tube which is greater than seven inches below the bottom of the expansion transition. The licensee, as well as the NRC, relied on a Westinghouse WCAP-15947 report as the basis for the proposed license amendment request and the licensee sought NRC action on their request on an exigent basis for approval by October 24, 2002 to avoid the economic effects of a delayed restart of PVNGS Unit-1 subsequent to the completion of the October 2002 refueling outage.

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" ("FRN") regarding the licensee's application. See, 67 Fed. Reg. 62079 (2002). The FRN stated that the licensee concluded the proposed amendment presents no significant hazards consideration ("NSHC") under the standards at 10 C.F.R. 50.92(c), and that the NRC should determine that a NSHC is warranted. The FRN indicated that the NRC Staff had reviewed the licensee's analysis and, based on the NRC's review of the licensee's analysis, it appeared that the three standards of 10 C.F.R. 50.92(c) were met. The FRN advised that the NRC staff proposes to determine that the licensee's amendment request involves no significant hazards consideration. See, Fed. Reg. at 62080. The FRN further advised that by November 4th, 2002 the licensee may file a request for a hearing with respect to issuance of the amendment to the PVNGS facility operating license and that 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.

On October 14th, 2002, NEPC submitted a request for hearing and a petition for leave to intervene. On November 4th, 2002, Thomas Saporito submitted a request for hearing and a petition for leave to intervene.

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On November 4th, 2002, the NRC staff filed NRC STAFF'S RESPONSE TO REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE FILED BY THE NATIONAL ENVIRONMENTAL PROTECTION CENTER. In accordance with 10 C.F.R. 2.714(a)(3) and in light of the NRC's response, Petitioner hereby amends its October 14, 2002 Request for Hearing and Petition for Leave to Intervene and its November 4th, 2002 Request for Hearing and Petition for Leave to Intervene.

III. LEGAL STANDARDS FOR FILING AN AMENDED REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

In accordance with the Commission's regulations at 10 C.F.R. 2.714(a)(3), Petitioner has the right to amend its request for hearing and petition for leave to intervene at any time up to fifteen days prior to the holding of the special prehearing conference, or where no special prehearing conference is held, fifteen days prior to the holding of the first prehearing conference. Inasmuch as the Atomic Safety and Licensing Board ("ASLB") has not as of this date decided to hold either a special prehearing or an initial prehearing conference, "[petitioner may amend its intervention petition to address any shortcomings, or other matters, in its initial petition." *See, Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 & 2; Watts Bar Nuclear Plant, Unit 1), 2002 NRC Lexis 27 (February 7, 2002).*

A. CONTENTION NUMBER ONE

Petitioner contends that the NRC acted in an exigent manner in reviewing the licensee's purported analysis under 10 C.F.R. 50.92(c) of no significant hazards consideration and "based on this review" the NRC determined that "it appears that the three standards of 10 C.F.R. 50.92 (c) are satisfied." Petitioner asserts here that the NRC acting in an exigent manner failed to due any comprehensive, or proper, or safety minded evaluation of the licensee's safety analysis under 10 C.F.R. 50.92(c). Moreover, the NRC admits that they did not conduct an independent agency safety evaluation under 10 C.F.R. 50.92(c) but instead relied on the licensee's safety analysis. *See, Fed. Reg. at 62080.* Indeed, the licensee submitted its request to amend its PVNGS Unit-1 operating license on

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September 26th, 2002 and therefore the NRC would have most likely received the licensee's request on September 27th, 2002, a Friday. Then four business days later on October 3rd, 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." Thus, the NRC had essentially only three business days to review the licensee's safety analysis. Therefore, the NRC acted on an exigent basis in reviewing the licensee's safety analysis and based on that review, and proposed to determine a no significant hazards consideration. The NRC concedes in a subsequent writing with respect to a subsequent FRN. See, Memorandum to NRC Biweekly Notice Coordinator, from Jack Donohew dated November 4th, 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") as described in the NRC Staff response attachment no. 2.

