

July 16, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of
ARIZONA PUBLIC SERVICE
COMPANY, et al.
(Palo Verde Nuclear Generating
Station, Units 4 and 5)

Docket Nos. STN 50-592
STN 50-593

NRC STAFF'S RESPONSE TO APPLICANTS' MOTION SEEKING EXTENSION OF TIME
WITHIN WHICH TO RESPOND TO STATEMENTS OF ISSUES FILED
BY CALIFORNIA ENERGY COMMISSION AND CALIFORNIA PUBLIC
UTILITIES COMMISSION AND REQUESTING BOARD TO
SET DATE FOR SECOND PREHEARING CONFERENCE

On June 20, 1979, both California agencies participating in the captioned proceeding pursuant to 10 CFR §2.715(c) filed extensive lists of questions which they apparently believe should be considered at the hearings to be scheduled in this matter at a later time. The Joint Applicants, in seeking an extension of time within which to respond, appear to have acted in the belief that, for purposes of responding to proffered questions from an interested state, the questions were to be treated as contentions, and that a response was required pursuant to the time periods set forth in 10 CFR §2.714. There is no time period specified in the Rules of Practice for responding to questions raised by states or subdivisions thereof which intervene pursuant to 10 CFR §2.715(c).

This Board, in its March 6, 1979 "Order Following Prehearing Conference," made clear that each issue raised by the two California participants "must be framed with sufficient detail and preciseness to define a concrete issue which

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is appropriate for adjudication in this proceeding." (Order, p. 5). This cautionary language echoes the requirements set forth by the Appeal Board in the River Bend proceeding,^{1/} in which the Board dealt with issues raised by the State of Louisiana under §2.715(c). The Appeal Board emphasized:

The State sought admittance to the proceeding as an "interested state." LBP-76-32, supra, 4 NRC at 296. It accordingly was not required to set forth contentions as a precondition to its participation. 10 CFR §2.715 (c); ALAB-317, supra, 3 NRC at 179 (1976). Once let in, however, an "interested state" must observe the procedural requirements applicable to other participants. See ALAB-317, 3 NRC at 180, n. 7.¹⁵ It may--as they may--raise particular issues of interest or concern to it. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-93 (1976). The Board is entitled to insist, however, that any new issue raised be framed with sufficient detail and preciseness. Cf. 10 CFR §2.714(a). A hearing participant "must be specific as to the focus of the desired hearing." BPI v. Atomic Energy Commission, 502 F.2d 424, 429 (D.C. Cir. 1974). And contentions (or their equivalent in the case of an "interested state") serve the purpose of defining the "concrete issues which are appropriate for adjudication in the proceeding." Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 191, affirmed, CLI-73-12, 6 AEC 241 (1973, affirmed sub. nom. BPI v. Atomic Energy Commission, supra).

^{15/} This concept was recently endorsed by the Commission. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-25, 6 NRC 535, 537, n. 1 (October 14, 1977).

Thus, issues raised by §2.715(c) participants must be narrow enough to permit evidentiary determination in an adjudicatory proceeding.

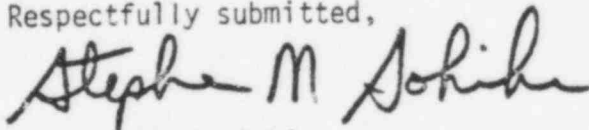
The Staff is currently examining the multitude of questions raised by the California participants. Frankly, it appears to us that many of the questions raised do not meet the criteria set forth above and that requiring an evidentiary

^{1/} Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-769 (1977).

presentation regarding many of these questions would not serve the purposes for which this adjudicatory proceeding has been convened. Given the voluminous nature of the State filings, the Staff has contacted counsel for both California agencies and expects to meet with them within the next several weeks to discuss the questions raised. We believe that such discussions, held informally and without involving the Board, may well result in a stipulated statement of issues to be litigated at the hearing in this matter. We urge the Board to delay any rulings regarding the proffered questions until the parties have had that opportunity to meet.

The Applicant has also requested in its motion that a prehearing conference be scheduled for July 23, 1979, or as soon thereafter as possible. While the Staff has no objection to the scheduling of such a conference for the purpose of hearing limited appearance statements, we believe that little else could be accomplished at this time. The Board currently has before it two petitions for leave to intervene upon which it has yet to rule (Environmental Defense Fund and the Morongo Band of Indians). Further, as discussed above, meetings among the current parties informally are needed to attempt to resolve issues raised by the State submittals without involving the Board. Therefore, the Board may wish to consider postponing such a conference until after the State participants, the Staff and the Applicant have had an opportunity to confer.

Respectfully submitted,



Stephen M. Sohinki
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 16th day of July, 1979.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO APPLICANTS' MOTION SEEKING EXTENSION OF TIME WITHIN WHICH TO RESPOND TO STATEMENTS OF ISSUES FILED BY CALIFORNIA ENERGY COMMISSION AND CALIFORNIA PUBLIC UTILITIES COMMISSION AND REQUESTING BOARD TO SET DATE FOR SECOND PREHEARING CONFERENCE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk by deposit in the Nuclear Regulatory Commission internal mail system, this 16th day of July, 1979:

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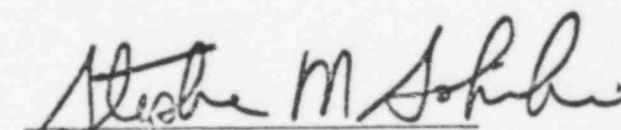
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