



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) Docket Nos. STN 50-528
COMPANY, et al.) STN 50-529
) STN 50-530
(Palo Verde Nuclear Generating)
Station, Units 1, 2 and 3)
)

JOINT APPLICANTS' MOTION FOR
SUMMARY DISPOSITION OF
INTERVENOR'S CONTENTION NO. 5

INTRODUCTION

Joint Applicants Arizona Public Service Company ("APS"), Salt River Project Agricultural Improvement and Power District ("SRP"), Southern California Edison Company, El Paso Electric Company, and Public Service Company of New Mexico (collectively "Joint Applicants") hereby move for summary disposition of Intervenor Patricia Lee Hourihan's ("Intervenor") Contention No. 5 pursuant to 10 C.F.R. §2.749. Joint Applicants submit that the attached affidavits and supporting documents demonstrate that there are no factual issues requiring adjudication and that dismissal of Intervenor's Contention No. 5 is warranted as a matter of law. A discussion of the operative legal principles underlying 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), ALAB-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. 5. 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. 5 reads as follows:

"Applicants will not have an assured supply of usable treated municipal effluent for cooling purposes for Unit 3 of PVNGS during months of peak reactor need for the first five years of operation."

2. The primary* source of cooling water for the Palo Verde Nuclear Generating Station ("PVNGS") will be sewage effluent from the City of Phoenix 91st Avenue Sewage Treatment Plant ("91st Avenue Plant"). Affidavit of Russell D. Hulse (attached).

3. Such sewage effluent will be conveyed to PVNGS via a 36.5-mile underground pipeline ("Effluent Pipeline") from the 91st Avenue Plant. Affidavit of Russell D. Hulse (attached).

4. Joint Applicants will obtain such effluent pursuant to Agreement No. 13904, Option and Purchase of Effluent, dated April 23, 1973, among the Cities of Phoenix, Glendale, Mesa, Scottsdale, Tempe and the Town of Youngtown, APS and SRP ("Agreement No. 13904"). Affidavit of Russell D. Hulse (attached).

5. Pursuant to Agreement No. 13904, APS and SRP may take up to 140,000 acre-feet per year from the 91st Avenue Plant and the 23rd Avenue Sewage Treatment Plant ("23rd Avenue Plant"), subject to the availability of such amounts after satisfaction of prior commitments. Affidavit of Russell D. Hulse (attached).

6. APS and SRP have dedicated to the operation of PVNGS as much of their entitlement under Agreement No.

* The secondary source of cooling water for PVNGS will be sewage effluent from the City of Tolleson wastewater treatment plant. See Paragraphs Nos. 36-41 of this Statement of Material Facts.

13904 as is required for such operation. Affidavit of Russell D. Hulse (attached).

7. Since issuance of the construction permits for PVNGS in 1976, projections of sewage effluent production have been made independently by (a) the U.S. Army Corps of Engineers ("COE") and the U.S. Environmental Protection Agency ("EPA") for the Maricopa Association of Governments and (b) the City of Phoenix Water and Sewage Department. Affidavit of Russell D. Hulse (attached).

8. COE-EPA have estimated, based on 1978 information, the annual quantity of effluent discharges from the 91st Avenue Plant in units of acre-feet ("AF") as follows:

1980	1983	1985	1990	1995	2000
94,640 AF	109,760 AF	115,250 AF	127,340 AF	139,220 AF	153,440 AF

U.S. Environmental Protection Agency, Final Environmental Impact Statement, Maricopa Association of Governments Point Source Metro Phoenix 208 Wastewater Management Plan, Appendix C (July 1979) ("EPA Appendix C") (attached); Intervenor's Response to Joint Applicants' Request for Admissions, Motion to Dismiss Contention No. 8, and Second Set of Interrogatories (undated) ("Intervenor's Response to Request for Admissions"), Statement No. 6 (attached) [Joint Applicants' Request for Admissions by Intervenor, dated May 22, 1981, is also attached].

9. The quantity of treated effluent discharged in 1980 from the 91st Avenue Plant was 88.46 million gallons per day ("MGD") (i.e., 99,100 acre-feet per year). Memorandum to Robert L. Frunton from Robert B. Steytler, P.E. (January 27, 1981) (attached); Intervenor's Response to Request for Admissions, Statement No. 6 (attached).

