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NUCLEAR REGULATORY COMMISSION

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Palo Verde Nuclear Generating Station,
Unit 1

Docket Number: 50-528-OLA

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD PANEL

LICENSING RENEWAL

TELEPHONE CONFERENCE CALL

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IN THE MATTER OF : Docket Nos.

ARIZONA PUBLIC SERVICE CO. : 50-528-OLA

Palo Verde Nuclear :

Generating Station, :

Unit 1 :

----------x

Monday,

November 25, 2002

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 a.m.

BEFORE:

THE HONORABLE ANN MARSHALL YOUNG, Chair

THE HONORABLE DR. RICHARD F. COLE

THE HONORABLE THOMAS D. MURPHY

APPEARANCES:

On Behalf of the Licensee, Arizona Public Service Company:

JOHN E. MATTHEWS ESQ.

THOMAS SCHMUTZ, ESQ.

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On Behalf of the Nuclear Regulatory Commission:

SHERWIN E. TURK, ESQ.

CASSIE GRAY, ESQ.

KATHRYN WINSBERG, ESQ.

U.S. Nuclear Regulatory Commission

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ALSO PRESENT:

Jack Donohew

William Ruland

Thomas Saporito

P-R-O-C-E-E-D-I-N-G-S

11:00 a.m.

JUDGE YOUNG: Let's go ahead and go on the record. Judge Cole and Judge Murphy are here with me. This is Judge Young. Mr. Turk, why don't you introduce everyone who's with you?

MR. TURK: Thank you, Your Honor. My name is Sherwin Turk. I'm an attorney with the NRC Staff. With me in the room is Kathryn Winsberg, who is Acting Associate General Counsel, Reactor Program Division of OGC, and Ms. Cassie Gray, who's an attorney with our office, OGC. Also present is Mr. Jack Donohew, who is Project Manager for Office of Nuclear Reactor Regulations, and Mr. William Ruland, who is Director of Project Directorate 4 with NRR.

JUDGE YOUNG: I think probably you'll need to spell all those names.

MR. TURK: May I note also, Your Honor, I don't know is Mr. Saporito is on the phone yet.

MR. SAPORITO: He is.

MR. TURK: Okay. I hadn't heard his name. Let me go back to the names that I mentioned. First was Kathryn Winsberg, K-A-T-H-R-Y-N, Winsberg, W-I-N-S-B-E-R-G. Cassie Gray is C-A-S-S-I-E G-R-A-Y. Jack Donohew, last name is D-O-N-O-H-E-W. William Ruland,

R-U-L-A-N-D.

JUDGE YOUNG: Thank you. And then, Mr. Saporito -- court reporter, did you list him, S-A-P-O-R-I-T-O?

COURT REPORTER: I did not, no.

JUDGE YOUNG: Mr. Saporito, do you have anyone with you?

MR. SAPORITO: No, Your Honor. It's just myself. I represent the National Environmental Protection Center --

JUDGE YOUNG: Okay.

MR. SAPORITO: -- as its Executive Director.

COURT REPORTER: Could I get a spelling on your last name?

MR. SAPORITO: Sure. It's S as in Sam, A-P, like in Peter, O-R-I-T-O.

COURT REPORTER: Thank you.

JUDGE YOUNG: And, Mr. Matthews?

MR. MATTHEWS: Yes, Your Honor. This is John E. Matthews from the law firm, Morgan Lewis, and with me here this morning is Thomas Schmutz, that's S-C-H-M-U-T-Z. And we represent the Arizona Public Service Company, and there won't be any other attorneys or representatives from APS on the call.

JUDGE YOUNG: Okay. So there is anyone else present that we have not introduced? All right. We want to allow all parties to make short arguments on the current motion that's before us, and we may, in the court of that, need to address what the status of the previous Motion to Hold the Proceedings in Obeyance. But, first, just to sort of maybe cut through some things and simplify matters so that we don't need to go into quite as much detail on some things that do appear to be more or less clear. I just wanted to state for the record that we have looked at the case law and assuming that the delegation still exists from the Commission and then from our Director, the NRC Staff does, under this case law authority, have the authority to address, to permit withdrawals of license amendment requests. There's no question about that, assuming that that allegation exists.