Therefore the Petitioner's contention regarding the exigent manner in which the NRC conducted its review of the licensee's safety analysis under 10 C.F.R. 50.92(c), in three days, remains valid and especially in light of the fact that the NRC failed to conduct an independent agency safety evaluation under 10 C.F.R. 50.92(c). Moreover, as described in Petitioner's Contention Number Two below, the licensee's safety analysis is apparently flawed and based on erroneous data and information. Therefore the NRC's review of the licensee's safety analysis is also apparently flawed and based on erroneous data and information. Thus the exigent manner in which the NRC evaluated the licensee's apparently flawed safety analysis under 10 C.F.R. 50.92(c) is a valid contention and requires that a hearing be conducted to address this important safety question.

B. CONTENTION NUMBER TWO

Petitioner contends that the Commission in its aforementioned FRN failed to establish a 30-day period for public comment on the proposed NSHC finding and failed to provide for a 30-day period for filing petitions for leave to intervene on the proposed amendment.

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request submitted by the licensee. See, 10 C.F.R. 2.105(d) and 50.91(a)(2). Thus the NRC, acting on an exigent basis in reviewing the licensee's safety analysis under 10 C.F.R.50.92(c), violated its own regulations and requirements that the Commission provide a 30-day period for public comment on the proposed NSHC finding and failed to provide for a 30-day period for filing petitions for leave to intervene on the proposed amendment request. In so doing, the NRC's review of the licensee's safety evaluation under 10 C.F.R. 50.92(c) is apparently invalid and cannot be relied upon as a basis for the NRC to approve the licensee's amendment request ("LAR").

C. CONTENTION NUMBER THREE

Petitioner contends that the licensee's LAR is incomplete and is apparently missing data and/or information that the licensee relied upon in its request to the NRC. Specially the licensee's September 26th, 2002 letter to the NRC at Enclosure 1, at p.2, Section Number 4.0 Technical Analysis, under Definitions and in reference to "Inspection Extent Uncertainty", it appears that information is missing from the definition of "Inspection Extent Uncertainty". Thus the licensee's LAR is apparently invalid and cannot be relied upon by the licensee to request a LAR approval by the NRC who admittedly issued a proposed no significant hazards determination based on the agency's review of the licensee's safety analysis under 10 C.F.R. 50.92(c). Thus to the extent that the licensee's safety analysis is defective the NRC's review of the licensee's safety analysis is defective and cannot provide the NRC a basis to approve the licensee's LAR. To the extent that the Petitioner has not been provided sufficient information to consider the licensee's technical analysis in support of the licensee's purported safety analysis under 10 C.F.R. 50.92(c), the NRC is estopped from approving the licensee's LAR.

D. CONTENTION NUMBER FOUR

Petitioner contends that the Westinghouse WCAP-15947 report is apparently flawed and therefore cannot be relied upon by the licensee as a basis for their amendment request and therefore cannot be relied upon by the NRC in approving the licensee's LAR. Thus the

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licensee's safety analysis under 10 C.F.R. 50.92(c) is apparently invalid and the NRC's review of the licensee's safety analysis under 10 C.F.R. 50.92(c) is also apparently invalid and requires a finding that the NRC's proposed no significant hazards consideration is apparently invalid as well. Therefore the NRC is estopped from approving the licensee's LAR.

