

RAS 5031

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November 27, 2002 (11:19AM)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ASLBP No. 03-804-01-OLA

In the Matter of)	November 20, 2002
)	
ARIZONA PUBLIC SERVICE COMPANY)	Docket No. 50-528-OLA
)	
(Palo Verde Nuclear Generating Station, Unit 1))	
)	

MOTION TO HOLD PROCEEDINGS IN ABEYANCE

Pursuant to 10 CFR § 2.730, Arizona Public Service Company ("APS") respectfully requests that the Board hold the above-captioned proceeding in abeyance pending Nuclear Regulatory Commission (NRC) Staff action on APS's Request for Withdrawal of its September 26, 2002 license amendment request ("LAR") for the Palo Verde Nuclear Generating Station (PVNGS), Unit 1. ("Request for Withdrawal"). APS submitted its Request for Withdrawal to the NRC Staff on November 19, 2002. A copy of APS's Request for Withdrawal is attached as Enclosure 1 to this Motion.

On September 26, 2002, APS submitted the LAR to the NRC to clarify the methodology and scope of certain aspects of the steam generator (SG) tube inspections conducted as part of the SG tube inspection program pursuant to the Technical Specifications (TS) for the PVNGS, Unit 1. APS had submitted the LAR as a prudent action in the course of an ongoing outage to assure acceptance of its inspection methodology based upon an understanding that such an amendment might be required

Template = SECY-041

SECY-02

prior to Unit 1 restart from a fall 2002 refueling outage. Subsequently, in a letter dated October 25, 2002, NRC informed APS that the proposed amendment was not required prior to Unit 1 restart. The letter states that the NRC Staff has no objection to an "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." A copy of NRC's October 25, 2002 letter to APS is attached as Enclosure 2 to this Motion. APS understands from the NRC Staff's October 25, 2002 letter that the underlying technical issues regarding SG tube inspections will be addressed without the need for individual licensee amendment requests at this time, but rather "on a generic basis," and these issues "may be the subject of future generic communications."

Given the guidance contained in NRC's October 25, 2002 letter that the proposed amendment is not required and that technical issues associated with SG tube inspections will be addressed on a generic basis, APS has submitted its Request for Withdrawal pursuant to 10 CFR § 2.107(a). Section 2.107(a) provides:

The Commission may permit an applicant to withdraw an application prior to the issuance of any notice of a hearing on such terms and conditions as it may prescribe or may, on receiving a request for withdrawal of an application, deny the application or dismiss it with prejudice. Withdrawal of an application after the issuance of a notice of a hearing shall be on such terms as the presiding officer may prescribe.

This rule draws a distinction between the Commission's authority and the Presiding Officer's authority based upon whether or not a Notice of Hearing is issued. In the pending matter, the Board has yet to determine whether or not NEPC and/or Mr. Saporito have standing to intervene in this proceeding or have articulated at least one

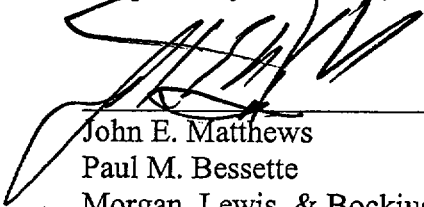
admissible contention to be set for hearing. Therefore, the Board has not yet issued any Notice of Hearing pursuant to 10 CFR 2.105(e)(2). Accordingly, the authority to approve APS's Request for Withdrawal of the LAR resides exclusively in the NRC Staff. *See Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), CLI-93-20, 38 NRC 83 (1993); *GPU Nuclear Corporation* (Oyster Creek Nuclear Generating Station), CLI-99-29, 50 NRC 331 (1999) (vacating Board decision on withdrawal of LAR, because under 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).

APS's response to the Joint Amended Petition served by NEPC and Mr. Saporito on November 7, 2002 is due to be submitted to the Board on November 25, 2002. However, if the NRC Staff approves APS's Request for Withdrawal, there will be no basis for continuing this proceeding. *See North Atlantic Energy Service Corp.* (Seabrook Station Unit No. 1), CLI-98-24, 48 NRC 267 (1998) (noting that licensee's abandonment of its amendment requests rendered the adjudications moot). Therefore, in the interests of judicial economy, APS requests that the Board exercise its authority pursuant to 10 CFR §§ 2.718 and 2.711 to extend the time for filing responses to the Joint Amended Petition indefinitely by granting this Motion to Hold the Proceeding in Abeyance pending NRC Staff action on APS's Request for Withdrawal of its LAR for PVNGS, Unit 1. *See Id.* at 268 (noting that "[t]he Board ordered the second ... amendment proceeding held in abeyance pending resolution of a related 'segmentation' question"). If necessary, the Board should establish an appropriate schedule for further pleadings in this proceeding, if any, after the Staff has acted on the Request for Withdrawal.