In this case, there are a couple of unusual circumstances, and I'm not sure whether they would have any effect on our ruling on the Motion to Terminate, but I think it would be a good idea just for the record to make sure that it's clear that the Staff, before we start arguments, fill us in on the status of the new notice that you had indicated was to

be published in the Federal Register, whether that has been published, whether there's anything about that or the circumstances related to it that would prevent this case from being viewed as moot.

And then also there is, to some degree, some lack of clarity about the original perceived need for a license amendment request, and then at this point there apparently being no perceived need for the license amendment request.

So, Mr. Turk, maybe you and some of the people with you could address those two issues before we go into the actual argument so that we're all made clear about -- Court Reporter, can you hear? Are you getting everything I'm saying?

COURT REPORTER: Yes, I am.

JUDGE YOUNG: Okay, good. I heard some paper rustling, and sometimes that blocks people out.

COURT REPORTER: I'm sorry, that was me.

JUDGE YOUNG: Okay. Mr. Turk?

MR. TURK: Yes, Your Honor. Let me address those two questions in the order that you posed them. First, with respect to the status of the license amendment request, as you know, we had originally published notice of the exigent circumstances license amendment request in the Federal

Register. We then determined that that procedure was not necessary. We sent a letter to the licensee advising them of that, I believe that was October 25, and shortly thereafter the licensee sent in a request to withdraw its application and, as you know, we issued a letter just last week indicating that we did not object to the withdrawal of the license amendment request.

In the meantime, as I had indicated in a letter to the Board previously, the Staff had sent to the Federal Register a new notice that the license amendment request had been received and that we would be reviewing it under a non-exigent circumstance basis. We sent that off to the Federal Register, that has gone to the Federal Register, and I believe it will be published as part of the bi-weekly notice that comes out in the Federal Register this coming Wednesday, I believe November 27 if things go according to our expectations.

Of course, we sent that notice to the Federal Register before we received the withdrawal request, and now that we have received a withdrawal request and taken action on it, we'll have to issue another notice to the Federal Register in which we notify the public that the request has been withdrawn.

So that the current status with respect to the Federal Register is that in two days the second notice will be published, but then probably two weeks later we'll be publishing the notice of withdrawal. So that's the status of the notice history for this license amendment request.

JUDGE YOUNG: If any parties in the interim file any petitions, how would you handle those?

MR. TURK: We would deem them to be moot because there is no pending license amendment request in which a person may intervene, and we would notify them of that and we would also send them a copy of the notice of withdrawal.

JUDGE YOUNG: All right. Go ahead then.

MR. TURK: With respect to the --

JUDGE YOUNG: Excuse me, Judge Murphy has --

JUDGE MURPHY: Mr. Turk, this is Judge Murphy.

MR. TURK: Yes.

JUDGE MURPHY: Before you leave that issue, can you comment on the existing status of your authority to approve withdrawals? Does the Staff still have that delegation?

MR. TURK: Yes, we do. That's a standing delegation, Your Honor. We don't receive that on an amendment-by-amendment basis; rather, we have an ongoing authority to receive docket and act upon license amendment requests, both in terms of granting them and disposing of them, along with withdrawal of them until a notice of hearing is published, which we don't have yet in this case. So that's a standing delegation.

JUDGE YOUNG: Okay. And then going on to the sort of underlying question about the specific perceptions of the need for a license amendment request.

MR. TURK: My understanding of the background, and this is third party on this end because I wasn't part of the proceedings that were going on before the Palo Verde license amendment request was received, but it's my understanding that the Staff was perceived by Palo Verde, and they can speak to this -- the Palo Verde applicant perceived that the Staff would require the amendment to be submitted and approved prior to restart of the facility. In fact, the Staff determined that that's not required prior to restart, and that's why we sent out our letter on October 25.

