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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
ARIZONA PUBLIC SERVICE COMPANY,)
 et al.)
)
(Palo Verde Nuclear Generating)
Station, Units 1, 2 and 3))

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

MEMORANDUM OF LAW IN SUPPORT OF THE PETITION
OF WEST VALLEY AGRICULTURAL PROTECTION COUNCIL, INC.
TO INTERVENE IN LICENSING PROCEEDINGS

INTRODUCTION

In the accompanying petition, West Valley Agricultural Protection Council, Inc. ("West Valley" or "Petitioner") requests, inter alia, that the Atomic Safety and Licensing Board ("the Board") grant it leave to intervene in the above-captioned licensing proceeding as a party of record. As set forth more fully below and in the accompanying affidavits, West Valley has only recently discovered substantial new information that salt drift from the cooling towers, spray ponds and evaporation ponds at the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (collectively PVNGS, separately PV1, PV2, or PV3), will cause major environmental damage to the surrounding cropland and direct, and potentially devastating, economic injury to the members of West Valley. Since discovering the above new information, West Valley, its experts and attorneys have acted with diligence and dispatch to bring these matters to the

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attention of the Board. The detailed reports prepared by West Valley's experts document the inadequacies of the Environmental Impact Statements and Environmental Reports previously submitted in this licensing proceeding, detail the harmful effects which salt deposition from PVNGS would have on surrounding crops and cropland and, most importantly, discuss reasonable and achievable technical changes which would reduce such damage at an acceptable cost. In light of the above, Petitioner submits that the Board should grant its petition to intervene in this proceeding so that it may, in a manner consistent with the efficient conduct of the Board's proceedings, require the Arizona Public Service Company ("APS" or "Applicant") and the NRC Staff to conduct a proper analysis of the detailed contentions set forth in West Valley's petition.

STATEMENT OF FACTS

The area surrounding the PVNGS, which includes the Buckeye Irrigation District, contains some of the most productive agricultural cropland in the nation. Annual production of agricultural products by West Valley members is worth approximately \$96,000,000. The large family-owned farms of this area employ highly advanced agricultural methods and equipment in

the production of cotton and a variety of other crops. (Aff. ¶1.)*/

Virtually all of the farmer-owners in the Palo Verde region initially supported the construction of PVNGS. They believed, based on conversations with local APS representatives, that PVNGS would not adversely affect their agricultural production. They also understood that the Environmental Impact Statements prepared for PVNGS stated that PVNGS would pose no potential environmental problems for agricultural production in the region. (Aff. ¶4)

The limited discussion of environmental effects on vegetation, specifically the effects of salt deposition from PVNGS cooling towers, could not have given the farmers reason to doubt this belief. The brief analysis of salt deposition in the Construction Permit Final EIS (September 1976) focused primarily on the effect of salt deposition on the soil (rather than on plant surfaces) and on native desert vegetation (rather than on agricultural crops). Id. at 5-17. The Construction EIS concluded that "salt buildup in the soil due to PVNGS operation is not expected to have a serious effect on agriculture in the site vicinity." Id. The Construction EIS did not consider previous studies on the effects of salt deposition directly on

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"Aff. ¶1" refers to the 24 affidavits submitted by West Valley members and attached as Exhibit E to the Petition to Intervene. The identically numbered paragraphs in each affidavit contain similar information. The figure of \$96,000,000 is taken from the affidavit of Jackie Meck and is greater than the figure in some of the other affidavits. The figure in the Meck affidavit is the latest estimate made by West Valley and represents the correct approximation of the value of the agricultural production of West Valley

the surfaces of vegetation, noting that the peculiar characteristics of native desert vegetation and the desert environment "invalidates" these studies. Id. at 5-18. Similarly, the Operating License Final EIS (February 1982) dismissed concerns regarding the deposition of salt from PVNGS, noting that salt drift would not alter soil salinity sufficiently to impact biota and concluding that "the staff does not expect impacts from salt-drift deposition." Id. at 5-10.

The farmers in the Palo Verde region received their first indication that salt drift from nuclear generating facilities could potentially affect agricultural production in late spring 1982. At that time, newspaper accounts of NRC hearings on APS's application for the PVNGS operating license noted that intervenor Lee Hourihan had briefly mentioned the possibility of environmental problems due to salt drift. The salt drift issue had not, however, been raised in Ms. Hourihan's intervention petition or been considered at the hearings; Ms. Hourihan presented no specific theories or documentation supporting her suspicions. The farmers received additional indications of a potential problem in the spring and summer of 1982: certain farmers learned that farmers in the San Joaquin Valley, California, had opposed a nuclear plant in part because of potential salt deposition, and APS applied for government permission to drill 49 wells, thus raising the possibility that PVNGS would utilize cooling water of a much higher salinity than previously supposed. (Aff. ¶8-9.)