10. The sum of treated effluent and untreated effluent discharged in 1980 from the 91st Avenue Plant was 92.41 MGD (i.e., 103,500 acre-feet per year). Memorandum to Robert L. Brunton from Robert B. Steytler, P.E. (January 27, 1981) (attached).

11. Based on a linear interpolation of the COE-EPA data for the years 1985 and 1990, the effluent discharge for the year 1986 would be estimated to be 117,600 acre-feet. Intervenor's Response to Request for Admissions, Statement No. 13 (attached).

12. The City of Phoenix has estimated effluent discharges from the 91st Avenue Plant as follows:

1980	1983	1985	1990	1995	2000
(1979 Projections)					
100,200 AF	116,000 AF	126,600 AF	153,060 AF	179,500 AF	205,900 AF
(1981 Projections)					
----	----	143,470 AF	177,590 AF	211,800 AF	247,740 AF

Letter from Robert B. Steytler, Assistant Director, City of Phoenix Wastewater Operations, to Terry Hudgins, Arizona Public Service Company (September 20, 1979) (attached); Affidavit of Russell D. Hulse (attached).

13. The existing commitments for effluent discharged from the 91st Avenue Plant are:

Buckeye Irrigation District ("BID")	30,000 AF/year
Arizona Department of Game and Fish ("ADGF")	7,300 AF/year
Palo Verde Nuclear Generating Station	140,000 AF/year

Affidavit of Russell D. Hulse (attached); Intervenor's Response to Request for Admissions, Statement No. 3 (attached).

14. A prior commitment of 1,200 acre-feet per year to the U.S. Water Conservation Laboratory ("WCL") has not been used since 1978 when the laboratory's research facilities at Flushing Meadows were washed out by flood waters. WCL has since moved its facilities and is no longer taking any effluent from the 91st Avenue Plant. Affidavit of Russell D. Hulse (attached).

15. The foregoing commitments of effluent from the 91st Avenue Plant to BID and ADGF must be satisfied prior to the release of effluent to meet the commitment for PVNGS. Intervenor's Response to Request for Admissions, Statement No. 8 (attached).

16. The quantities of effluent available in any year at the 91st Avenue Plant for use at PVNGS are the quan-

tities of effluent produced at the 91st Avenue Plant in such year less the quantities of effluent committed to BID (i.e., 30,000 acre-feet per year), and the ADGF (i.e., 7,300 acre-feet per year). Intervenor's Response to Request for Admissions, Statement No. 11 (attached).

17. Based on the estimated quantities of effluent to be produced at the 91st Avenue Plant as shown in the COE-EPA estimates, the estimated quantities of effluent to be available for use at PVNGS are as follows:

<u>Year</u>	Total Effluent Produced at <u>91st Ave. Plant</u> (AF)	Effluent Committed to BID and ADGF (AF)	Balance Available for use at PVNGS (AF)
1983	109,760	37,300	72,460
1985	115,250	37,300	77,950
1990	127,340	37,300	90,040
1995	139,220	37,300	101,920
2000	153,440	37,300	116,140

Intervenor's Response to Request for Admissions, Statement No. 12 (attached).

18. In 1986, based on the COE-EPA data, the estimated quantity of effluent to be produced at the 91st Avenue Plant and available for use at the PVNGS after satisfaction of the prior commitments to BID and the ADGF is 80,300 acre-feet. Intervenor's Response to Request for Admissions, Statement No. 14 (attached).

19. The estimated quantities of effluent to be produced at the 91st Avenue Plant in 1983, 1985 and 1986, as shown in Exhibit C - Effluent Flow Projections, Greeley and Hansen, January, 1980, of the City of Phoenix 23rd and 91st Avenue Wastewater Treatment Plants Draft Residuals Management Facility Plan, Volume 5 - Phase C Effluent Discharge Assessment, August, 1980, by Arthur Beard Engineers, Inc., and Camp Dresser & McKee, Inc. ("Greeley and Hansen") (copy attached), are the same as the COE-EPA estimates for 1983 and 1985 and as the estimate for 1986 determined by interpolation of the COE-EPA estimates for 1985 and 1990. Intervenor's Response to Request for Admissions, Statements Nos. 16, 17 (attached).