So I believe that whatever was Palo Verde's understanding originally ended up not being consistent with the Staff's determination on October 25 that the license amendment request need not be submitted on an exigent basis or approved prior to restart. So I think there may have been some confusion about that beforehand, but I think we've tried to clear that up and we issued our statement in writing on October 25.

JUDGE YOUNG: Just to clear up all confusion and get everything out on the table and sort of spark this as much as possible before the argument and hopefully make argument more efficient, was there any difference in what the Licensee or how the Licensee did the inspection under the current technical specifications and how they would have done it under the license amendment request?

MR. TURK: Your Honor, I think Palo Verde should address that in the first instance. I think they'd be more familiar with how they were conducting their inspections previously.

MR. MATTHEWS: This is John Matthews from Morgan Lewis. I think, Your Honor, the answer is more or less, no, there is no difference. The inspections were conducted in a way that would have been

consistent with the amendment but also that is consistent with the existing tech spec requirements.

JUDGE YOUNG: Thank you. So just to recap what I've heard, or my understanding of what I've heard, there seems to have been some miscommunication about whether a license amendment was necessary. And, Mr. Turk, maybe you'd be best --

MR. TURK: I'm sorry, Your Honor, could you repeat the question?

JUDGE YOUNG: There seems to have been some miscommunication or misunderstanding on whether a license amendment request was necessary.

MR. TURK: Your Honor, I don't know how much I can say to that. There was a perception that this would be a Staff requirement. There had been two other plants which the Staff has discovered were doing inspections in a certain manner, and the Staff, in discussing with those plants the nature of their inspections, had obtained license amendment requests from the plants in order to specify that. And this is based on a very weak understanding on my part on what happened with the other plants because I was not involved, but those plants did submit license amendment requests in order to modify the language of the tech spec such that inspections may not be

conducted below a certain point in the tube sheet, or I should say a certain point within the tube sheet.

And I believe, and this is my third-hand understanding, Palo Verde can correct me if I'm wrong, but Palo Verde perceived that the Staff would require the same of them, and it's my understanding that that's probably why they submitted a license amendment request. That's supposition on my part, I'm not a party to what had happened.

But be that as it may, we did clarify with Palo Verde that we would not require this from them on an exigent basis before the plant could restart from their refueling outage. So whatever the circumstances were beforehand, we've examined them and determined that the amendment was not necessary prior to restart of the facility.

JUDGE YOUNG: And am I understanding correctly that by approving the withdrawal, you're in a sense saying that there's no amendment necessary at all and so everything is moot or is there anything that has not been mooted out by the withdrawal?

MR. TURK: There is nothing that has not been mooted out. In other words, the entire license amendment request is now moot. We are developing, as I believe our letter of October 25 indicated, we are

developing generic guidance to the industry on what we would like to see happen with the technical specifications in this area. And Palo Verde has indicated to us that they will act in accordance with the generic resolution of this issue, and we hope to have that generic guidance out shortly. I know that there are -- it's in the works right now, and hopefully we'll get a resolution of this on a generic basis in the near future.

JUDGE YOUNG: I think at this point, unless there are any other questions from here, and there don't appear to be, we would go to argument on the Motion to Terminate, and I would ask just a couple of things in your argument, and I want to keep these fairly brief. We've gone into this discussion in advance of hearing arguments in large part for the purpose of getting everything sort of out on the table and as clear as possible so that everyone's on the same page so that we don't sort of replow new ground in the argument. But I would ask APS to go first and ask whether in filing your Motion to Terminate have you withdrawn your Motion to Hold the Proceedings in Obeyance?

And in all parties' arguments, I would like everyone to keep in mind based on the case law

that we've seen the Staff does have the authority to permit withdrawals as they've done in this case, and unless there is anything that would cause the proceedings not to be completely moot, then the Board's duty under the law is to terminate the proceedings.