The licensee identifies the PVNGS Unit 1 steam generator to be a CE System 80 design and fabricated by Combustion Engineering ("CE"). See, licensee's September 26th, 2002 letter to the NRC, Enclosure 1 at p.1. The licensee's requested an inspection criteria limit of seven (7) inches in consideration of the licensee's review of the WCAP, NRC Safety Evaluations for Sequoyah Unit 2 and SONGS Units 2 and 3 and comparative review of the W*WCAP. Thus the licensee's more conservative approach in requesting an inspection criteria limit of seven (7) inches appears to be based on a safety issue identified in the NRC's Safety Evaluation of the Sequoyah Unit 2 and the SONGS Units 2 and 3, and not based on any NRC Safety Evaluation conducted by the agency on the PVNGS Unit 1 SG. The licensee apparently fails to explain its rationale and reasoning in requiring an inspection criteria limit of seven (7) inches. Indeed, twelve (12) inches would be an even more conservative approach. However, because the licensee failed to delineate the basis for its conclusions in requesting an inspection criteria limit of seven (7) inches, there is a great deal of uncertainty about the margin of safety which is established by the licensee's safety analysis and conclusions therein. Consequently, to this extent, the NRC's review of the licensee's safety analysis is apparently invalid and cannot be relied upon by the agency in approving the licensee's LAR.

The licensee admits that the WCAP is based on assumptions rather than scientific facts and/or certainties. See, licensee September 26th, 2002 letter at the Executive Summary at p. 1. Moreover, the licensee further admits p.3 of the Executive Summary that the "steam generators at PVNGS Units 1, 2, and 3 were designed and fabricated by Combustion Engineering (CE), and are currently the only US operated units of the System80 design." However in contrast to the licensee's System 80 CE designed steam generators,

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the NDE Inspection Strategy for the Tubesheet Region in Palo Verde Unit 1 ("NDEIS") at Section 1 p.1, clearly states that "Testing was performed using tubesheet mockups and a cancelled plant steam generator to determine the leak and burst limiting tube to tubesheet joint length needed to assure operation within generic licensing and industry developed limits." Thus the NDEIS safety analysis is based on testing of a different type of steam generator other than the CE System 80 steam generator and a steam generator apparently not manufactured by Combustion Engineering. Thus, as stated above, the NDEIS is based on assumptions and not based on an exact science using identical steam generators manufactured by Combustion Engineering. Indeed, the Westinghouse testing was apparently performed on a fairly "new" steam generator taken from a cancelled plant in contrast to the PVNGS Unit 1 which has been in operation since 1986 under the demanding temperatures and the demanding pressures of full operation in that time period. Moreover, the PVNGS Unit 1 SG has been subject to having many of its tubes plugged over the course of its operation. Because the PVNGS Unit 1 SG has had a great many of its tubes plugged, the overall diminished flow through the plugged SG tubes would apparently result in a greater amount of pressure being exerted on the remaining SG tubes considering all other operational parameters remained the same.

Thus because the NDEIS failed to consider any effects which the plugging of the PVNGS Unit-1 SG tubes may have with respect to any increase in the amount of internal pressure applied to the SG tubes, in comparison to the NDEIS safety analysis of the Westinghouse mockup SG unit, the NDEIS safety analysis is apparently invalid and cannot be used by the licensee as a basis to request a LAR from the NRC. To the extent that the NRC relied on the licensee's safety analysis under 10 C.F.R. 50.92(c) in proposing a no significant hazards consideration, the NRC is estopped from approving the licensee's LAR.

The NDEIS safety analysis at Section 1, p.1 states in part that, "The threshold distance of five inches is based on the number of tubes in the steam generator." Thus, the NDEIS did not take into consideration any amount of tubes in the PVNGS Unit-1 SG that are

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plugged and not in service. Therefore the NDEIS is apparently invalid and not based on scientific data or a realistic and material comparison of identical steam generator units having an identical number of operable tubes. Therefore the licensee's safety analysis is apparently invalid and cannot be relied upon in requesting a LAR from the NRC. To the extent that the NRC based their proposed no significant hazards consideration on the agency's review of the licensee's safety analysis, the NRC is estopped from approving the licensee's LAR. Notably, the Babcock & Wilcox designed plants have discovered tube cracks within the tubesheet region "leading the NRC to issue Information Notice (IN 98-27) alerting the PWR industry to the events." See, NDEIS at Section 1 at p.1.