Based on these indications, individual farmers in the region recognized the need to gather more specific evidence on the salt deposition issue. Accordingly, area farmers formed West Valley and decided to retain outside experts to analyze the effect of salt deposition on their crops. It was only after receiving the initial reports of these experts--Dr. Charles Mulchi and Dr. Edward Davis--that the West Valley members had factual support for their suspicions. (Aff. ¶10.) The experts' reports^{*}/ concluded that the EIS' had seriously understated the potential salt drift from PVNGS and had ignored the major environmental and economic damage which would result from this salt drift. (Affidavit of Kenneth Berlin annexed as Exhibit A to the Petition to Intervene ¶4 - hereinafter referred to as Berlin Affidavit.) Recognizing the need for action on this serious issue, the members of West Valley met on September 11, 1982, and voted unanimously to authorize the firm of Winston & Strawn to seek intervention in this proceeding on West Valley's behalf. (Aff. ¶11.) Since that date, West Valley has also received a report from an additional expert--Dr. Michael Golay--which sets forth various technical solutions to the salt deposition problem.

ARGUMENT

I. INTERVENTION BY WEST VALLEY IN THIS PROCEEDING IS CONSISTENT WITH THE CRITERIA SET FORTH IN 10 C.F.R. §2.714

Although the deadlines for timely intervention petitions in the above-captioned proceeding have passed, West

^{*}/ The expert's reports are annexed as Exhibits B to D to the Petition to Intervene.

Valley submits that it may properly intervene in the proceeding on the basis of the criteria set forth in 10 C.F.R. §2.714 (1981). This section of the NRC Procedural Rules provides that the NRC may grant nontimely intervention petitions based on a balancing of the following eight factors:

- (1) Good cause, if any, for failure to file on time.
- (2) The availability of other means whereby the petitioner's interest will be protected.
- (3) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (4) The extent to which the petitioner's interest will be represented by existing parties.
- (5) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.
- (6) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (7) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (8) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

Id. §2.714(a)(1), (d). The Commission has repeatedly emphasized that these factors must be viewed in a flexible manner, consistent with the facts of each case and has noted that no one factor is necessarily dispositive. See, e.g., Nuclear Fuel Services (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273

(1975). As set forth in detail below, West Valley submits that it has made a strong showing as to most, if not all, of these factors.

1. Good Cause for Failure to File on Time

Under the facts set forth in this petition and the accompanying affidavits and reports, West Valley has good cause for failing to file a timely petition to intervene. There are at least three independent grounds which excuse West Valley's untimely filing.

First, and perhaps most importantly, West Valley has only recently acquired substantial new information detailing the devastating effects which salt deposition from PVNGS might have on local agriculture. The acquisition of such new information has long been recognized as "good cause" for admitting untimely intervenors. See Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 385-87; Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-79-22, 10 N.R.C. 213, 214 (1979). The accompanying experts' reports, prepared by the authors of the respected Chalk Point study and a noted authority on drift elimination technology, contain a wealth of new information on the salt deposition characteristics of PVNGS, the adverse effects of salt deposition on surrounding agriculture and the feasible technical solutions to the salt deposition problem. Given the current lack of detailed information regarding the effects of salt deposition on desert agriculture, many of the issues raised in these reports should have properly been the subject of detailed analyses and field studies by APS and the NRC staff. As noted above, West

Valley only recently received indications that salt deposition might pose a major threat to agriculture in the PVNGS area. It is only through West Valley's diligence and financial commitment that this new information has finally come to light. The new information contained in these reports provides substantial support for the contentions raised by West Valley and provides "good cause" for West Valley's untimely intervention.