So at this point, if there's anything that would counter the authority of the Staff to permit withdrawals and the duty of the Board to terminate a proceeding given that the withdrawal moots everything in the proceedings, our inclination would be to terminate the proceedings. I'm saying that so you'll know what issues you need to address. Then after APS, I want to hear from Mr. Saporito and the Staff. I don't know whether in permitting the withdrawal and based on what you've said already that you agree to APS' motion, but if you have anything, then you can say that then.

Again, I want to see if we can keep these as brief as possible without cutting off anyone's right to say whatever you feel is relevant to the motion or motions that are currently pending. Mr. Matthews, just to start out, what do you consider to be the status of your Motion to Hold Proceedings Obeyance.

MR. MATTHEWS: My understanding from the Board's order on Friday was essentially that that Motion to Hold Proceedings in Obeyance was temporarily granted, and I would ask that the Board extend that status until its ruling on the Motion to Terminate.

JUDGE YOUNG: I don't think that we temporarily granted it. I think what we did was we said that you wouldn't be required to file any response and we'd take up the motion today.

MR. MATTHEWS: Well, I guess I interpreted that as a grant of extension of time to file our response. So granted, in part, I guess, was my perception of the motion, and I would ask here today that the Board extend the time for filing that response and extend the time for the Staff filing any pleadings until it rules on the Motion to Terminate as well.

JUDGE YOUNG: All right. So then on the Motion to Terminate, go ahead.

MR. MATTHEWS: On the Motion to Terminate, I guess let me just recap that we were of the opinion initially that no amendment to the tech specs were required. The tech specs currently require inspection of a certain length of each steam generator tube. We conduct an inspection using a bobbin-coil method of

essentially 100 percent of the steam generator tubes, from cold end to hot end, and that that meets the requirements of the existing tech specs.

In addition, there is a second kind of inspection at issue, which is, I guess, the plus-point probe inspection which is a more sophisticated technology that didn't even exist, it's my understanding, when these tech specs were put in place. And the license amendment was essentially to address certain aspects of that particular type of inspection. We did not believe that the amendment was necessary, but based upon Staff action with respect to some other plants and some other amendments that those plants had submitted, we thought that it might be required, so we submitted the request, essentially prudently, perceiving that the Staff might require this additional detail.

The Staff, upon reviewing this, concluded that we didn't need the amendment, which was essentially in agreement with our initial position and so, hence, our withdrawal. And we've committed to continue to work with the Staff on addressing the detail of some of these more sophisticated inspections taking place in the future.

I think at this point the amendment is

withdrawn. The Staff acted appropriately in granting the withdrawal of the amendment, and there's no proceeding to go forward, so I think the only thing that can happen is for the Board to terminate the proceeding at this point.

JUDGE YOUNG: All right. Mr. Saporito?

MR. SAPORITO: Good morning, Your Honor. Our position would be that even though the Staff, as the Court points out, may have requisite jurisdiction to grant a licensee's withdrawal of the LAR, we don't believe that the Staff acted appropriately based on the fact that the NRC, through Mr. Donovan's office, confirmed to us, in fact agreed with us, that the technical specifications as they currently exist for Palo Verde Steam Generator Unit 1 are ambiguous. And it was on that basis that the NRC, through Mr. Donovan's office --

JUDGE YOUNG: Excuse me, when you refer to Mr. Donovan, are you referring to Mr. Donohew?

MR. SAPORITO: Oh, yes, ma'am, I'm sorry -- Your Honor, it's Donohew. I stand corrected. So the NRC Staff acted to grant the Licensee's withdrawal of the LAR based on erroneous and ambiguous technical specifications which currently exist. And, therefore, it's our position that the Licensee cannot demonstrate

with any reasonable assurance the operability of the Palo Verde Unit 1 steam generator, and, therefore, there is an issue outstanding before this Board which should go to hearing.