20. The analysis presented by COE-EPA assumes that 21,400 acre feet of effluent will be required annually for operation of each of the Palo Verde units. Intervenor's Response to Request for Admissions, Statement No. 18 (attached).

21. The analysis presented in Table C-2 of Greeley and Hansen reflects the use of approximately 21,600 acre-feet of effluent per year for each of the Palo Verde units. Intervenor's Response to Request for Admissions, Statement No. 20 (attached).

22. Each unit at PVNGS will require approximately 21,350 acre-feet of treated wastewater effluent per year for cooling water, based on the following assumptions:

- a. Each Palo Verde unit will operate at a capacity factor of 95% of rated power for 11 months each year and will experience a one-month outage each year for refueling and maintenance.
- b. There will be no treatment of the cooling water blowdown from the circulating water system.
- c. Use of annual average ambient meteorological conditions.
- d. Cooling water losses will be as defined in Figure 3.3-1 of the Environmental Report - Operating License Stage for PVNGS.
- e. Concentrations of dissolved solids in the influent to the circulating water system will be permitted to be increased by a factor of 15.

Affidavit of William G. Bingham (attached); see Intervenor's Response to Request for Admissions, Statement No. 21 (attached), with respect to assumption (a).

23. PVNGS Unit 1 is scheduled for commercial operation in May, 1983; PVNGS Unit 2 is scheduled for commercial operation in May, 1984; and PVNGS Unit 3 is scheduled for commercial operation in May, 1986. Affidavit of Russell D. Hulse (attached).

24. As set forth in Greeley and Hansen, in June, 1986, the estimated amount of effluent available at the 91st Avenue Plant for use at PVNGS is 0.6 MGD or 56 acre-feet less than will be required to operate all three Palo Verde

units at 95% capacity factors during said month. Intervenor's Response to Request for Admissions, Statement No. 24 (attached).

25. In each month during the five-year period of May, 1986, to April, 1991, other than June, 1986, the estimated amount of effluent available at the 91st Avenue Plant for use at PVNGS is greater than the amount required to operate all three Palo Verde units at 95% capacity factors during each such month. Affidavit of Russell D. Hulse (attached); see Intervenor's Response to Request for Admissions, Statement No. 25 (attached).

26. The capacity of the reservoir at PVNGS is 2300 acre-feet. Intervenor's Response to Request for Admissions, Statement No. 26 (attached).

27. The deficiency in effluent available at the 91st Avenue Plant for use at PVNGS in June, 1986, as projected from the data in Greeley and Hansen, is less than 3% of the capacity of the Palo Verde reservoir. Intervenor's Response to Request for Admissions, Statement No. 27 (attached).

28. The deficiency in effluent available at the 91st Avenue Plant for use at PVNGS in June, 1986, as projected from the data in Greeley and Hansen, is less than 3% of the amount of effluent required to operate one Palo Verde unit at a 95% capacity factor during such month. Inter-

venor's Response to Request for Admissions, Statement No. 28 (attached).

29. If there is inadequate treated effluent in the Palo Verde reservoir to make up the 56 acre-feet projected deficiency in available effluent in June, 1986, a deficiency in the available effluent of less than 3% of that amount required to permit operation of one unit at a 95% capacity factor during such month would result in the reduction of the capacity factor at which such unit could operate during such month from 95% to approximately 92%. Intervenor's Response to Request for Admissions, Statement No. 29 (attached).

30. A 3% reduction in the capacity factor of a single unit for a period of one month will not change significantly the cost-benefit analysis of PVNGS Units 1, 2 and 3. Intervenor's Response to Request for Admissions, Statement No. 30 (incorrectly listed as Statement No. 26) (attached).

31. The existing commitments of effluent from the 23rd Avenue Plant are as follows:

Palo Verde Nuclear Generating Station	140,000 acre-feet less the amount of effluent available to PVNGS at 91st Avenue Plant
Roosevelt Irrigation District	20,000 acre-feet
McDonald Farms	Indeterminate

Intervenor's Response to Request for Admissions, Statement No. 9 (attached).

32. The foregoing commitment of effluent from the 23rd Avenue Plant to Roosevelt Irrigation District is secondary to and subject to the availability of effluent after satisfaction of the commitment to PVNGS. Intervenor's Response to Request for Admissions, Statement No. 10 (attached).

