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Attorneys for Petitioner,  
 Morongo Band of Mission Indians

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

In the Matter of	)	
	)	DOCKET NOS. STN 50-592
ARIZONA PUBLIC SERVICE COMPANY	)	STN 50-593
et al.	)	
(Palo Verde Nuclear Generating	)	PETITION TO INTERVENE
Station, Units 4 and 5)	)	

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Petitioner, Morongo Band of Mission Indians, states:

I.

The Morongo Band of Mission Indians (hereinafter "Petitioner" or "Band"), a federally recognized Indian tribe, hereby petitions to intervene in the above-entitled proceedings.

II.

This petition is filed untimely for the following reasons:

(a) Petitioner did not receive actual notice of these proceedings until March 9, 1979 when attorneys for California Indian Legal Services (CILS), which had represented

Petitioner in connection with California Energy Commission proceedings on the proposed Sundesert Nuclear Plant, advised the Business Committee of the Morongo Band of the pendency of these proceedings. CILS attorneys, in late February 1979, had been apprised of these proceedings and had immediately requested, by letter of February 27, 1979 to Robert M. Lazo, Chairman of the Atomic Safety and Licensing Board, copies of all documents relating to the electrical transmission facilities for Palo Verde Nuclear Generating Station (PVNGS) Units 4 and 5.

(b) The Supplemental Notice Of Hearing And Notice Of Opportunity To Intervene With Regard To Environmental Issues In Hearing On Application For Construction Permits which was published in the Federal Register on Friday, December 8, 1978, did not provide constructive notice to Petitioner in that said notice was insufficient to adequately and reasonably apprise Petitioner of the real scope of the proposed project, particularly the proposed and alternate locations for electrical transmission facilities and their potential impact on the lands of Petitioner.

(c) The United States, its agencies and commissions, including the Nuclear Regulatory Commission, have a trust obligation to federally recognized Indian tribes. This obligation encompasses the duty to give actual notice to the governing bodies of said tribes when the actions of said agencies or commissions will, or may, have an adverse effect on the lands

and members of said tribes.

(d) The Applicant at all times relevant hereto was aware that the proposed and alternative electrical transmission corridors from Devers to Mira Loma would have to cross the lands of Petitioner and could have easily provided Petitioner with actual notice of this fact. Failure to provide actual notice to Petitioner under these circumstances is contrary to law. See, e.g., SCHROEDER v. NEW YORK, 371 U.S. 208, 306 (1962); EISEN v. CARLISLE & JACQUELIN, 417 U.S. 156, 175 (1974).

(e) Unless Petitioner is allowed the opportunity to fully participate as a party in these proceedings, including the opportunity to introduce evidence and interrogate witnesses, its ability to adequately represent its interests and concerns to this Board will be unduly restricted.

### III.

Petitioner's grounds for intervention are as follows:

(a) Petitioner is the beneficial owner of the lands of the Morongo Indian Reservation, title to which are held in trust by the United States of America for the exclusive use and benefit of Petitioner.

(b) While the Nuclear Regulatory Commission and this Board lack jurisdiction to condemn or to otherwise regulate the use of the lands of the Morongo Indian Reservation, the actions of the Commission and Board in issuing construction permits and operating licenses for nuclear generating facilities may ultimately have a direct adverse effect on the lands

of Petitioner.

(c) The lands of Petitioner lie within the proposed and alternate locations of the proposed Devers to Mira Loma corridor of the 500 kilovolt transmission line which is proposed to carry the electrical power produced by the PVNGS Units 4 and 5.

(d) The lands of Petitioner may not be utilized for such transmission line purposes without the consent of the governing body of Petitioner.

(e) The location of said transmission lines as proposed by the Applicant, poses serious environmental and health hazards to the lands and members of the Band, among which are:

(1) the potential health and safety hazards created by the electrical and magnetic fields within and without the proposed and alternative transmission corridors;

(2) the impact of the construction of transmission facilities on the archaeological and cultural resources within and adjacent to the proposed and alternative transmission corridors;

(3) the impact of the transmission facilities on the Petitioner's present and long-range plans for use and development of its lands, especially the potential

interference with alternative land uses which are more compatible with the purpose for which the Morongo Reservation was established, i.e. to provide a permanent home for the members of the Band;

(4) the visual impact of the transmission facilities on the lands on which they are situated and on those adjacent to or in near proximity to the transmission facilities;

(5) the physical hazards posed by the presence of the lines themselves (e.g., fire hazards and hazards to aviation).

