UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD
Before Administrative Judges

Robert M. Lazo, Esq., Chairman
Richard F. Cole, Ph.D
A. Dixon Callihan, Ph.D

SERVED APR 17 1981

In the Matter of

ARIZONA PUBLIC SERVICE COMPANY, Et Al.

(Palo Verde Nuclear Generating Station, Units 1, 2 and 3 Operating License Proceeding)

Docket Nos. STN 50-528-OL
STN 50-529-OL
STN 50-530-OL

April 16, 1981

MEMORANDUM AND ORDER

1. BACKGROUND

On July 25, 1980, the U.S. Nuclear Regulatory Commission (the Commission) published in the Federal Register a notice of receipt of an application for facility operating licenses for Palo Verde Nuclear Generating Stations Units 1, 2 and 3 and notice of opportunity for hearing (45 Fed. Reg. 49732).1/ Such licenses would authorize Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, Public Service Company of New Mexico and Arizona Electric Power Cooperative, Inc., (Joint Applicants) to possess, use and operate Palo Verde Nuclear Generating Station, Units 1, 2 and 3, three pressurized water nuclear reactors (the facilities) located on the Joint Applicants' site in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix.

1/ The July 25, 1980, notice is a clarification of an earlier notice published in the Federal Register (45 Fed. Reg. 46941-43) on July 11, 1980

The notice of opportunity for hearing provided that any person whose interest may be affected by this proceeding may file a petition for leave to intervene in accordance with the Commission's Rules of Practice (10 CFR 2.714). In response to this notice, on August 11, 1980, Patricia Lee Hourihan submitted a timely petition for leave to intervene and a request for hearing in the above-identified matter for herself as well as on behalf of two other persons, Kevin Dahl and Christopher Shuey. On November 21, 1980, Ms. Hourihan filed a Supplement to Petition for Leave to Intervene and Contentions (Supplement) setting forth 28 contentions.

On December 2, 1980, a prehearing conference was held before this Atomic Safety and Licensing Board (Board) to consider the petition for leave to intervene and to permit identification of the issues in this proceeding. At the prehearing conference, the Board orally granted the petition for leave to intervene as to Ms. Hourihan, thereby making her a full party to this proceeding.[2/] (Ms. Hourihan hereinafter will be referred to as "Intervenor.")

At the aforementioned prehearing conference the parties--Intervenor, Joint Applicants, and the NRC Staff--indicated that they would confer in an effort to arrive at a stipulation regarding the language of Intervenor's remaining contentions.[3/] Such a stipulation was executed and filed with the Board on December 12, 1980.

With regard to the Intervenor's contentions not withdrawn in the prehearing conference, the stipulation indicates that the Intervenor further withdrew Contentions Nos. 3, 9, 10, 15, 16 20, 21 and 22 from Intervenor's November 21, 1980

2/ Tr. 16.

3/ Tr. 30. During the course of the discussion of Intervenor's contentions at the prehearing conference, Intervenor withdrew Contentions Nos. 19, 24, 25 and 27 (Tr. 30, 32).

Supplement and formed from the remaining contentions a group of reworded contentions which all the parties agreed were valid contentions (Appendix A to the Stipulation) and a group of reworded contentions that the parties were not able to agree were valid contentions (Appendix B).

Joint Applicants and the NRC Staff have each filed written responses to the disputed contentions. In the view of the Staff, only Contention 6B of the contentions set forth in Appendix B to the Stipulation should be accepted as a valid contention in this proceeding. Joint Applicants oppose each of the disputed contentions. By Order dated January 6, 1981, the Board afforded the Intervenor the opportunity until January 20, 1981, to respond in writing to any contention which has been objected to by Joint Applicants or the Staff. No response by Intervenor has been received.

II. CONTENTIONS

Upon consideration of the filings by the Petitioner and the other parties, this Board concludes that a hearing is warranted and that it should confirm its earlier oral ruling that Ms. Hourihan should be admitted as a party to the proceeding. Her petition provides sufficient assertion of her interest and she has submitted admissible contentions which identify specific aspects of the subject matter of the proceeding as to which she wishes to intervene. Accordingly, the Board will grant the petition for leave to intervene filed by Ms. Hourihan. Neither Mr. Dahl nor Mr. Shuey have requested party status, thus Ms. Hourihan will be the sole intervenor in this proceeding.[4/]

4/ Tr. 12

Further, the Board has concluded that it should approve the December 12, 1980 "Stipulation of Parties Regarding Contentions and Discovery." By so doing the Board accepts as issues in controversy in this proceeding three safety contentions (Contentions Nos. 1, 7 and 8) and one environmental contention (Contention No. 5).