33. COE-EPA have estimated the annual quantity of effluent discharges from the 23rd Avenue Plant as follows:

1980	1983	1985	1990	1995	2000
40,830 AF	40,770 AF	40,770 AF	40,770 AF	41,100 AF	41,660 AF

EPA Appendix C (attached); Intervenor's Response to Request for Admissions, Statement No. 5 (attached).

34. The City of Phoenix has estimated the annual quantity of effluent discharges from the 23rd Avenue Plant as follows:

1980	1983	1985	1990	1995	2000
40,000 AF					

Letter from Robert B. Steytler, Assistant Director, City of Phoenix Wastewater Operations, to Terry Hudgins, Arizona Public Service Company (September 20, 1979) (attached).

* 35. In addition to the amount of effluent available from the 91st Avenue Plant for use at PVNGS, the esti-

mated quantity of effluent available in 1986 from the 23rd Avenue Plant for use at PVNGS is 40,770 acre-feet, less such amount of effluent, if any, for which McDonald Farms may have an established prior right. Intervenor's Response to Request for Admissions, Statement No. 15 (attached).

36. On June 12, 1981, the City of Tolleson, APS and SRP entered into an "Agreement for the Sale and Purchase of Wastewater Effluent" ("Tolleson Agreement") (copy attached), pursuant to which APS and SRP shall purchase and accept (a) all of the sewage effluent produced through the operation of the wastewater treatment plant ("Tolleson Plant") owned by the City of Tolleson in excess of the sum of 2.0 MGD (*i.e.*, 186 acre-feet per month) committed for the production of sod adjacent to the Tolleson Plant ("Committed Effluent") and 10% of the amount of effluent in excess of the 2.0 MGD reserved by Tolleson ("Reserved Effluent") and (b) any amounts of the Committed Effluent not actually sold, and of the Reserved Effluent not actually used or otherwise disposed of by Tolleson, but not to exceed 8.3 MGD. Affidavit of Russell D. Hulse (attached).

37. APS and SRP have dedicated their entitlement under the Tolleson Agreement to the operation of PVNGS. Affidavit of Russell D. Hulse (attached).

38. The effluent purchased and accepted from Tolleson will be delivered to PVNGS via the Effluent Pipeline. Affidavit of Russell D. Hulse (attached).

39. The present capacity of the Tolleson Plant, including the expansion completed in December, 1981, is 8.3 million gallons per day, or approximately 9,300 acre-feet per year. Affidavit of Jack Muir (attached).

40. The projected output of the Tolleson Plant in 1986 is approximately 8,400 acre-feet, or 700 acre-feet per month (average). Affidavit of Jack Muir (attached).

41. The estimated average monthly quantity of effluent to be processed during 1986 at the Tolleson Plant, less the Committed Effluent and Reserved Effluent, would more than offset the 56 acre-feet shortage at PVNGS projected for June, 1986, from the data provided in Greeley and Hansen. Affidavit of Russell D. Hulse (attached).

42. Intervenor has withdrawn Paragraph No. 3 from the Explanation to Contention No. 5 as set forth in the Stipulation of Parties Regarding Contentions and Discovery ("Stipulation"), dated December 12, 1980. Intervenor's Answers to Applicant's First Set of Interrogatories, Answer to Interrogatory No. 26, dated June 26, 1981 (attached).

43. Paragraph No. 3 of the Explanation to Contention No. 5 as set forth in the Stipulation is the only basis offered by Intervenor for contending that the wastewater effluent to be used at PVNGS will be of insufficient quality. Stipulation, Explanation to Contention No. 5 (attached).

44. Under the terms of both Agreement No. 13904 and the Tolleson Agreement, APS and SRP are not obligated to purchase and accept effluent that does not meet the quality requirements of the U.S. Environmental Protection Agency and/or the Arizona Department of Health Services. Affidavit of Russell D. Hulse (attached).

45. The effluent from the 91st Avenue Plant and the Tolleson Plant will be further processed at the Water Reclamation Plant ("WRP") located at PVNGS. Affidavit of William G. Bingham (attached).

46. In the early design stages of PVNGS it was recognized that (a) the design and specification of materials for the circulating water system for the Palo Verde units could be impacted by the quality of the wastewater effluent discharged from the 91st Avenue Plant and (b) the quantity of effluent required for blowdown to control scale formation, fouling and corrosion and other treatment to limit biological growths within tolerable limits would be a function of the concentrations of suspended and dissolved solids present in the effluent. Affidavit of William G. Bingham (attached).