Second, it is clear that the NRC Staff, whether through inadequate investigation or otherwise, has furnished the public with erroneous or misleading information on matters of basic fact and that West Valley's reliance on this information prompted its previous inaction. See Puget Sound Power & Light Company (Skagit Nuclear Power Project, Units 1 and 2), ALAB-559, 10 N.R.C. 162, 165 (1979) (dissemination of erroneous information on basic facts may, if reasonably relied upon, constitute "good cause"). As noted above, the members of West Valley had been repeatedly informed and had understood that PVNGS posed no environmental threat to their farms. Moreover, the Operating Licensing Final EIS had specifically stated that "the staff does not expect impacts from salt-drift deposition." The expert reports accompanying the petition indicate that there is a substantial likelihood that this, and other information contained in the EIS, is seriously in error. These expert reports indicate, inter alia, that the EIS vastly understated the amounts of salt emitted from PVNGS cooling towers and was incorrect in dismissing prior salt deposition studies as "invalid." These and other errors in developing basic factual information led the NRC and the applicant to downplay the effects of salt deposition on

agriculture, thus seriously misleading the members of West Valley.

Third, the NRC staff failed to consider or disclose a whole series of material facts which, if disclosed, might have induced West Valley to seek intervention at an earlier time. See id. at 165 (failure to disclose material facts may constitute "good cause"). As set forth in West Valley's contentions, the EIS failed to disclose such important factual information as: 1) the fact that cooling water salinity may, at times, be significantly higher than the average levels, 2) the fact that the efficiency of drift elimination equipment tends to deteriorate over time, 3) the fact that other utilities have commissioned major field studies on the effects of salt deposition on agriculture, 4) the fact that those studies have demonstrated that aerosol salt deposition may seriously damage a wide variety of agricultural crops, and 5) the fact that "base load" dry cooling towers and a desalination capacity might substantially reduce salt deposition from PVNGS. Failure to disclose this important information lulled West Valley and its members into a false sense of security regarding the environmental effects of PVNGS.

2. The Availability of Other Means to Protect West Valley's Interests

Participation as a party in this proceeding is the only means through which West Valley can protect its interest in preventing agricultural damage due to salt deposition. Contentions regarding the effects of salt deposition have not

been raised by the present intervenor, and it is clear that the intervenor has neither the expertise nor the financial resources to represent the interests of West Valley.

Other forums, including the Arizona Public Service Commission, are neither empowered nor qualified to consider the salt deposition contentions raised by West Valley. At best, these forums can provide only partial and incidental relief. This is inadequate, however, because the Boards have emphasized that other forums do not adequately protect a petitioner's interests unless they protect all of his interests. See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-80-14, 11 N.R.C. 570 (1980).

In addition, the Applicant and the Staff may not claim that West Valley's interests could have been protected through its participation in prior NRC proceedings. In interpreting this element of section 2.714, the Board must look to whether there are now alternative means through which the petitioner's interest will be protected. See Puget Sound Power & Light Co. (Skagit Nuclear Power Project, Units 1 & 2), ALAB-559, 10 N.R.C. 162, 170 (1979).

Finally, limited participation by West Valley in these proceedings will not adequately protect West Valley's interests. Allowing the Staff to represent West Valley's interest would clearly not suffice, since the Staff cannot be expected to pursue West Valley's issues with the same diligence as West Valley would itself. See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-79-22, 10 N.R.C. 213, 215 (1979). Similarly, a limited appearance would be inadequate since West

Valley would be denied the necessary procedural rights to protect its interests. See Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273, 276 (1975). Thus, for all of the above reasons, there are no means--short of full participation in NRC proceedings with all of the procedural rights of a party--which will protect West Valley's interests.

3. The Extent to Which West Valley's Participation May Assist in Developing a Sound Record

In reviewing discretionary petitions to intervene in licensing proceedings, the Boards have often emphasized that the petitioner's ability to make a "valuable contribution" to the decision-making process is often the most important factor considered. See Virginia Electric & Power Co. (North Anna Power Station, Units 1 & 2), ALAB-363, 4 N.R.C. 631, 633 (1976). In the words of the Commission:

Permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, and demonstrates their importance and immediacy, justifying the time necessary to consider them.

Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 N.R.C. 610, 617 (1976). West Valley clearly meets this test: the accompanying affidavits and experts' reports demonstrate that West Valley can contribute substantial new information on the salt deposition issue--an important issue which will not otherwise be adequately analyzed.

