

ARIZONA



PUBLIC SERVICE COMPANY

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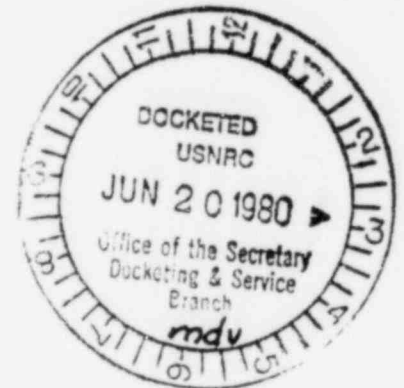
June 16, 1980
ANPP-15662 - JMA/JPS

DOCKET NUMBER
PETITION RULE PRM - 2-10 (8)
(45 FR 26071)

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Re: Citizens Advisory Board of the Metropolitan
Area Planning Agency; Filing of Petition
for Rulemaking 45 Federal Register 26071
(April 17, 1980)



Dear Sir:

On March 13, 1980, the Citizens Advisory Board of the Metropolitan Area Planning Agency filed a petition for rulemaking with the Commission. The petition requests the amendment of 10 CFR Part 2 relative to the conduct of licensing proceedings. Arizona Public Service Company, as Project Manager and one of 5 Participants in the Palo Verde Nuclear Generating Station, opposes the petition for the reasons hereinafter set forth.

Paragraph 3 of the petition provides for the holding of an informal hearing in situations involving the issuance, amendment, modification, suspension or revocation of a facility operating license.⁽¹⁾ There are several procedural uncertainties associated with the proposed revision to Section 2.105.⁽²⁾ The principal problem, however, lies with the potential for waste of time and effort. For instance, assume that under proposed Section 2.105(a) (4), the Commission determines that the opportunity for a public hearing should be afforded. Assume further that neither the applicant nor anyone else files a request for formal hearing under proposed Section 2.105(c) and (d). Under such circumstances, an informal hearing would be required.

The requirement for an informal hearing would apply even though the proposed action may be a license amendment which involves no significant safety issue. An informal public hearing would have to be arranged, a notice of such hearing would have to be published, and the licensee, Commission staff and perhaps vendors and consultants would have to prepare for the informal hearing. However, if no one desired a hearing, it is unlikely that anyone from the public would appear to ask questions or make comments. Thus, holding an informal hearing under such circumstances would benefit no one, and would only result in a waste of time and effort.

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Acknowledged by card. 6/20/80 mdv.

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Paragraph 4 of the petition is intended to provide for interested persons to request a formal hearing without being required to intervene and make formal showings. The problem is that the requestor need only specify the aspect of the subject matter as to which a hearing is sought and need not identify any specific issues (unlike a person filing a petition to intervene, who must file a list of contentions (see Section 2.714(b)). If a request for formal hearing is filed and granted, and it is solely because of such request that a formal hearing is scheduled, there would be no issues to be determined. If there are no issues to be determined, there is no point in holding a hearing.

Paragraph 5 of the petition is intended to permit all interested persons to participate in a limited manner in all aspects of a proceeding. The proposed revision to Section 2.715 would permit a person not a party to the proceeding to "participate in the proceedings within such limits and on such conditions as may be fixed by the prescribed officer." The participation provided for in the proposed revision in some respects resembles the limited participation described in Section 2.714(e) and (f). The chief difference is that a person participating under the proposed revision to Section 2.715 need not identify his interest in the proceeding, or how such interest may be affected by the results of the proceeding. (See 10 CFR Section 2.714(2).)

Permitting the type of participation requested by petitioner would be contrary to all traditional notions of standing. The proposed revision is nothing more than an attempt to circumvent the Commission's established requirements in Section 2.714.

For the foregoing reasons, Arizona Public Service Company respectfully urges the Commission to deny the subject petition.

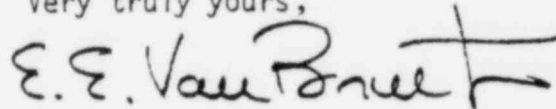
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- (1) Although Paragraph 2 of the petition states that an informal hearing should be required in all instances, it appears that under the proposed revision, an informal hearing is required only (1) if no request for formal hearing is filed within the time prescribed in the notice published pursuant to Section 2.105(a) (see proposed Section 2.105(d)), or (2) if a request for a formal hearing is filed but denied (see proposed Section 2.105(f)). Presumably, if no notice is required under Section 2.105(a) and no request for formal hearing is filed, no informal hearing is necessary.

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- (2) For instance, the differences between a formal and informal hearing are not defined. Furthermore, the requirements applicable to an informal hearing are confusing. Although the petition proposes to make Section 2.750 applicable solely to formal hearings, an informal hearing is to be reported "by the best practicable means" (see proposed Section 2.105(e), thus raising the question of when would a transcript not be the best practicable means.

Proposed Section 2.105(a) provides in part that a notice of proposed action will be published "with respect to an application for:....(4) Any other license or amendment...as to which a hearing is requested by 5 or more persons." If such a request is made, following which a notice is published, is it necessary for 5 persons to file yet another request for hearing, assuming the applicant does not, pursuant to proposed Section 2.105(c) (3)?

Very truly yours,



E. E. Van Brunt, Jr.
APS Vice President,
Nuclear Projects
ANPP Project Director

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