Counsel for the NRC Staff indicated in a telephone conference this evening that the Staff does not oppose this Motion provided that all pleadings are deferred while this proceeding is held in abeyance. Counsel for the NRC Staff and the undersigned attempted to reach the petitioners by telephone, but their line was busy. The undersigned requested consent from petitioners by electronic mail, but no response was received prior to the filing of this Motion.

APS respectfully requests that the Board act on this Motion on an expedited basis by November 22, 2002, because otherwise a Response is due to be filed on the next business day, November 25, 2002. In addition, the Board has scheduled a Status Conference for 11:00 a.m. on November 25, 2002 that presumably will be rendered unnecessary if this Motion is granted.

Respectfully submitted,



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Paul M. Bessette
Morgan, Lewis, & Bockius, LLP
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Washington, DC 20004
202-739-5524

COUNSEL FOR THE ARIZONA PUBLIC
SERVICE COMPANY

Dated November 20, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ASLBP No. 03-804-01-OLA

In the Matter of)

ARIZONA PUBLIC SERVICE COMPANY)

(Palo Verde Nuclear Generating Station, Unit 1))

) Docket No. 50-528-OLA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Hold Proceedings in Abeyance, were served upon the persons listed below by U.S. mail, first class, postage prepaid, with copies by electronic mail as indicated by an asterisk, this 20th day of November 2002.

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** Original and 2 copies



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10 CFR 50.90
10 CFR 50.91
10 CFR 2.107(a)

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102-04865-CDM/TNW/RJR
November 19, 2002

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Mail Station P1-37
Washington, DC 20555-0001

- References
1. Letter 102-04844-CDM/TNW/JAP, "Exigent Amendment Request to Technical Specification 5.5.9, Steam Generator (SG) Tube Surveillance Program," dated September 26, 2002, C. D. Mauldin, APS to USNRC
 2. Letter 102-04856 CDM/TNW/RJR, "Response to Request for Additional Information to Proposed Exigent Amendment to Technical Specification 5.5.9, Steam Generator Tube Surveillance Program," dated October 23, 2002, C. D. Mauldin, APS to USNRC
 3. Letter dated October 25, 2002, from the NRC to APS, "Palo Verde Nuclear Generating Station, Unit 1 – Review Related to Steam Generator Tube Inspection."

Dear Sirs:

**Subject: Palo Verde Nuclear Generating Station (PVNGS)
Unit 1
Docket No. STN 50-528
Request to Withdraw Proposed Exigent Amendment to Technical
Specification 5.5.9, Steam Generator Tube Surveillance Program in
Accordance with 10 CFR 2.107(a)**

In References 1 and 2 above, Arizona Public Service Company (APS) requested and provided additional information in support of an exigent amendment to the Unit 1 Technical Specification (TS) 5.5.9, Steam Generator (SG) Tube Surveillance Program.

On October 25, 2002, the NRC issued to APS Reference 3 concluding that the requested amendment was not needed prior to restart of Unit 1. Reference 3 states that the NRC Staff has no objection to the "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."

A member of the **STARS** (Strategic Teaming and Resource Sharing) Alliance

Callaway • Comanche Peak • Diablo Canyon • Palo Verde • South Texas Project • Wolf Creek

U. S. Nuclear Regulatory Commission
Request to Withdraw Proposed Exigent Amendment to Technical Specification 5.5.9,
Steam Generator Tube Surveillance Program in Accordance with 10 CFR 2.107(a)
Pg. 2

We also understand from the October 25, 2002 letter that the underlying technical issues regarding SG tube inspections will be addressed without the need for immediate individual licensee amendment requests, but rather "on a generic basis," and that these issues "may be the subject of future generic communications."

Based on NRC Staff guidance contained in the October 25, 2002 letter and recent conversations with NRC Staff on this same subject, we have concluded that the proposed TS change is not needed to demonstrate operability of the SGs in Unit 1. Specifically, APS can conduct the plus point coil tube inspections as described in References 1 and 2 within the terms of the current TS governing SG tube inspections. Therefore, in accordance with 10 CFR § 2.107(a), APS requests to withdraw the proposed amendment request.

Additionally, as the TS inspection issue addressed in the NRC's October 25, 2002 letter applies also to Units 2 and 3, we do not believe that a TS change is required for Units 2 or 3 based upon the same rationale that no TS amendment is required for Unit 1. APS will, however, attempt to pursue resolution of this and other SG tube inspection issues on a generic basis with the Nuclear Energy Institute Steam Generator Task Force and the NRC technical staff.

No new commitments are being made to the NRC by this letter. Should you have any questions, please contact Thomas N. Weber at (623) 393-5764.

Sincerely,



CDM/TNW/RJR/kg

cc: E. W. Merschoff
J. N. Donohew
N. L. Salgado
A. V. Godwin



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

Enclosure 2

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,

A handwritten signature in black ink, appearing to read "Stephen Dembek".

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