Initially, West Valley has at its disposal substantial expertise on all phases of the salt deposition question. Such expertise is crucial to an intervenor's ability to make a meaningful contribution to a licensing proceeding. See Duke Power Co. (Perkins Nuclear Station, Units 1, 2 & 3), ALAB-431, 6 N.R.C. 460, 463-64 (1977); Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), LBP-79-22, 10 N.R.C. 213, 215 (1979). Dr. Edward Davis of the Johns Hopkins University Applied Physics Laboratory, Dr. Charles Mulchi of the University of Maryland Department of Agronomy and Dr. Michael Golay of the MIT Department of Nuclear Engineering have each written an extensive report on behalf of West Valley and are each available to West Valley for additional consulting work and testimony. Dr. Davis is a respected expert on the modeling of salt deposition from cooling towers and was the principal author of the Chalk Point study--the seminal study on salt drift deposition. Dr. Mulchi was project leader for a five-year field study on the effects of salt deposition on agriculture surrounding the Chalk Point Station and has written extensively on the effects of aerosol salt pollution on agriculture. Dr. Golay has substantial expertise on drift eliminators and other technical means of reducing salt drift from cooling towers. Each of these experts has, in addition, worked closely with the nuclear power industry and, accordingly, could assist in developing reasonable and achievable solutions to the salt deposition issue.

In addition, as evidenced by the experts' reports and West Valley's extensive contentions, West Valley can make a valuable contribution to the framing of issues on the salt

deposition question. West Valley's contentions are based on more than mere speculation. As set forth in the contentions, West Valley has presented detailed technical and scientific theories and evidence on the causes and effects of and the solutions for the salt deposition question.

Finally, the members of West Valley are in a unique position to provide important information on the characteristics of the crops and cropland surrounding PVNGS.

It is thus evident that West Valley can make crucial technical and scientific contributions on the salt deposition issue and, accordingly, this factor weighs heavily in favor of granting West Valley's petition.

4. The Extent to Which West Valley Will Be Represented By Existing Parties

For the reasons set forth under factor 2 supra, there is no existing party which can adequately represent West Valley's interests on the salt deposition question: contentions on salt deposition have not been included in prior hearings on PVNGS, the intervenor has neither the expertise nor the financial resources to pursue the salt deposition question and a limited appearance by West Valley or representation by the NRC Staff would clearly not suffice. See Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 N.R.C. 273, 276 (1975).

5. The Extent to Which West Valley's Participation Will Broaden or Delay the Proceeding

West Valley acknowledges that a grant of its petition to intervene will cause some delay in the NRC licensing

proceedings. It submits, however, that, for a variety of reasons, any such delay is reasonable and necessary in light of the importance of the salt deposition issue.

First, consideration of the salt deposition issue will not necessarily delay the completion and initial operation of the plant. APS has recently announced that PV1 will not come on line for at least another year; PV2 and PV3 are currently scheduled for initial operation in late 1984 and late 1985, respectively. These scheduled operation dates should provide sufficient lead time for adequate study of salt deposition and necessary technical modifications to the plant. Moreover, since West Valley is ultimately concerned with the total amount of salt deposition from PVNGS, there are a variety of flexible technical solutions which would assure that each unit of PVNGS begins operation on schedule. The NRC may, for instance, require only limited modifications on PV1 and order that more complex and time consuming changes be reserved for PV2 and 3.

Second, under the proper test for evaluating the delay factor, the Board must consider only the delay directly attributable to the tardiness of a petition to intervene. See Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631, 650 fn. 25 (1975). In the present case, much of the delay in NRC proceedings which would result from West Valley's intervention on the salt deposition issue is directly attributable to APS and the NRC staff rather than to West Valley. As previously discussed, West Valley's experts have concluded that the Applicant and the NRC Staff have failed to analyze adequately and to discuss publicly a whole range of

material facts bearing on the salt deposition issue. Any delay occasioned by proper consideration of these issues should thus be attributed to these parties.* / West Valley should not be penalized for its diligence in bringing these important issues to light.

Third, very little of the delay caused by West Valley's intervention would be unproductive delay. West Valley will not delay these proceedings by developing preliminary theories or gathering preliminary information on salt deposition--it has already made an intensive effort in preparing its pleadings and has demonstrated detailed knowledge on the salt deposition issue. When combined with the Board's extensive authority to expedite proceeding through such means as informal discovery, West Valley's detailed preparation should assure that the salt deposition issues are resolved as expeditiously as possible.

Finally, and most importantly, any delay occasioned by West Valley's intervention would not be unwarranted when balanced against the potentially devastating consequences which salt drift may have on agriculture in the Palo Verde region.

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If, for example, the PVNGS operator believes it must conduct years of baseline study to determine the effect of salt deposition on crops in the PVNGS area, PVNGS should not be licensed until such study is complete. Failure to conduct such studies is attributable to the PVNGS operator not West Valley. The solutions recommended by West Valley experts to the salt deposition problem can be implemented without delaying the plant if the PVNGS operator chooses to implement them now.

