

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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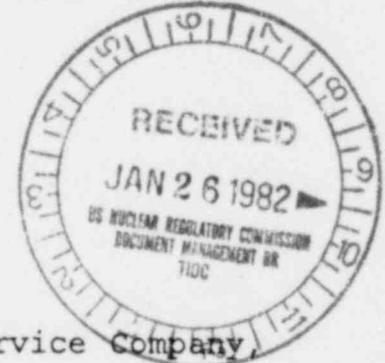
OFFICE OF SECRETARY  
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

JOINT APPLICANTS' MOTION FOR  
SUMMARY DISPOSITION OF  
INTERVENOR'S CONTENTION NO. 6B



INTRODUCTION

Joint Applicants Arizona Public Service Company,  
Salt River Project Agricultural Improvement and Power Dis-  
trict, Southern California Edison Company, El Paso Electric  
Company, and Public Service Company of New Mexico (collec-  
tively "Joint Applicants") hereby move for summary disposi-  
tion of Intervenor Patricia Lee Hourihan's ("Intervenor")  
Contention No. 6B pursuant to 10 C.F.R. §2.749. Joint Ap-  
plicants submit that the attached affidavit and the Staff's  
Safety Evaluation Report for the Palo Verde Nuclear Gen-  
erating Station ("PVNGS") demonstrate that there are no  
factual issues requiring adjudication and that dismissal of  
Intervenor's Contention No. 6B is warranted as a matter of  
law. A discussion of the operative legal principles under-  
lying summary disposition follows.

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#### SUMMARY DISPOSITION PROCEDURES

The Commission's regulations provide that summary disposition of all or any part of the matters at issue can be obtained "if the filings in the proceeding, depositions, answers to interrogatories, and admissions on file, together with the statements of the parties and the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law." 10 C.F.R. §2.749(d).

The use of summary disposition has been encouraged by the Commission and the Appeal Board to resolve issues where the proponent of the issue has failed to establish the existence of a genuine issue. See, e.g., *Statement of Policy on Conduct of Licensing Proceedings*, CLI-81-8, 13 NRC 452, 457 (1981); *Northern States Power Co. (Prairie Island Nuclear Generating Station, Units 1 and 2)*, CLI-73-12, RAI-73-4 241, 242 (1973), *aff'd sub nom. BPI v. Atomic Energy Commission*, 502 F.2d 424 (D.C. Cir. 1974); *Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1)*, ALAB-590, 11 NRC 542, 550-51 (1980). All material facts set forth in the statement of material facts which accompanies a motion for summary disposition are deemed to be admitted unless controverted by the opposing party. 10 C.F.R. §2.749(a); *Pennsylvania Power & Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2)*, LBP-81-8, 13 NRC 335, 337 (1981). "[A] party opposing the

motion may not rest upon mere allegations or denial of his answers; his answer by affidavits or as otherwise provided in [10 C.F.R. §2.749] must set forth specific facts showing that there is a genuine issue of fact." 10 C.F.R. §2.749(b); see *Virginia Electric and Power Company* (North Anna Nuclear Power Station, Units 1 and 2), ALAE-584, 11 NRC 451, 453 (1980).

In light of these principles, and for the reasons set forth below, Joint Applicants request the Board to grant summary disposition of Intervenor's Contention No. 6B. If the Board is unable to grant summary disposition of this contention in its entirety, summary disposition should be granted on any portions of such contention as to which there is no genuine issue of material fact. See 10 C.F.R. §2.749(a); *Public Service Company of Oklahoma, et al.* (Black Fox Station, Units 1 and 2), LBP-77-46, 6 NRC 167 (1977).

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

1. Contention No. 6B reads as follows:

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

2. ATWS is an acronym for "anticipated transients without scram." Affidavit of F. W. Hartley (attached).

3. Anticipated transients are deviations from normal operating conditions which can be foreseen as prob-

able occurrences during the service life of a nuclear power plant. Affidavit of F. W. Hartley (attached).

4. An ATWS event refers to the failure of the reactor protection system to shut down the reactor following the occurrence of an anticipated transient requiring reactor shutdown. Affidavit of F. W. Hartley (attached).

5. ATWS is an unresolved generic safety issue which has been included by the NRC Staff in its "Task Action Plans for Generic Activities," NUREG-0371 (November 1978), as Task No. A-9. Affidavit of F. W. Hartley (attached).