JUDGE YOUNG: Mr. Saporito, what the case law says is that the NRC Staff has the authority to approve withdrawals, and in those circumstances the Board, and I'm quoting from the Commission in the Vermont Yankee case of September 16, 1993 was the date of the Commission's memorandum and order, the Commission said that, "Under these circumstances, the Board should issue an order indicating that the Commission or its Staff has previously approved the withdrawal of an application and that the proceeding is being terminated, therefore, on grounds of mootness."

So I understand that you currently, and I think I saw somewhere in the pleadings, that you currently have a Section 2.206 Petition pending with the Commission and the Staff, but you need to realize that the Board can only act within the jurisdiction and authority granted in the rules.

So I guess my question to you is given that the Commission has said that in these circumstances Staff has approved a withdrawal, or

permitted a withdrawal, that the Board's duty is to terminate a proceeding on grounds of mootness, what would you suggest would make this proceeding not moot such that the Board would not terminate it, because we don't -- I think we don't see that we have jurisdiction to do anything other than terminate it. What would you argue would be our authority to do anything other than to terminate the proceedings?

MR. SAPORITO: Your Honor, our position is the Board has, number one, inherent authority through congressional mandate to exist. A Board also inherent authority because it serves to protect the public -- as a matter of public policy, it serves to protect public safety and health issues.

JUDGE YOUNG: And, Mr. Saporito, what would be the legal authority for your saying that we have inherent authority?

MR. SAPORITO: Well, the legal authority is based, in part, on the argument the Court already made in reference to the other case in so far as the other case was based on the NRC Staff having authority --

JUDGE YOUNG: Mr. Saporito?

MR. SAPORITO: Yes.

JUDGE YOUNG: You say the other case. I'm

not sure that I understand what you're talking about there.

MR. SAPORITO: You mentioned it, I think it was the Yankee Plant.

JUDGE YOUNG: Vermont Yankee?

MR. SAPORITO: Yes. Yes, Your Honor. In that particular instance --

JUDGE YOUNG: Excuse me. Mr. Saporito, have you read that order?

MR. SAPORITO: I haven't. I have only referenced the -- I haven't read the order itself, only to the extent that it was in these pleadings.

JUDGE YOUNG: Okay. When you refer -- I'm just going to ask you to help us. When you refer to cases or to authority, I want you to point us to the place we look in the law or in a decision for authority for what you're saying, because that's how we operate. If there is law there to support what you say, then we follow that, but we can't take any action just merely on your statement or any lawyer's statement or anybody's statement that there's inherent authority. We need to base our authority on something that's written down in either a rule or a law or a decision that's been published.

MR. SAPORITO: All right. Well, I guess

my comments are based on the authority that the Court pointed to in the Vermont Yankee Nuclear Power Corporation, CLI-93-20, 38 NRC 83, parentheses, 1993, closed parentheses; GPU Nuclear Corporation, parentheses, Oyster Creek Nuclear Generating Station, closed parentheses, CLI-99-29, 50 NRC 331, parentheses 1999, closed parentheses. And then this parentheses, "vacating Board decision on withdrawal of LAR because 10 CFR 2.717, the jurisdiction of the Board commences when the proceeding commences, and the proceeding commences when a Notice of Hearing is issued," closed parentheses.

Based on that case, the Board in this particular instance, in the instant action that we're talking about with APS, that case was because the Board -- the NRC Staff allowed the Licensee to withdraw is my understanding. So there was no issues in dispute because there was no licensing amendment request.

However, this case is distinguishable from that case because in this particular instance, although the NRC Staff granted the Licensee authorization to withdraw their license amendment, the NRC did so erroneously, in our opinion, because -- the NRC being Mr. Donohew's staff organization -- told us

and agreed with us that the Licensee's technical specifications were ambiguous.