Thus, for all of the above reasons, the delay factor should not weigh heavily, if at all, against West Valley's petition to intervene in this proceeding.

6-8. Standing of West Valley

Factors 6 through 8 of 10 CFR §2.714 can properly be reduced to the question of whether a petitioner would have had standing to intervene had he filed a timely petition. Under the circumstances presented in this petition and the accompanying documents, West Valley would undoubtedly have had standing to intervene as a matter of right if it had filed such a petition.

According to the Commission, a party seeking to intervene as a matter of right in NRC licensing proceedings must allege both 1) "some injury that has occurred or will probably result from the action involved" and 2) "an interest arguably within the zone of interest" protected by an applicable statute. Portland General Electric Co. (Pebble Springs Nuclear Plant Units 1 & 2), CLI-76-27, 4 NRC 610, 613 (1976).

Clearly, there is a strong probability that injury to West Valley's members will result from the operation of PVNGS as presently planned. West Valley's experts have presented substantial evidence that salt deposition from PVNGS could measurably reduce the productivity of farms in the Palo Verde region. According to Dr. Mulchi, productivity losses as small as 5%--well within even conservative estimates of losses due to PVNGS--could have devastating consequences, since such losses could conceivably drive some area farmers out of business. These and other detailed contentions presented by West Valley substantially exceed the minimal requirements necessary to

provide a basis for standing in NRC proceedings. See, e.g., Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 115 (1979) citing United States v. SCRAP, 412 U.S. 669, 689 fn. 14 (1973).

West Valley's members have also been injured by the Staff's failure to prepare an adequate environmental impact statement on the salt deposition issue. Failure to produce such a statement in circumstances where one is required has been held to constitute injury--indeed, irreparable injury. Id., Jones v. D.C. Redevelopment Land Agency, 499 F.2d 502, 512 (D.C. Cir. 1974).

It is equally evident that West Valley's members are within the "zone of interest" of a relevant statute--the National Environmental Policy Act. West Valley has alleged that its members will sustain substantial economic harm due to the impacts which NRC approval of PVNGS would have on the local environment. See Houston Lighting & Power Co. (Allens Creek Nuclear Generation Station Unit 1), ALAB-582, 11 NRC 239, 242 (1980); Tennessee Valley Authority (Watts Bar Nuclear Plant Units 1 & 2), ALAB-413, 8 NRC 1418, 1420-21 (1977) (environmentally-related economic harm within the zone of interest of NEPA).

Moreover, as set forth in the attached affidavits, the members of West Valley all reside within close geographic proximity of the plant. Such geographic proximity may, standing alone, establish that the members of West Valley are within the geographic "zone of interest" protected by NEPA. See Virginia Electric & Power Co. (North Anne Nuclear Power Station Units 1 & 2), ALAB-522, 9 NRC 54 (1979). Cf. Tennessee Valley Authority

(Watts Bar Nuclear Plant Unit 1 & 2), ALAB-413, S NRC 1418, 1421 n. 4 (1977).

Finally, West Valley may properly obtain standing in this proceeding in a representative capacity for its members. In order to allege such representative standing, an organization must demonstrate that the members whom it purports to represent have authorized such representation. See Houston Lighting & Power Co. (South Texas Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 444 (1979) aff'd ALAB-549. The organization must also demonstrate that the members or persons representing it have been authorized to do so. Id. As noted in the attached affidavits, each person who has submitted an affidavit with this petition voted on September 10, 1982, to authorize West Valley to intervene on his behalf in this proceeding. In addition, each of these persons and all members present at the above meeting voted to authorize the firm of Winston & Strawn to act on behalf of West Valley in this proceeding. (Aff. ¶11.)

In light of the above, West Valley would most certainly have had standing to intervene as a matter of right had it filed a timely petition with the Board. As a consequence of this standing and West Valley's significant interest in this proceeding, factors 6 through 8 weigh heavily in West Valley's favor.

II. THE BOARD SHOULD ALSO CONSIDER THE EQUITIES AND OTHER FACTORS BEARING ON THIS POSITION

In addition to the eight factors set forth in Section 2.714, the Board should also consider a variety of equitable and

other factors in its review of West Valley's petition to intervene.

The equities in this matter strongly favor West Valley and its members. As documented in the attached reports, salt deposition on crops in the Palo Verde region could seriously harm the economic livelihood of West Valley's members. It is indeed possible that salt deposition may force farmers out of business entirely. These devastating effects should be contrasted with the minimal inconvenience to the applicant of the technical solutions proposed by West Valley. These proposed solutions will not prevent or even seriously delay the Applicant's successful operation of PVNGS but will, at an acceptable cost, reduce environmental impacts which could have dire consequences for the entire Palo Verde region.