6. The NRC Staff has issued its Safety Evaluation Report related to the operation of the Palo Verde Nuclear Generating Station, Units 1, 2 and 3, NUREG-0857 (November 1981), and its Safety Evaluation Report related to the final design of the Standard Nuclear Steam Supply Reference System, CESSAR System 80, NUREG-0852 (November 1981). Affidavit of F. W. Hartley (attached).

7. The Staff's review of ATWS for PVNGS is set forth at pages 15-1 to 15-2 of the Safety Evaluation Report for PVNGS. Affidavit of F. W. Hartley (attached).

8. In its Safety Evaluation Report for PVNGS, the NRC Staff has identified two procedural requirements which in the Staff's view serve as an acceptable basis for operation of PVNGS pending completion of any plant modifications ultimately required by the Commission in its final resolution of ATWS as a generic safety issue. Affidavit of F. W. Hartley (attached).

9. The procedural requirements referred to in Paragraph No. 8 above are as follows:

"Develop emergency procedures to train operators to recognize anticipated transient without scram event, including consideration of scram indicators, rod position indicators, flux monitors, pressurizer level and pressure indicator, and any other alarms annunciated in the control room with emphasis on alarms not processed through the electrical portion of the reactor scram system.

Train operators to take actions in the event of an anticipated transients without scram, including consideration of manually scrambling the reactor by using the manual scram button, prompt actuation of the auxiliary feedwater system to assure delivery to the full capacity of this system, and initiation of turbine trip. The operator should also be trained to initiate boration by actuation of a high pressure safety injection system to bring the facility to a safe shutdown condition." U.S. Nuclear Regulatory Commission, Safety Evaluation Report related to the operation of Palo Verde Nuclear Generating Station, Units 1, 2 and 3, NUREG-0857 (November 1981), at page 15-2 (attached).

10. Joint Applicants have committed to meet the NRC Staff's ATWS procedural requirements set forth in Paragraph No. 9 above. Affidavit of F. W. Hartley (attached).

11. Joint Applicants have committed to have the required procedures implementing the Staff's requirements available for NRC review at least 60 days prior to fuel loading. Affidavit of F. W. Hartley (attached).

12. The Commission published in the *Federal Register* on November 24, 1981, a proposed rule to require improvements in the design and operation of nuclear power reactors to reduce the likelihood of occurrence of ATWS events and to mitigate the consequence of ATWS events. 46 Fed. Reg. 57521-32 (November 24, 1981) (attached).

#### DISCUSSION

Summary disposition procedures have been used in prior operating license proceedings to dispose of ATWS issues. In the recent case of *Pennsylvania Power & Light Co. et al.* (Susquehanna Steam Electric Station, Units 1 and 2), Memorandum and Order on Summary Disposition Motions (October 12, 1981) (attached), the licensing board granted the applicants' motion for summary disposition on a contention challenging the ability of the Susquehanna station to survive ATWS events. The board noted that unresolved safety issues, such as ATWS, are rarely litigated absent a showing of special circumstances involving a specific plant. The primary consideration is whether the NRC Staff has provided some explanation why operation can proceed pending a final Commission decision on such issues. *Id.* at 18-19, citing *Gulf States Utilities Co.* (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977), *Virginia Electric and Power*

Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (1978). Under the *River Bend* decision, such explanations are to appear in the Staff's Safety Evaluation Report.

In support of their motion for summary disposition, the applicants in *Susquehanna* filed affidavits stating that they had implemented or were implementing the interim requirements considered by the Staff to be an acceptable basis for operation of the facility pending final resolution of the ATWS issue. Based on these affidavits, the licensing board concluded that the *Susquehanna* plant could be operated with no undue risk to the public from an ATWS event.

In *Northern States Power Company* (Monticello Nuclear Generating Plant, Unit 1), ALAB-611, 12 NRC 301 (1980), the Appeal Board upheld a licensing board's ruling that the Monticello facility could be operated safely pending final Commission action on the ATWS issue. The licensing board's ruling was based on affidavits submitted by the applicant stating that the applicant would comply with the requirements identified by the Staff as appropriate steps to take to further reduce the risk from ATWS events during the interim period while the ATWS matter is under review by the Commission.

