

MAY 25 1979

NRC PUBLIC DOCUMENT ROOM

RELATED CORRESPONDENCE

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))

Dockets Nos. STN 50-592
STN 50-593

MOTION SEEKING EXTENSION OF TIME
WITHIN WHICH TO FILE COMMENTS TO
DRAFT ENVIRONMENTAL IMPACT STATEMENT



I

The People of the State of California and the Public Utilities Commission of the State of California (CPUC), a participant in the above-captioned proceeding under Section 2.715 of the Nuclear Regulatory Commission (NRC) Rules of Practice, hereby request the Atomic Safety and Licensing Board (ASLB) or ("Board") to grant an extension of time until July 1, 1979, within which the CPUC may file its formal comments with the NRC regarding the "Draft Environmental Impact Statement relating to the construction of Palo Verde Nuclear Generating Station Units 4 and 5 - Arizona Public Service Company, et al. ... published April, 1979" (DEIS) by the NRC, Office of Nuclear Reactor Regulation.

II

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The basis for the CPUC Motion requesting an extension of time beyond June 4, 1979, which was announced in the Federal

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Register of April 23, 1979 as the due date for filing formal comments on the DEIS, is as follows:

The CPUC did not receive a copy of the DEIS from the NRC until Monday, May 7, 1979 despite several telephone communications to the NRC Staff raising this issue. CPUC had received one copy from Arizona Public Service Co. (APS) which was received on Thursday, May 3. By virtue of the fact the DEIS was not formally received until May 7, although one copy had been received 4 days earlier from APS, CPUC has been severely constrained in its ability to properly and adequately evaluate and submit appropriate comments on the DEIS to the NRC following review of a document which could have far-reaching implications on the outcome of this matter. Affording the CPUC only thirty-one calendar days, or twenty working days to analyze, evaluate, and prepare comments of a highly technical and complex nature does not appear to be a reasonable or adequate length of time.

III

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Existing federal regulations afford this Board with discretion to extend the time within which to comment for a period in addition to 15 days beyond the 45 day period afforded by law.

The regulatory Guidelines of the Council of Environmental Quality for the preparation of Environmental Impact Statements (Title 40 CFR 1500, 1500.9(f)) prescribes that a "party" consulted by a federal agency requesting comments on a federal EIS may "request a specified extension of time" within which to make comments. Moreover, the regulation goes on to state

that federal agencies should grant extensions of up to 15 days, (beyond the 45 day period), implying that fifteen days should be granted upon a request as a matter of course. The regulation does not state or imply that a federal agency cannot grant an extension of more than 15 days, only that 15 days would be a minimally acceptable extension of time. It is also significant that the section does not require "good cause" to be shown or spell out the criteria for a federal agency to grant a fifteen day or longer extension. Nevertheless the CPUC submits that there is good cause for affording it an extension of time based on the fact the CPUC was not provided a copy of the DEIS in a reasonable time despite repeated efforts beginning April 23 to obtain copies.

IV

The CEQ Guidelines (1500.9(f)) further indicates CEQ's intent that a federal agency has discretion to grant an extension of time to comment in addition to a 15 day period by stating that an agency may determine an "appropriate period for comment" considering the "magnitude and the complexity of the [DEIS] statement and the extent of citizen interest in the proposed action." As "appropriate period" would obviously vary by the circumstances of the matter. Using the term "appropriate period" indicates CEQ's suggestion that it may be more or less than 15 days depending upon the circumstances of the case. This matter without doubt is certainly of sufficient "magnitude and complexity" and "citizen interest", at least insofar as California is concerned.

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The NRC rules also afford the Board basis for extending the period to comment on the DEIS beyond May 4. The NRC regulations implementing the National Environmental Policy Act and the CEQ Guidelines authorize an extension of time for a period longer than 60 days from the date of "publication" or "availability." Although Section 51.25 of Part 51 of Title 10 of the Code of Federal Regulations, in implementation of 40 CFR 1500.9(f), initially prescribes inter alia that the NRC's DEIS will request comments within forty-five (45) days from date of publication of the Federal Register notice, the NRC is given discretion by the section to allow comments,

"... within such longer period as the Commission may specify."

This section is complimentary to the CEQ Guidelines in 40 CFR 1500.9(f) which permits an agency to grant extensions beyond a 45 or 60 day period.

The request by CPUC for an extension of time from June 4 to July 1 would be, in effect, an extension from 45 days to 71 days from publication and is wholly reasonable under the circumstances.

VI

The CPUC submits that the requested relief may be granted without detrimentally affecting the hearing schedule established

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by the Board following the Prehearing Conference held on February 21, 1979, and would not appear to jeopardize any party to this proceeding.

Respectfully submitted,

/s/ VINCENT V. MacKENZIE

Vincent V. MacKenzie

Counsel for the People of the
State of California and the
Public Utilities Commission of
the State of California

May 16, 1979

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UNRECORDED CORRESPONDENCE

CERTIFICATE OF SERVICE



I hereby certify that I am a citizen of the United States, over the age of 18 years, with business address at 5066 State Building, San Francisco, California, and am not a party to nor interested in Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 4 and 5), Dockets Nos. STN 50-592 and STN 50-593 before the Atomic Safety and Licensing Board.

— On May 16, 1979, in San Francisco, California, I personally deposited in the United States mail copies of MOTION SEEKING EXTENSION OF TIME WITHIN WHICH TO FILE COMMENTS TO DRAFT ENVIRONMENTAL IMPACT REPORT, addressed as follows:

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Each copy was enclosed in a sealed envelope and all postage thereon fully prepaid.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ IDA MacDONALD

Ida MacDonald