The members of West Valley have also acted with all possible dispatch and diligence in bringing the salt deposition issue to the Board's attention. They acted as soon as they had concrete evidence of the adverse effects of salt deposition and have, at significant expense to themselves, brought substantial technical and scientific expertise to bear on the salt deposition issue. The Applicant and the NRC Staff, on the other hand, conducted, at best, only a cursory review of the effects of salt deposition on agriculture in the Palo Verde region. They were also responsible for material omissions of fact which concealed from the public the potential seriousness of the salt deposition issue.

Finally, the Board should not neglect the importance of West Valley's farms to the region and the nation as a whole.

These farms are extremely productive and innovative and are among the largest family-owned farms in the nation. They contribute significantly to the economy of the region and to the trade performance of the United States. If PVNGS is completed without adequate consideration of the salt deposition issue, the important economic contributions of these farms may be lost and precious and productive farmland may be surrendered to the desert.

III. THE ABOVE FACTORS BALANCE HEAVILY IN WEST VALLEY'S FAVOR

Based on the foregoing analysis, West Valley submits that at least 7 of the 8 factors contained in 10 C.F.R. §2.714 weigh in favor of granting its petition to intervene. Foremost among these factors is the fact that West Valley has demonstrated a substantial ability to contribute, through highly qualified experts, to the consideration of the important issue of salt deposition (Factor 3). It is also evident from the accompanying information that there is a substantial probability that West Valley's members will suffer significant environmental and economic injury from salt deposition from PVNGS; West Valley would undoubtedly have had standing to raise this issue had it filed a timely petition (Factors 6-8). Moreover, West Valley has good cause for its failure to file on time (Factor 1). Its prior inaction was prompted by factual errors and material omissions made by the NRC staff and the Applicant. Since discovering these errors and omissions, West Valley has assisted in the development of substantial new information on the salt deposition issue. Based on the prior decisions of the Commission and the Boards, it

is also apparent that West Valley's interests cannot now be protected by other forums or other parties (Factors 2 and 4). Finally, the equities in this matter are also in West Valley's favor.

The delay factor is the only factor which might conceivably weigh against the grant of West Valley's petition (Factor 5). Under the circumstances of this petition, however, this factor should be accorded little, if any, weight. Most of the delay occasioned by analysis of the salt deposition issue is due to material omissions made by the NRC Staff and the Applicant during their cursory analysis of the salt deposition issue. This delay should thus not be attributed to West Valley. In addition, any delay caused by grant of West Valley's petition is warranted by the extreme consequences which salt deposition may have on agriculture in the Palo Verde region. The Petitioner's intensive preparation on the salt deposition issue and the Board's broad authority to expedite proceedings should assure that any delay caused by the grant of this petition will be kept to a minimum.

It is thus evident that virtually all of the factors governing untimely intervention weigh--and in some instances weigh quite heavily--in favor of West Valley's petition to intervene. Thus, the Board should grant West Valley's petition in spite of its untimeliness and should promptly institute proceedings to examine adequately the important issues asserted by West Valley.

IV. WEST VALLEY HAS PROPERLY PRESENTED ALL OF THE CONTENTIONS RAISED IN ITS PETITION

Although West Valley need only present one valid contention to support its petition to intervene, it submits that it has properly presented each of the contentions set forth in its petition. The Boards have emphasized that a petitioner need only state, with some reasonable level of specificity, the basis and reasons for each contention. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 N.R.C. 542, 548-9 (1980). The Boards are not required to reach the merits or the sufficiency of the factual support for each contention. Id. West Valley's contentions are each based upon scientific and technical facts and theories which have detailed and specific support in the accompanying affidavits and experts' reports.* This detailed support clearly surpasses the more limited levels necessary to support a valid contention.

CONCLUSION

For all of the reasons stated above, Petitioner West Valley respectfully requests that the Board grant its petition to intervene in the above-referenced licensing proceeding and grant the other relief requested in West Valley's petition.

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The Berlin Affidavit cross-references each non-conclusory contention to the relevant pages in the expert's reports.

Respectfully submitted,

Dated: Oct 13, 1982

Kenneth Berlin

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Petition to Intervene and Memorandum of Law in Support of Petition" have been served upon the following listed persons by personal service or by deposit in the United States mail, properly addressed and with postage prepaid, this 14th day of October, 1982.

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