JUDGE YOUNG: Mr. Saporito, when the Commission says that the NRC Staff has the authority to approve withdrawals of application and also says that the Licensing Board's authority to address withdrawals only commences after a Notice of Hearing or when a Notice of Hearing has been issued, I don't see how you can assume that any petitioner in any of the other cases might not have also thought that the Staff was in error in what they did.

We don't really review the appropriateness or inappropriateness -- alleged inappropriateness or appropriateness of what the Staff action is. If the Staff has the authority to approve a withdrawal, I'm not sure where we would get the authority to go behind that and undo what the Staff has done. It specifically said that the Staff has that authority and we don't.

MR. SAPORITO: Your Honor, it's our position that the Staff has authority of acting sua sponte as an agency to protect public safety and health as a matter of public policy and it should act to reverse the NRC Staff authorization to allow withdrawal of a license amendment request.

JUDGE YOUNG: I assume you mean that the Board has that authority.

MR. SAPORITO: Yes, Your Honor.

JUDGE YOUNG: And where does that authority come from?

MR. SAPORITO: It comes from the Board itself. The Board can act sua sponte, in our view, at any time in these proceedings when information comes to light that the there is public policy safety issue at risk here.

JUDGE YOUNG: Mr. Saporito, as I said before, we only have the authority that's granted us in the law, statute or a rule or a legal decision by a court or the Commission. So, again, I ask you where would our authority come from?

MR. SAPORITO: I believe your authority is inherently given to you by virtue of the Congress when they mandated the NRC's organization to exist, Your Honor.

JUDGE YOUNG: Okay. I'm not sure that we -- Mr. Saporito, you do -- you are aware that we have not yet granted a hearing, right?

MR. SAPORITO: It's my understanding that this is a pre-hearing conference that I'm attending right now. That's my position.

JUDGE YOUNG: But you understand that we have not granted a hearing in this case.

MR. SAPORITO: Yes, Your Honor.

JUDGE YOUNG: Okay. Before we grant a hearing, we do not have the authority to approve or disapprove withdrawals or to second guess the Staff when they approve or disapprove withdrawals. So I want you to try to wrap up your argument that we do have that authority, give us any citations of any law that you want to argue would be the basis of any such authority and then move on to your next point.

MR. SAPORITO: Well, in sum, our position of NEPC is that the Board has inherent authority to through congressional mandate to exist and that when such significant public policy safety issues are brought to light to the Board they should act in a sua sponte fashion in the interest of public safety and health.

JUDGE YOUNG: Okay. Do you have any other arguments that you'd like to make?

MR. SAPORITO: Well, I mean I could go into the contentions, but I don't think it's relevant at this point until the Board decides whether it's going to have a hearing, unless the Board wants me to go into those issues.

JUDGE YOUNG: No. I agree, those would not be relevant at this point. All right. Mr. Turk, do you have any argument to the Motion to Terminate?

MR. TURK: I would simply make two points, Your Honor. First, we fully agree with your analysis of the law in that a Notice of Hearing has not been issued yet, and the authority to grant a request to withdraw the application does rest at this time with the Staff, and the Staff has acted pursuant to its understanding of the law and has granted the request to withdraw the application. The case law cited by the Applicant in its motion, I believe they cite the same three cases in both the Motion to Hold Proceeding in Obeyance as well as the Motion to Dismiss, their citation of that case law is correct.

There are many other cases which hold the same thing and which indicate that the proceedings should be dismissed as moot where the application has been withdrawn and a Notice of Hearing has not yet been issued. And if required to respond to the Motion to Dismiss, we'll cite that case law to you. I would note that this is long-standing judicial practice and precedent on the point. I'm looking at cases published by the Commission or by Licensing Boards dating back 15 or 20 years already, so there's quite

a bit of case law on that point.