Appendix B to the Stipulation sets forth three safety contentions (Contententions Nos. 6B, 17 and 23A) and five environmental contentions (Contentions Nos. 6A, 14, 18, 23B and 28) that the parties were not able to agree were admissible contentions. We will address each of these in turn.

CONTENTION NO. 6A

> The Applicants have not analyzed the financial consequences of an Anticipated Transient Without Scram (ATWS) event which can result in a Class 9 accident. [By this contention, Intervenor is not limiting the area of the contention to only ATWS events that could lead to Class 9 accidents.]

The Intervenor in this contention raises the issue that the potential dollar costs resulting from the consequences of an ATWS event (including an ATWS event that could lead to a Class 9 accident) have not been considered by the Joint Applicants.

The Commission recently issued an interim policy statement entitled "Nuclear Power Plant Accident Consideration Under the National Environmental Policy Act of 1969" (45 Fed. Reg. 40101, June 13, 1980), which revised Commission policy on the consideration of environmental impacts arising from

more severe very low probability accidents (Class 9 accidents) that are physically impossible.[5/] The interim policy statement provides:

> It is the Commission's position that its Environmental Impact Statement shall include considerations of the site-specific environmental impacts attributable to accident sequences that lead to releases of radiation and/or radioactive materials, including sequences that can result in inadequate cooling of reactor fuel and to melting of the reactor core.

However, this interim policy statement applies to the Staff only and not to the Joint Applicants. Only applicants who file their environmental reports after July 1, 1980, are required to address such Class 9 risks. (45 Fed. Reg. 40103). The Applicant's environmental report was submitted on December 5, 1979.

Even if the contention were reworded to assert that the Staff had failed to take into account the costs of the referenced ATWS events it still must fail, at least for now. The contention is premature and in addition fails to meet the specificity requirements of 10 C.F.R. §2.714. Accordingly, it cannot be admitted.

CONTENTION NO. 68

> The Applicants have not incorporated measures designed to mitigate a postulated ATWS event.

The Appeal Board has made it clear that "unresolved" issues such as ATWS cannot be disregarded in individual licensing proceedings because they have generic applicability. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2) ALAB-491, 8 NRC 245, 248 (1978) The Appeal Board added: "There must be some explanation why construction or operation can proceed even though an overall solution has not been found." (Id.)

5/ This policy will be applied to the Staff's environmental assessment of Palo Verde Nuclear Generating Station since it is an ongoing review. See Fed. Reg. 40101, at 40103.

In Northern States Power Company, (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, slip op. at 19 (September 3, 1980) the Appeal Board stated that the Licensing Board must look at the record and assure itself that "the generic safety issues have been taken into account in a manner that is at least plausible and that, if proven to be of substance, would be adequate to justify operation.

Thus the basic matter set out in the contention must be dealt with in this proceeding. The issue to be dealt with under this contention would be (a) have the Joint Applicants incorporated measures to deal with ATWS events in their Palo Verde facility, and if not (b) does this pose a safety question that would foreclose issuing an operating license for the facility.[6/]

For the above reasons the Board finds this contention to be admissible.

CONTENTION NO. 14

> The Applicants have failed to show the effects of cumulative radiation on the Primary System of the PVNGS and the likelihood that these effects will not shorten the life-span of the plant.

This contention is not admissible for the reason that it fails to meet the bases and specificity requirements of 10 C.F.R. §2.714. The Intervenor states no basis for the contention. Furthermore, it is not clear from the contention what "effects" are of concern to the Intervenor and how these effects will lead to a shortening of the life of the Palo Verde Nuclear Station so as to be of concern in this licensing proceeding.

6/ Should the Commission resolve the ATWS issue or other generic questions by rule or regulation, such action would be binding on this Board and prevent litigation of this matter. See 10 C.F.R. §2.758.

