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NEPC

NATIONAL ENVIRONMENTAL PROTECTION CENTER

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

November 22nd, 2002

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Rulemakings and Adjudications Staff

RE: ASLBP No. 03-804-01-OLA

Dear Secretary:

The National Environmental Protection Center ("NEPC") by and through its undersigned Executive Director (hereinafter "NEPC" or "Petitioners") hereby submit their motion in opposition to Arizona Public Service Company's ("APS") motion to hold proceedings in abeyance.

Please file this document with Judge Young and the NRC ASLBP accordingly.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Saporito", is written over a horizontal line.

Thomas Saporito
Executive Director

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

November 22, 2002

ASLBP No. 03-804-01-OLA
Docket No. 50-528-OLA

In the Matter of

ARIZONA PUBLIC SERVICE COMPANY

Palo Verde Nuclear Generating Station
Unit-1

**PETITIONERS' OPPOSITION TO APS' MOTION
TO TERMINATE PROCEEDING**

COMES NOW, the National Environmental Protection Center ("NEPC") and the membership of NEPC and Thomas Saporito, (hereinafter "Petitioners") and submit their motion in opposition to Arizona Public Service Company's (hereinafter "APS" or "Licensee") motion to terminate proceeding ("Motion") and states as follows:

On November 22, 2002, the Licensee filed a motion to terminate this proceeding on the basis that the NRC Staff granted the Licensee's request to withdraw their license amendment request LAR and in so doing removed any issues in dispute which are within the Board's jurisdiction. See, Licensee Motion at p.3.

NRC STAFF LACKS JURISDICTION OVER LAR

As previously stated in Petitioner's earlier motion filed on this date regarding the U.S. Nuclear Regulatory Commission ("NRC") Staff's jurisdiction to act on the Licensee's request to withdraw its license amendment request ("LAR"), the NRC Staff lacks requisite jurisdiction to grant the Licensee's request to withdraw its LAR. Thus, this ASLBP retains its jurisdiction over the instant action, and Petitioners have submitted several valid contentions which are material to the instant action and which are in dispute. Moreover, Petitioners' have requisite standing as a **matter of right** and notwithstanding the ASLBP's

consideration of the issue of Petitioner's standing in this proceeding, and therefore the ASLBP should deny the Licensee's Motion.

ONLY THE ASLBP HAS JURISDICTION IN THIS PROCEEDING

The ASLBP has jurisdiction in this proceeding and maintains jurisdiction in this proceeding. The NRC Staff apparently made an inappropriate adjudication in granting the Licensee's request to withdraw its LAR almost immediately after Petitioners submitted their motion in opposition to the Licensee's earlier motion to hold this proceeding in abeyance this date. Notably, Petitioners advised the ASLBP that based on information and belief, the NRC Staff is currently under investigation by the Inspector General, Office of the Inspector General (OIG") of the NRC, regarding the NRC Staff's earlier conduct related to circumstances surrounding the Licensee's LAR. Thus, the NRC Staff was put on notice by the Petitioners that its earlier conduct was not appropriate. The Petitioners efforts to dissuade the NRC Staff from engaging in further apparent misconduct with respect to the Licensee's request to withdraw its LAR, apparently went unheeded by the NRC Staff as they unilaterally acted in granting the Licensee's request only hours after receiving the Petitioner's opposition motion.

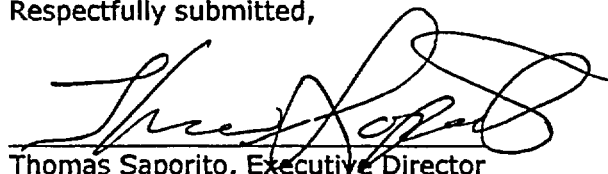
The actions of the NRC Staff and those of the Licensee in acting on an exigent basis to withdraw the Licensee's LAR serves to highlight that even more issues are now in dispute with respect to the Licensee's LAR, although some of these new issues are apparently under investigation by the NRC OIG. To the extent that the Licensee avers that the Board lacks jurisdiction because there are no issues in dispute, Petitioners **strenuously** disagree. Here in the instant action, unlike in North Atlantic Energy Service Corp., (Seabrook Station Unit No.1), CLI-98-24. 48 NRC 267 (1988), the NRC Staff is apparently under investigation for alleged wrongdoing in circumstances surrounding its conduction in the material aspects of the instant action. Notably, it was the NRC Staff who agreed with Petitioners that the Licensee's technical specifications were ambiguous and that the NRC required further action on the part of the Licensee. Now, at this very late hour, and just prior to the ASLBP's

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telephonic "pre-hearing" conference, the NRC Staff again "bends over" backwards for its Licensee in granting the Licensee's request to withdraw its LAR. Notably, following this action on the part of the NRC Staff to act on an exigent basis, the Licensee also acted on an exigent basis, on a platform constructed by the regulator "the NRC Staff", and quickly submitted to this ASLBP a motion to terminate the proceeding. Clearly, the Licensee along with its "buddy" the **NRC Staff**, have created their own unique material issues in dispute along with, and in addition to those issues in contention in Petitioner's amended petition currently before the ASLBP. To the extent that the NRC Staff's actions and those promulgated thereafter by the Licensee are **bogus**, the Petitioners assert that the ASLBP retains its jurisdiction in the instant action and must act in furtherance of public safety and health and the environment and deny the Licensee's Motion.

Only through appropriate adjudication at a **public** hearing by this ASLBP will the public's interests be protected in this proceeding. Therefore as a matter of public policy this ASLBP has inherent and broad powers to retain its jurisdiction in the instant action and must deny the Licensee's Motion and must move this matter to a public hearing in a timely fashion.

Respectfully submitted,



Thomas Saporito, Executive Director
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COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to those individuals listed below this 22nd day of November 2002.

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