

Hy-Hin-Yale



ADJUDICATORY ISSUE

February 18, 1983

(NEGATIVE CONSENT)

SECY-83-71

COMMISSION LEVEL
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For: The Commissioners

From: Sheldon L. Trubatch
Acting Assistant General Counsel

Subject: REVIEW OF ALAB-713 (IN THE MATTER OF ~~SOUTH~~ ^{ARIZONA}
~~CAROLINA ELECTRIC & GAS CO.)~~
Public Service Company)

Facility: Palo Verde Nuclear Generating Station, Units
1, 2 and 3

Purpose: To inform the Commission of an Appeal Board
decision which, in the General Counsel's view, ^{is}

Review Time Expires: March 28, 1983

Petitions for Review: None

Discussion: In ALAB-713 the Appeal Board concluded its sua
sponte review of the Licensing Board's
decision authorizing the issuance of an

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4-3224

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PDR FOIA
GILINSK92-436 PDR

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA- 92-436

EX 5

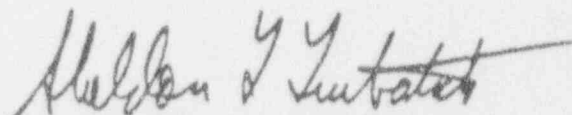
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operating license for Unit 1. 2/ Essentially without discussion, the Appeal Board found no error warranting corrective action and affirmed the Licensing Board's decision. However, the Appeal Board noted that under NRC practice this affirmance did not imply Appeal Board agreement with every statement in the Licensing Board's opinion. [

For
these reasons, we believe that

EX 5

EX 5



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Acting Assistant General Counsel

Attachment:
ALAB-713

2/ The Licensing Board had authorized issuance of a license for only Unit 1 because it had reopened the record for Units 2 and 3 on a new issue. See SECY-83-65, OPE's immediate effectiveness review, for a full discussion of the Licensing Board's actions.

SECY NOTE: In the absence of instructions to the contrary, SECY will notify OGC on Monday, March 7, 1983 that the Commission by negative consent, assents to the action proposed in this paper.

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED

ATOMIC SAFETY AND LICENSING APPEAL BOARD 83 FEB 15 P2:16

Administrative Judges:

Alan S. Rosenthal, Chairman
Stephen F. Eilperin
Howard A. Wilber

U.S. SERVICE
DIVISION

SERVED FEB 15 1983

In the Matter of)	
)	
ARIZONA PUBLIC SERVICE COMPANY,)	Docket Nos. STN 50-528 OL
<u>ET AL.</u>)	STN 50-529 OL
)	STN 50-530 OL
(Palo Verde Nuclear Generating)	
Station, Units 1, 2 and 3))	
)	

DECISION

February 15, 1983

(ALAB-713)

On December 30, 1982, the Licensing Board rendered an initial decision in this operating license proceeding involving the three units of the Palo Verde Nuclear Generating Station. LBP-82-117A, 16 NRC _____. On the basis of its resolution of the matters placed in controversy by intervenor Patricia Lee Hourihan, the Board authorized the Director of Nuclear Reactor Regulation to issue an operating license for Unit 1 following his consideration and determination of any uncontested matters pertaining to the operation of that unit. No like authorization was given the Director with regard to Units 2 and 3. This was because, in a simultaneously entered order, the Board granted as to those two units (but not Unit 1) the late petition for leave to intervene of the West Valley Agricultural Protection

Council, Inc. LBP-82-117B, 16 NRC _____. The Board has reopened the record for the limited purpose of considering the issue raised by the Council's petition and proposes to render a decision on that issue once the record is again closed.

In the absence of exceptions to it, we have examined on our own initiative the initial decision and the relevant portions of the underlying record. ^{1/} That examination has disclosed no error warranting corrective action with regard to the Licensing Board's determination in the applicants' favor of the ultimate issue before it: the availability of an adequate supply of condenser cooling water for the Palo

^{1/} The Licensing Board's order on the Council's intervention petition similarly has not been challenged. We do not review the grant or denial of an intervention petition unless an appeal has been taken under 10 CFR 2.714a. Thus, once the time prescribed in that Section for perfecting an appeal had expired, the order below became final. It is to be noted that the issue raised by the Council is entirely discrete from the issues determined in the initial decision. That being so, there is no reason to withhold our examination of the decision to await the Licensing Board's action on the Council's intervention.

Verde facility. ^{2/} For this reason, we affirm.

In doing so, we are constrained to repeat the note of caution in our Cherokee decision several years ago: ^{3/}

In this uncontested proceeding, we need not (and do not) say that each [ruling on a point of law] is beyond doubt. Indeed, in passing judgment on questions of law in a nonadversary context, the possibility is enhanced that some important consideration will be overlooked by us. It is for this reason that we do not give stare decisis effect to licensing board conclusions on legal issues not brought to us by way of an appeal.

^{2/} The proposed source of water for the condenser cooling system is effluent piped in from waste water treatment plants in the Phoenix, Arizona, area (the facility is located approximately 36 miles west of Phoenix). Insofar as we are aware, no other nuclear generating station has a like source.

The Palo Verde primary (reactor coolant) and secondary (steam-feedwater) systems derive their water from another source. See generally Applicants' Exhibit W, Palo Verde Final Safety Analysis Report, Section 9.2.4. The adequacy of the water supply for those systems was not brought into question by Ms. Hourihan and, thus, was not considered by the Board below. In this regard, although an insufficient supply of condenser cooling water might necessitate a reduction in power levels (and perhaps total reactor shutdown), it would not pose a safety threat. Indeed, it appears that the equipment associated with the condenser cooling system is not required to meet the standards established for facility components that are deemed to be safety-related. See Staff Exhibit 2, Palo Verde Safety Evaluation Report, Section 10.4.5.

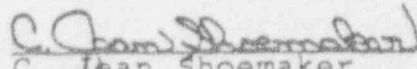
^{3/} Duke Power Co. (Cherokee Nuclear Station, Units 1, 2, and 3), ALAB-482, 7 NRC 979, 981 fn.4 (1978).

A significant portion of the initial decision before us is devoted to certain legal questions presented in connection with Ms. Hourihan's water supply contention. 16 NRC at ____ (slip opinion, pp. 42-51). The Board's conclusions on those questions do not appear to represent a marked departure from established principles. Given the additional fact that no party claims otherwise, we therefore have no hesitancy in endorsing the conclusions as applied to this case.

Nonetheless, should one or more of the same questions arise anew in some future proceeding involving another facility, the door will, as it must, be open to the presentation of any considerations that might point to a different result.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Shoemaker
Secretary to the
Appeal Board