47. Accordingly, during the period from August 1973 to September 1974, analyses of the effluent discharged from the 91st Avenue Plant were performed and a demonstration plant incorporating the principal relevant features of the proposed tertiary treatment plant and a circulating

water system was established and operated at the 91st Avenue Plant. Affidavit of William G. Bingham (attached).

48. From such extended analyses and demonstration plant operation, it was determined that the principal constituents in the effluent discharged from the 91st Avenue Plant which could cause scale formation, fouling, corrosion and/or contribute to biological growths were calcium, magnesium, silica, phosphorus and ammonia and that reductions in the concentrations of such materials could reduce significantly the quantity of blowdown water required to control scale formation, fouling, corrosion and biological growths within tolerable limits and minimize chlorination requirements. Affidavit of William G. Bingham (attached).

49. Accordingly, the WRP was designed to incorporate a two-stage lime treatment process to remove dissolved solids, including calcium, phosphorus, silica and magnesium. Additionally, trickling filters are provided to reduce ammonia which reduces chlorination requirements, corrosion potential and sludge production; filtration is provided to remove residual suspended solids, including calcium, phosphorus and other solids; and chlorination is provided to control biological growths. Affidavit of William G. Bingham (attached).

50. The treatment described above is designed to remove quantities of suspended and dissolved solids and to limit biological growths to a degree that the resulting

concentrations in the treated effluent may be increased by a factor of 20 in each generating unit's circulating water system without excessive scaling, fouling or corrosion of system components and heat exchangers. Affidavit of William G. Bingham (attached).

51. The foregoing factor of 20 is predicated upon the assumption that the concentrations of dissolved solids in the effluent discharged from the 91st Avenue Plant will be within the range of fluctuation of such concentrations observed during the period of effluent analyses and demonstration plant operation referenced in Paragraph No. 47 hereof. Affidavit of William G. Bingham (attached).

52. If treatment were limited solely to filtration and chlorination, the increase in concentration of dissolved solids in the cooling water would be limited to a factor of about 5 and effluent consumed would be increased by a factor of 4. Affidavit of William G. Bingham (attached).

53. The concentrations of dissolved solids in the effluent discharged from the 91st Avenue Plant are primarily a function of water sources for the domestic water systems of the communities using the 91st Avenue Plant, principally the Salt and Verde Rivers. Consequently, subject to normal seasonal variations, this element of effluent quality has been and is expected to continue to be relatively stable. Affidavit of William G. Bingham (attached).

54. Nonetheless, for conservatism in estimating the quantity of effluent required for operation of each of the Palo Verde units, the blowdown requirements included in the 21,350 acre-feet effluent requirement for each unit are based on the assumption that concentrations of dissolved solids in the influent to the circulating water system will be permitted to be increased by a factor of 15. Affidavit of William G. Bingham (attached).

DISCUSSION

Joint Applicants maintain that the facts set forth in Paragraphs Nos. 1 - 41 hereof clearly demonstrate that there is an assured supply of treated municipal effluent for cooling purposes for Unit 3 of PVNGS during each month of the five year period at issue. Even under the most conservative of the effluent projections for the 91st Avenue Plant, the effluent available for use at PVNGS from the 91st Avenue Plant and the Tolleson Plant will be more than sufficient to operate each of the Palo Verde units during each month of 1986 and throughout the life of the plant. Furthermore, even if these conservative projections prove to be too high and the actual amount of wastewater effluent available for use at Palo Verde Unit 3 is less than the 21,350 acre-feet per year requirement, it would simply mean that Palo Verde Unit 3 could not be operated at the 95% capacity factor assumed in determining such requirement. For example, even if it were assumed (i) that there would be no growth in

effluent discharges from the 91st Avenue Plant after 1980 and (ii) that the COE-EPA projections for 1980 are never exceeded, the average amount of effluent discharged from the 91st Avenue Plant during the three summer months would be 91.3 MGD which would, after satisfaction of prior commitments, make an average of 58.0 MGD available for use at Palo Verde. This amount of effluent would be sufficient to operate Units 1 and 2 during such months at 95% capacity factors (46.4 MGD) and leave a balance of 11.6 MGD available for operation of Unit 3, or approximately 50% of its requirement to operate at 95% capacity factor during such period. Assuming a linear relationship between generation and evaporation losses, the effect of assuming no growth in effluent discharges after 1980 would be a reduction in the annual capacity factor for Unit 3 from 87% (95% for 11 months/year) to about 75% (95% for 8 months/year, 50% for 3 months/year, and 1 month outage). Such a reduction in capacity factor would have no significant influence on the cost benefit analysis.