CONTENTION NO. 17

> The Applicants have failed to adequately consider the report on "Spent Fuel Heat Up Following the Loss of Water During Storage" prepared by the Sandia Laboratories for the NRC in September of 1978 (SAND 77-1371).

This contention is unacceptable for the reason the Intervenor has failed to provide a basis with reasonable specificity as required by 10 C.F.R. §2.714. There is no showing how the cited report relates to the Palo Verde Station or why such report should be considered by the Joint Applicants.

CONTENTION NO. 18

> The Applicants have not adequately figured the costs and impacts of storage or disposal of spent fuel and other radioactive wastes, for the term of the operating licenses, in the cost/benefit analysis.

This contention is too vague to be admissible. It fails to meet the specificity and bases requirement of 10 C.F.R. § 2.714. Principally, it is not clear what issue the Intervenor is asking the Board to accept for litigation. Moreover, it is not clear what "impacts" are referred to.

CONTENTION NO. 23A

> The Applicants have not adequately considered the effects of on-site sabotage.

The Board recognizes the difficulty that an intervenor has with regard to asserting a contention on the security plan for a nuclear reactor with sufficient basis and specificity to satisfy the requirements of 10 C.F.R. §2.714, since the security plan is not available to the intervenor. The Board, however, does not believe that the basis cited by the Intervenor in

the support of this contention, the general availability of the Barrier Penetration Handbook, is sufficient in spite of this difficulty. The basis cited for such a contention should be site specific, i.e., stating specific reasons why a security plan may not be adequate for this particular station. The mere availability of a Handbook giving the times certain types of physical barriers can resist penetration, does not show that the security at the plant is insufficient. Further, the nexus between this book dealing with barrier penetration, i.e., an attack on a plant from outside and, on-site sabotage is not apparent. The contention is not admissible.

CONTENTION NO. 22B

> The Applicants have not adequately considered the economic cost effects of off-site sabotage.

This contention is unacceptable for the reason that it fails to satisfy the "basis" and "specificity" requirements of 10 C.F.R. §2.714. The simple assertion that the transmission line routes are public and that transmission line towers can be toppled easily does not support the contention. The Intervenor has failed to indicate any reason why she believes that such sabotage will occur at the Palo Verde Station or that it can have any substantial effect on the economic viability of the facility. The statements in the Intervenor's "Explanation" are, in essence, nothing more than speculation.

CONTENTION NO. 28

> The cost of PVNGS outweighs the cost of alternative sources of energy. The Applicants have not sufficiently met the requirements of 10 C.F.R. 51.21. The Applicants have failed to show the alternative available to meet Arizona's energy needs.

This contention lacks the basis and specificity required by 10 C.F.R. §2.714. It is nothing more than a collection of bare assertions that the costs of PVNGS outweigh the costs of alternatives, that Joint Applicants have not met the requirements of 10 C.F.R. §51.21, and that Joint Applicants have failed to discuss the available alternatives to PGNS. There is no basis stated to support any of these assertions. The construction permit Final Environmental Impact Statement did consider various alternatives and their costs relative to PVNGS (FES, September 1975, Chapter 9) and the Licensing Board evaluated that discussion (LBP-76-21, 3 NRC 662, 690-693, (1976)). Furthermore, the Intervenor has not indicated how the Joint Applicants have failed to meet 10 C.F.R. §50.21. In sum, the Intervenor has totally failed to show how the consideration of alternatives to PVNGS has been deficient. Accordingly, the contention lacks the required basis and specificity and is not admissible in this proceeding.

III. ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter it is this 16th day of April, 1981

ORDERED

1. The Petition For Leave To Intervene in this proceeding by Patricia Lee Hourihan is granted;
2. The Stipulation of Parties Regarding Contentions and Discovery, dated December 12, 1980, is approved;
3. Intervenor's Contentions Nos. 1, 5, 6B, 7 and 8 are admitted as issues in controversey in this proceeding; and

4. Intervenor's Contentions Nos. 6A, 14, 17, 18, 23A, 23B and 28 are rejected

A notice of hearing implementing this decision is appended to this Memorandum and Order as Attachment A.

Judge Richard F. Cole and Judge A. Dixon Callihan, Members of the Board, join in this Memorandum and Order.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD

Robert M. Lazo

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Administrative Judge