The Combustion Engineering company pioneered the use of explosive expansion for steam generator tubesheet joints, termed "expansion". The desired design features were to provide a cost-efficient method for closing the tube to tubesheet gap over the full length with sufficient pullout strength, leak tightness and without excessive residual stress in the tube. See, NDEIS at Section 1, p.2. Notably, the use of the expansion technique is a relatively "new" concept without a significant database of information to determine its reliability over an expected 40-year life span of a steam generator. Moreover, the NDEIS states that, "Incomplete expansions have been detected operating units . . ." NDEIS at Section 1, p.2. Of even greater concern to the Petitioner is the fact that the NDEIS considered a W* developed based on two radial zones to credit less tubesheet flexure for the radial zone nearest the steam generator shell. However, only one radial zone was considered for the CE designed SG tube threshold distance based on an assumption that the tubesheets in the PVNGS Unit-1 experience less flexure near the stay cylinder and the shell due to the support provided by these parts of the steam generator. The NDEIS assumptions also failed to consider what, if any, effect any increased operating pressure caused by the plugged SG tubes in PVNGS Unit-1 may have on the tubesheet flexure for the radial zone nearest the SG shell. Therefore the licensee's safety analysis is apparently invalid and cannot be relied upon in requesting a LAR from the NRC. To the extent that the NRC based

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their proposed no significant hazards consideration on the agency's review of the licensee's safety analysis, the NRC is estopped from approving the licensee's LAR.

Petitioners assert here that the NDEIS conducted a parametric approach for testing the pressure, temperature, and expansion contact force effects to consider the key contributions to joint integrity, and that the NEDIES parametric approach was applicable to the Boston Edison canceled plant as-built steam generator and not applicable to the CE System 80 steam generator employed at the PVNGS Unit-1. Therefore the licensee's safety analysis is apparently invalid and cannot be relied upon in requesting a LAR from the NRC. To the extent that the NRC based their proposed no significant hazards consideration on the agency's review of the licensee's safety analysis, the NRC is estopped from approving the licensee's LAR.

Under MSLB conditions, the differential pressure across the tubesheet causes tubesheet flexure and dilation of the tubesheet hole. Dilation of the hole reduces the contact force in the region of dilation. NDEIS at Section 1, p.5. The Petitioner notes here that nowhere in the NDEIS does there appear to be a safety analysis that takes into account the age of the PVNGS Unit-1 SG, or the stresses experienced by the PVNGS Unit 1 SG during events which may have caused a significant increase in the differential pressure which induces axial and hoop stresses on the tube inside diameter. These transient events in the PVNGS Unit-1 SG should have been considered in the NDEIS to the extent that such events could have fatigued any number of the SG tubes. Therefore the licensee's safety analysis is apparently invalid and cannot be relied upon in requesting a LAR from the NRC. To the extent that the NRC based their proposed no significant hazards consideration on the agency's review of the licensee's safety analysis, the NRC is estopped from approving the licensee's LAR.

The NDEIS states that, "Tubesheet hole surface roughness was addressed in the fabrication of tubesheet mockups and visual inspection of the roughness in the Boston Edison steam generator and several single tube mockups . . . Tubesheet mockup holes were

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fabricated by drilling to represent the CE design applicable to Palo Verde 1 . . ." The Petitioner asserts here that the NDEIS testing is not valid because it was conducted under ideal laboratory conditions using "new" materials and no testing was conducted using materials similar to the aged and fatigued materials employed in the PVNGS Unit-1. Therefore the licensee's safety analysis is apparently invalid and cannot be relied upon in requesting a LAR from the NRC. To the extent that the NRC based their proposed no significant hazards consideration on the agency's review of the licensee's safety analysis, the NRC is estopped from approving the licensee's LAR.