Joint Applicants submit that the rulings in the *Susquehanna* and *Monticello* cases and the affidavit attached to this motion are dispositive of Contention No. 6B. As

stated by the board in *Susquehanna*, the primary consideration in dealing with an unresolved generic safety issue is the Staff's review of such issue. The Staff in this case has reviewed the PVNGS design with consideration of ATWS events and has identified in the Safety Evaluation Report for PVNGS certain interim requirements which it regards as an adequate basis for allowing operation pending final Commission action. The attached affidavit confirms Joint Applicants' commitment to implement the Staff's requirements.

In addition to Joint Applicants' commitment to meet the NRC Staff's interim requirements and the rulings in *Susquehanna* and *Monticello*, there is another reason why Contention No. 6B should be dismissed. As set forth in the Statement of Material Facts, on November 24, 1981, the Commission published in the *Federal Register* a proposed rule to require improvements in the design and operation of nuclear power reactors to reduce the likelihood of occurrence of ATWS events and to mitigate the consequences of ATWS events.

Because ATWS is now the subject of a general rulemaking, Joint Applicants submit that it would be inappropriate to litigate Contention No. 6B in this proceeding. Joint Applicants will of course be bound by whatever requirements are determined by the Commission in its rulemaking proceeding to be applicable to the PVNGS facility. If Contention No. 6B were to be litigated and the Board were to decide that certain plant modifications should be made, and

if such modifications turned out to be inconsistent with the Commission's decision in the rulemaking proceeding, then Joint Applicants would have been put to what would no doubt be significant expense to no avail. Joint Applicants' position is supported by prior Appeal Board decisions. In *Potomac Electric Power Company* (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, RAI-74-7 79 (1974), the Appeal Board was concerned with a petitioner's contention dealing with the environmental effects of the uranium fuel cycle. One of the considerations discussed by the Appeal Board in ruling on the acceptability of the contention was that the uranium fuel cycle had recently been the subject of a rulemaking proceeding. As part of its discussion, the Appeal Board stated:

"In short, the *Vermont Yankee* [*Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-56, 4 AEC 930 (1972)] line of cases stands for the proposition that licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission. If this was only implicit in the *Vermont Yankee* opinion (4 AEC 930), it was explicitly articulated in the cases which followed. See e.g., *Shoreham*, *supra*, ALAB-99, RAI-73-2 at 55-56, and *Vermont Yankee Nuclear Power Corporation* (Vermont Yankee Nuclear Power Station), ALAB-179, RAI-74-2, 159 at 163-164 (February 28, 1974)." RAI-74-7 at 85 (footnote omitted).

The potential for an inconsistency with the Commission's ultimate resolution of the ATWS issue and the ruling in the *Douglas Point* case further support the dismissal of Contention No. 6B.

CONCLUSION

Based on the material facts set forth in paragraphs nos. 1-12 above, the supporting affidavit attached to this motion, and the Staff's Safety Evaluation Report for PVNGS, Joint Applicants contend that no material issue of fact remains and holding of an evidentiary hearing on Contention No. 6B would serve no useful purpose. Furthermore, based on the rulings in the *Susquehanna* and *Monticello* cases, as well as the *Douglas Point* case, dismissal of Intervenor's Contention No. 6B is warranted as a matter of law.

WHEREFORE, Joint Applicants move this Board for an order granting summary disposition in Joint Applicants' favor on Contention No. 6B.

RESPECTFULLY SUBMITTED

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Attorneys for Joint  
Applicants

Dated: January 15, 1982.

LIST OF ATTACHMENTS

1. Affidavit of F. W. Hartley, dated January 13, 1982.
2. U.S. Nuclear Regulatory Commission, Safety Evaluation Report related to the Operation of Palo Verde Nuclear Generating Station, Units 1, 2 and 3, NUREG-0857 (November 1981), pages 15-1 to 15-2.
3. U.S. Nuclear Regulatory Commission, Standards for the Reduction of Risk From Anticipated Transients Without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants, Proposed Rule, 46 Federal Register 57521-32 (November 24, 1981).
4. Pennsylvania Power & Light Co., et al. (Susquehanna Steam Electric Station, Units 1 and 2), Memorandum and Order on Summary Disposition Motion (October 12, 1981).