The second point I would like to make is that what Mr. Saporito is asking you to do is not to function as a Licensing Board with respect to the license amendment application that was submitted, but rather to act as essentially a board with plenary powers to go into matters that exceed the license amendment request. In effect, he would ask you to become the Commission for all purposes, and I believe you're correct that Mr. Saporito has filed a petition under 2.206 which goes to the Commission, and that is the proper avenue for him to raise these concerns once the license amendment proceeding is withdrawn. And I think that's where he would obtain his relief, if any, rather than asking the Board to act upon matters that don't relate to any existing license amendment request, because there is no existing license amendment request.

JUDGE YOUNG: All right. Does that conclude your argument?

MR. TURK: Yes, Your Honor.

JUDGE YOUNG: Give us one second, please.

(Judges confer.)

JUDGE YOUNG: Mr. Matthews, did you have anything further to say?

MR. MATTHEWS: No, Your Honor.

JUDGE YOUNG: All right. We have conferred, and we have read the case law, and, Mr. Saporito, we understand your argument that you would like us to, on our own, sort of take the authority to overrule the Staff on approving the withdrawal, but we do not find that we have the legal authority to do that. And so as soon as we get the transcript back to make sure that we have correctly understood and stated all your arguments, we would grant the Motion to Terminate.

Mr. Saporito, your Section 2.206 petition to the Commission, in effect, from what I understand, addresses the same concerns that you have about the issues that surround the pertinent inspection of the steam generator tubes, and I don't know whether the Staff, when you address those issues generically, will be providing for a period of public comment, but certainly if the Staff gets to the point of a new rulemaking, there would be an opportunity for public comment. And Mr. Turk might be able to enlighten you as to whether there would be any other opportunity in that generic process. Hello?

MR. SAPORITO: Yes, yes. I understand, Your Honor.

JUDGE YOUNG: Mr. Turk?

MR. TURK: Yes.

JUDGE YOUNG: Is there anything that you can explain with regard to the generic process so that if Mr. Saporito wanted to provide a comment --

MR. TURK: Yes, Your Honor. There really are two different things happening right now. Mr. Saporito has submitted his petition under 10 CFR 2.206, which the Staff is evaluating, and the Staff will be in communication with him about his petition. So the very issues that he raises will be discussed with him by the appropriate people in the Staff. So he will have input that way.

The generic communication that is being developed right now I do not believe provides for prior comments by the public. I think it's something that would be issued and if people have comments about it, they can always submit comments. But I think his best avenue at this point would be to discuss his 2.206 petition with the Staff. And, in addition, whenever the generic communication is issued, he'll be able to see that and he can provide comment on that if he'd like.

JUDGE YOUNG: Okay. Mr. Saporito, I think Mr. Turk has explained that fairly well, so I would

encourage you, and I think the other members of the Board would join me in encouraging you to work with the Staff with regard to your 2.206 petition on these issues. And an order will be issued in the near future by granting the Motion to Terminate the Proceedings. Are there any other outstanding issues that any party would like us to address?

MR. MATTHEWS: Your Honor, just for clarification, I assume at this point then you do not require a written response from the Staff on the Motion to Dismiss?

JUDGE YOUNG: Motion to Terminate?

MR. MATTHEWS: Right.

JUDGE YOUNG: No.

MR. MATTHEWS: Okay. Thank you.

JUDGE YOUNG: Any other party have anything that you'd like to say?

MR. MATTHEWS: Nothing from the Applicant, Your Honor.

JUDGE YOUNG: And, Mr. Saporito, you understood our references to your 2.206 petition and encouragement that you work with the Staff on that.

MR. SAPORITO: Yes, Your Honor, I understand.

JUDGE YOUNG: Great. Okay. Well, thank

you all. That would conclude this call.

(Whereupon, at 11:44 a.m., the Telephone Conference Call was concluded.)

CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Arizona Public Service Company Palo Verde Nuclear Generating Station, Unit 1

Docket Number: 50-528-OLA

Location: (Telephone Conference)

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

/s/ Mia Tharpe

Mia Tharpe
Official Reporter
Neal R. Gross & Co., Inc.