1. PETITIONER HAS REQUISITE STANDING AS A MATTER OF RIGHT

One of the represented petitioners, Thomas Saporito has standing to intervene in the instant action as a matter of right insofar as the petitioner resides at 1516 North 380th Avenue, Tonopah, Arizona and within a 10-mile radius of the licensee's PVNGS. In addition, Thomas Saporito is a member of NEPC and its Executive Director. Thus NEPC has standing to intervene in the instant action as a matter of right. Ms. Marcia E. McMahon is a member in good standing with NEPC and she resides within an approximate 10-mile radius of the licensee's PVNGS and at 34938 West Siesta Way, Tonopah, Arizona. Ms. McMahon has authorized NEPC's Executive Director to act on her behalf and in her interest at the hearing. Thus NEPC has requisite standing to intervene in the instant action.

Mr. Saporito as well as NEPC and all of its ever increasing membership live, work, play and otherwise enjoy their environment at and/or near their residence. Mr. Saporito as well as the NEPC membership enjoy the entertainment facilities at the local pub and the convenience of obtaining gasoline at the local gas station and purchasing food and products at the local store. The PVNGS facility also offers an area available to the public to learn about the nuclear power plant. Mr. Saporito and Ms. McMahon actively solicit the public seeking new NEPC members. Ms. McMahon has a young child who lives with her at home and this child also enjoys the area near the PVNGS facility. Mr. Saporito and Ms. McMahon have close friends that they enjoy within a 10-mile radius of the PVNGS facility. Mr. Saporito

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enjoys climbing the rugged mountains with a 5-mile radius or nearer to the PVNGS facility. Mr. Saporito also enjoys traveling here and there riding a four wheel all terrain vehicle in the dessert area very near to the PVNGS facility. NEPC by and through its undersigned Executive Director have recently contacted a representative of the licensee seeking to discuss certain and specific PVNGS perimeter security safety concerns regarding operations at the facility in light of the September 11th, 2002 terrorist attacks.

2. PETITIONER'S SHOWING OF DISTINCT AND PALABLE HARM

As stated earlier, the licensee has requested a LAR to change certain and specific aspects of its TS as they relate to the surveillance testing of the PVNGS Unit-1 SG. Petitioner asserts here that the licensee's safety analysis is apparently flawed and not based on a realistic scientific testing and analysis. Therefore the licensee cannot rely on the WCAP report as a basis for its LAR submitted to the NRC and the NRC cannot rely on the agency's review of the licensee's safety analysis as a basis to approve the licensee's LAR. Thus, Petition asserts here that if the NRC approves the licensee's LAR, a significant nuclear accident, from a breach in the SG tubesheet primary coolant boundary, could occur whereby a substantial amount of radioactive particles and/or radioactive materials could be released into the Tonopah, Arizona area causing significant adverse safety and health affects to the Petitioner, and to the Petitioner's friends, and would otherwise contaminate the area described above where the petitioner works, lives, play, and enjoys.

NEPC and Mr. Saporito maintain a working business office at Mr. Saporito's residence and said business office contains real property such as a computer workstation, FAX, telephone, restroom, furniture, etc. Thus, Petition asserts here that if the NRC approves the licensee's LAR, a significant nuclear accident, from a breach in the SG tubesheet primary coolant boundary, could occur whereby a substantial amount of radioactive particles and/or radioactive materials could be released into the Tonopah, Arizona area causing significant loss to real property of NEPC and Mr. Saporito. In addition, NEPC member Ms. McMahon also has real property and a young child that lives with her. Thus, Petition asserts here that

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If the NRC approves the licensee's LAR, a significant nuclear accident, from a breach in the SG tubesheet primary coolant boundary, could occur whereby a substantial amount of radioactive particles and/or radioactive materials could be released into the Tonopah, Arizona area causing significant loss to real property of Ms. McMahon.

Thus, Petitioner has demonstrated that NEPC, along with its entire membership, and Mr. Saporito have a "real stake" in the outcome of the instant action and therefore should be allowed to intervene in this proceeding.