#### IV.

The concerns expressed in Paragraph III(e) are not exhaustive. Petitioner will request leave to amend this petition once Petitioner and its attorneys have had an opportunity to obtain and review all of the pleadings and documents on file herein.

#### V.

It is the position of Petitioner that the construction of the PVNGS in a location which necessitates the construction of 500 kilovolt transmission facilities across, above, and/or adjacent to its lands, as well as the construction of the nuclear power plant itself, will create unacceptable dangers to the health and safety of Petitioner's members and other residents of the Morongo Reservation, and will unacceptably preclude the use of precious Reservation lands for the purpose

for which the Reservation was created -- for the exclusive use and benefit of the Morongo Band of Mission Indians -- without conferring a commensurate benefit upon Petitioner. Unless and until the concerns of Petitioner are satisfied, Petitioner opposes construction of both the PVNGS itself and the 500 kilovolt transmission lines which will transmit the power produced by said plant.

VI.

Petitioner wishes to present direct evidence and to cross-examine any and all parties and/or witnesses testifying in these proceedings.

WHEREFORE the Morongo Band of Mission Indians prays as follows:

- (1) That the Band be permitted to intervene in this proceeding and fully participate as a party in all phases thereof;
- (2) That the Atomic Safety and Licensing Board postpone any further proceedings and/or hearings for a reasonable period of time to allow the Band sufficient time to obtain and review the pleadings and documents on file herein and to amend its Petition to more specifically state its interests and concerns;
- (3) That, in the event the Board should deny this petition to intervene, the Band requests permission to make a limited appearance pursuant

to the provisions of the Commission's Rules of Practice (10 CFR §2.715);

(4) That, because the Band is composed primarily of low-income persons and is represented by a publicly-funded legal services organization, and thus lacks the financial means to serve copies of its pleadings, exhibits, testimony and other papers upon the numerous other parties to this proceeding, the Band be permitted to file twenty copies thereof with the Nuclear Regulatory Commission and that the Commission serve copies thereof on the other parties; and

(5) That the Band be supplied with all documents, exhibits, testimony and other exhibits filed by all parties in this proceeding.

Dated this 11<sup>th</sup> day of May, 1979.

CALIFORNIA INDIAN LEGAL SERVICES

by:

Stephen V. Queisenberry  
STEPHEN V. QUEISENBERRY

Attorneys for Petitioner

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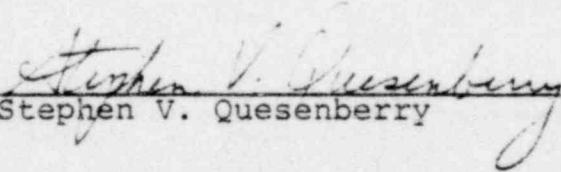


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of	)	
	)	DOCKET NOS. STN 50-592
ARIZONA PUBLIC SERVICE COMPANY,	)	STN 50-593
et al.	)	
(Palo Verde Nuclear Generating	)	CERTIFICATE OF SERVICE
Station, Units 4 and 5)	)	
	)	

I certify that a copy of the attached Petition to Intervene has been served on Arthur C. Gehr, Esquire, by placing same in the United States mail, postage prepaid, this 11th day of May, 1979, addressed as follows:

Arthur C. Gehr, Esq.  
Snell & Wilmer  
3100 Valley Bank Center  
Phoenix, Arizona 85073

  
\_\_\_\_\_  
Stephen V. Quesenberry



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Attorneys for Petitioner,  
 Morongo Band of Mission Indians

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

In the matter of	)	
	)	DOCKET NOS. STN 50-592
ARIZONA PUBLIC SERVICE COMPANY,	)	STN 50-593
et al.	)	
(Palo Verde Nuclear Generating	)	NOTICE OF APPEARANCE
Station, Units 4 and 5)	)	
	)	

NOTICE IS HEREBY GIVEN that California Indian Legal Services, by Stephen V. Quesenberry, George Forman and Lester J. Marston, hereby enters its appearance in the above-entitled proceedings on behalf of the Petitioner In Intervention, Morongo Band of Mission Indians. The undersigned represents that all of the above-named attorneys are admitted to practice before the Supreme Court of the State of California and before various courts of the United States. The respective addresses and telephone numbers of the above-named attorneys are as follows:

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Telephone: 714-746-8941

Dated this 11<sup>th</sup> day of May, 1979.

CALIFORNIA INDIAN LEGAL SERVICES

By *Stephen V. Quesenberry*  
STEPHEN V. QUESENBERRY

Attorneys for Petitioner  
In Intervention,  
Morongo Band of Mission Indians