With respect to that aspect of Contention No. 5 which alleges that the treated effluent will not be "usable," as noted in Paragraphs Nos. 42 - 43 hereof, Intervenor has withdrawn the only basis offered to support such allegation. Accordingly, that portion of her contention may properly be dismissed by the Board without consideration of the facts described in Paragraphs Nos. 44 - 54 hereof. Nonetheless,

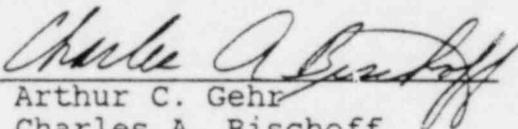
should the Board deem it necessary to consider the quality of the effluent because of its potential impact on the quantity required for operation of the Palo Verde units at a 95% capacity factor, Joint Applicants submit that (i) the WRP has been designed to meet the range of fluctuations observed in the effluent of the dissolved solids critical for minimizing makeup cooling water requirements, (ii) the fluctuations in concentrations of such dissolved solids in the effluent may reasonably be expected to be stable since they are related to the sources of domestic water used by the communities providing effluent and (iii) the estimated effluent requirement of 21,350 acre-feet per year per unit has been calculated conservatively using a factor of 15 for increase in concentrations in cooling water rather than a factor of 20 for which the WRP and circulating water system have been designed.

CONCLUSION

Based on the material facts set forth in Paragraphs Nos. 1-54 above, and the supporting affidavits and documents attached to this motion, Joint Applicants contend that no material issue of fact remains and holding of an evidentiary hearing on Contention No. 5 would serve no useful purpose. Joint Applicants maintain that the facts clearly demonstrate that there is an assured supply of usable treated municipal effluent for cooling purposes for Unit 3 of PVNGS during each month of the first five years of its operation.

WHEREFORE, Joint Applicants move this Board for an order granting summary disposition in Joint Applicants' favor on Intervenor's Contention No. 5.

RESPECTFULLY SUBMITTED,

By 
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Attorneys for Joint
Applicants

Dated: January 15, 1982.

LIST OF ATTACHMENTS

1. Affidavit of Russell D. Hulse, dated January 12, 1982.
2. U.S. Environmental Protection Agency, Final Environmental Impact Statement, Maricopa Association of Governments Point Source Metro Phoenix 208 Wastewater Management Plan, Appendix C (July 1979).
3. Intervenor's Response to Joint Applicants' Request for Admissions, Motion to Dismiss Contention No. 8, and Second Set of Interrogatories (undated).
4. Joint Applicants' Request for Admissions by Intervenor, dated May 22, 1981.
5. Memorandum to Robert L. Brunton from Robert B. Steytler, P.E. (January 27, 1981).
6. Letter to Terry Hudgins, Arizona Public Service Company, from Robert B. Steytler, Assistant Director, City of Phoenix Wastewater Operations (September 20, 1979).
7. Arthur Beard Engineers, Inc. and Camp Dresser & McKee, Inc., City of Phoenix 23rd and 91st Avenue Wastewater Treatment Plants Draft Residuals Management Facility Plan, Volume 5 - Phase C, Effluent Discharge Assessment (August 1980), Exhibit C, Effluent Flow Projections, Greeley and Hansen (January 1980).
8. Affidavit of William G. Bingham, dated January 11, 1982.
9. Agreement for the Sale and Purchase of Wastewater Effluent Among the City of Tolleson, Arizona Public Service Company and Salt River Project Agricultural Improvement and Power District, dated June 12, 1981, as amended.
10. Affidavit of Jack Muir, dated January 12, 1982.
11. Intervenor's Answer to Applicant's First Set of Interrogatories, dated June 26, 1981.
12. Stipulation of Parties Regarding Contentions and Discovery, Explanation to Contention No. 5, dated December 12, 1980.

Attachment 1

Affidavit of Russell D. Hulse,
dated January 12, 1982