3. PETITIONER'S DISCRETIONARY INTERVENTION SHOULD BE AFFORDED

Petitioner asserts here that his participation may reasonably be expected to assist in developing a sound record. Mr. Saporito was previously employed at the licensee's PVNGS facility as a "Journeyman" Instrument and Control Technician and has many years of experience in the nuclear industry. Moreover, Mr. Saporito has engaged the NRC many times in the past regarding matters similar to the instant action and brought before the ASLB for adjudication. Thus, Petitioner's extensive knowledge in the nuclear power industry, and his extensive work experience in the nuclear industry, and his knowledge and experience in ASLB proceedings, may reasonably be expected to assist in developing a sound record in this matter.

Petitioner has significant property, financial, and other interest in this proceeding as described earlier. Additionally, the possible effect of any order which may be entered in this proceeding on the petitioner's interest has been well described above. There are no other means for Petitioner to protect its interest because there is no other party in the proceeding that seeks to require that the NRC not approve the licensee's LAR. Furthermore, a hearing is the only forum in which Petitioner can request that the NRC not approve the licensee's LAR. There are no other intervenors in this proceeding, and therefore there are no other parties who can or will represent Petitioner's interest.

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4. PETITIONER SATISFIES THE ADDITIONAL STANDARDS FOR INTERVENTION

Petitioner satisfies additional standards set forth in 10 C.F.R. 2.714(d)(1) and thereby demonstrating it has a substantial interest in the outcome of the proceeding.

A. Petitioner's Interest in the Proceeding

Petitioner is a not-for-profit organization with two (2) members dedicated to the protection and conservation of the environment in and around the Tonopah, Arizona area as well as the greater Phoenix, Arizona area. Many of Petitioner's members who live, work and recreate sufficiently close to PVNGS are concerned with the substantially higher probability and consequences of a potential radiation leak at the PVNGS facility. Through its members and standing alone Petitioner has requisite personal interests to establish standing.

B. Standing as of Right

Petitioner has demonstrated standing as of right to intervene. Petitioner has asserted that it has suffered or will suffer a distinct and palpable injury that constitutes injury in fact within the zone of interests arguably protected by the governing statute.

C. Proximity Presumption

The Petitioner has also demonstrated standing to intervene based upon "proximity presumption." NRC case law establishes that, "In certain types of proceedings, the agency has recognized a proximity or geographical presumption that presumes a petitioner has standing to intervene without the need specifically to plead injury, causation, and redressability if the petitioner lives within, or otherwise has frequent contacts with, the zone of possible harm from the nuclear reactor or other source of radioactivity." *See, Florida Power & Light Co. (Turkey Point Nuclear)*, 53 NRC 138, 18 (2001) (In this case NRC found that petitioner, who lived 15 miles downwind of the plant, had standing to intervene under the proximity presumption).

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D. Discretionary Standing

The Petitioner has demonstrated It meets the requirements for discretionary standing to Intervene.

E. Petitioner Should Be Allowed to Intervene Because The Result of the Proceeding Affects the Petitioner's Interest

The Petitioner asserts here that if the NRC denied the LAR, the licensee would be required to immediately conduct a qualified and thorough safety analysis under 10 C.F.R. 50.92(c) to ensure that any changes to the SG tube inspections surveillance program in changing certain and specific safety parameters within the PVNGS Unit-1 technical specifications will not result in a nuclear accident that would release radioactive particles and/or radioactive materials into the environment.

IV. CONCLUSION

For all the foregoing reasons, the request for hearing and petition for leave to Intervene submitted by NEPC and by Thomas Saporito should be granted.

Dated this 8th day of November 2002 in Tonopah, Arizona.

Respectfully submitted,

NATIONAL ENVIRONMENTAL PROTECTION CENTER



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITIONERS' JOINT AMENDED REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE were served upon the persons listed below by means indicated on this 8th day of November 2002.

Sent via Email

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Hon. George W. Bush
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The White House
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By: 