UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	Docket Nos. STN 50-528
ARIZONA PUBLIC SERVICE	)	STN 50-529
COMPANY, et al.,	)	STN 50-530
	)	
(Palo Verde Nuclear	)	
Generating Station, Units 1,	)	
2 and 3)	)	
	)	

JOINT APPLICANTS' ANSWER TO WEST VALLEY AGRICULTURAL PROTECTION COUNCIL, INC.'S MOTION FOR RULING ON CONTENTIONS, FOR DECLARATION THAT NEPA ANALYSIS IS INADEQUATE AND FOR CONTINUANCE OF PROCEEDINGS

INTRODUCTION

On February 3, 1983, joint applicants Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico and Southern California Public Power Authority (collectively "Joint Applicants") received a copy of West Valley Agricultural Protection Council, Inc.'s ("West Valley") Motion for Ruling on Contentions, for Declaration that NEPA Analysis is Inadequate and for Continuance of Proceedings ("Motion"). West Valley filed the Motion following the issuance by this Board of its Memorandum and Order (Ruling on the Petition to Intervene of West Valley Agricultural

Protection Council, Inc.), ("Memorandum and Order"), on December 30, 1982. In its Memorandum and Order the Board noted that there was little information in the record on the consequences of salt drift from the Palo Verde Nuclear Generating Station ("PVNGS"), and concluded that the record should be reopened to enable the Board to more carefully delineate the nature and extent of the impact of salt drift on agriculture. Memorandum and Order at 8-9, 14. Although concluding that the record should be reopened, the Board carefully limited the scope of the reopened proceeding. It ordered that "the record will be reopened for the limited purpose of considering the salt deposition issue." Id. at 14.

The Board emphasized that it was concerned about the lack of information in the record on the "effects," "consequences" and "impacts" on agriculture of salt drift emanating from PVNGS. Memorandum and Order at 8-9, 13. The Board also admitted West Valley's Contention III, which alleges that salt deposition from PVNGS will reduce the productivity of agricultural lands owned by West Valley members. The basis alleged in support of Contention III is that salt accumulation on leaves may cause injury under the climatic conditions prevailing near PVNGS. West Valley has acknowledged that Joint Applicants' environmental reports and the NRC's environmental statements do discuss the effects of adding salt to the soil. Petition to Intervene and

Request for Preparation of Supplemental or Revised Environmental Impact Statement, Hearing and Other Relief ("Petition to Intervene"), at 11. Based on the foregoing, the Board's decision to reopen the record on the "salt deposition issue" is being interpreted by Joint Applicants to mean that additional information is required in the record on the extent to which salt drift from PVNGS can affect the productivity of lands owned by West Valley members due to foliar uptake and injury from saline aerosol.

Consistent with such interpretation, the following factual questions are germane in connection with resolving the "salt deposition issue."

1. What are the sources from which salt may be emitted from PVNGS to the atmosphere (e.g., cooling towers, spray ponds, evaporation ponds)?

2. For each source, what are the characteristics of the salt drift?

   a. What is the quantity of salt emitted?

   b. What is the droplet size distribution?

3. What is the quantity of salt deposited per acre as a function of distance from the source (includes consideration of the predictive capability of the analytical model used)?

4. What is the relationship between foliar deposition of salt and agricultural productivity (includes consideration of the effect of salt being washed off the plants by rainfall and other mechanisms)?

Joint Applicants submit that each of these matters has been addressed in Joint Applicants' environmental reports and in the NRC's environmental statements. With respect to the fourth question, this Board has noted that at the construction permit stage the Licensing Board found that the degree of impact to plants from salt drift was not predictable. Memorandum and Order at 8; see Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-76-21, 3 NRC 662, 686 (1976). In connection with the Board's statement, Joint Applicants note that substantial work has been done in the area of salt injury to plants since the construction permit stage, including not only studies referred to by West Valley's consultants, but other work as well. See, e.g., E:V. Maas, S. R. Gratton, and G. Ogata, "Foliar Salt Accumulation and Injury in Crops Sprinkled with Saline Water," printed in 3 Irrigation Science 157-68 (1982); S. R. Gratton, E. V. Maas, and G. Ogata, "Foliar Uptake and Injury from Saline Aerosol," printed in 10 Journal of Environmental Quality, 406-09 (1981). In addition, Joint Applicants are undertaking their own experimental work to study the effects of salt deposition on the principal crops grown in the vicinity of PVNGS. Joint Applicants plan on making the results of such additional studies part of the record in this proceeding.

In view of the fact that there is much information currently available respecting the questions set forth above, and for the reasons discussed in Argument IV infra, the parties should commence discovery immediately. The reports generated as part of the additional experimental work referred to above will be subject to discovery as they become available. Joint Applicants currently anticipate that such reports should be available in the Fall of 1983. Joint Applicants therefore urge the Board to schedule discovery, prehearing motions, prefiled testimony and other prehearing matters in a manner which would permit the commencement of hearings on the salt deposition issue by mid-January, 1984.

Therefore, Joint Applicants oppose West Valley's Motion that its remaining contentions be admitted, that the Board rule that the FES-OL fails to comply with the National Environmental Policy Act ("NEPA"), and that discovery and hearings be continued.

SUMMARY OF ARGUMENTS

I. There is no basis or need to admit West Valley's remaining contentions.

II. Preparation of a revision or supplement to the Final Environmental Impact Statement is inappropriate and unnecessary under the Commission's regulations.

III. A worst case analysis should be rejected because it is not required by either the Commission's or CEQ's regulations.

IV. Given the numerous factual allegations made by West Valley, and the extensive information already available, there is no basis for continuing discovery or hearings.

V. The Licensing Board lacks jurisdiction to direct activities relating to issues decided at the construction permit stage.

ARGUMENT I

THERE IS NO BASIS OR NEED TO ADMIT WEST VALLEY'S REMAINING CONTENTIONS

A. Contentions I and II

The Introduction portion of this Answer sets forth Joint Applicants' interpretation of the principal factual questions embraced by the Board's decision to reopen the record on the "salt deposition issue." These questions, Joint Applicants submit, adequately address West Valley's concerns as outlined in Contentions I and II. Contention I alleges that the subject of salt deposition has been inadequately assessed in Joint Applicants' Environmental Reports and the NRC's Environmental Impact Statements. Contention II alleges that the Environmental Reports and Environmental Impact Statements fail to evaluate the impact of salt on

agricultural crops. Litigation of these two contentions is totally unnecessary. Assuming that the contentions are litigated, and that findings are made in favor of West Valley, it would only mean that the record in this proceeding on salt deposition should be supplemented. That decision has already been made by the Board when it ordered that the record be reopened. Because the record now has been reopened, and because Joint Applicants will be supplementing the record with evidence bearing on the factual questions underlying Contentions I and II, there is simply no need to litigate whether or not the Environmental Report and Final Environmental Statement are adequate.

B. Contention IV

Contention IV alleges that the ER and EIS undervalue the cost of water which will be used at PVNGS. Joint Applicants would first note that the Board ordered the record reopened in this proceeding "for the specific limited purpose of consideration of the salt deposition issue." Memorandum and Order at 14 (emphasis added). West Valley's concern with the cost of cooling water at PVNGS is clearly beyond the scope of the impact on agriculture of salt drift from PVNGS. West Valley failed to appeal the Board's Order and, therefore, cannot now argue that its participation in this proceeding should be expanded.

In addition, the fact that the Board has admitted West Valley's Contention III does not mean that West

Valley's other contentions are likewise admissible merely because the requirements of 10 CFR §2.714(b) may be satisfied. This is a reopened proceeding, and for each contention which West Valley wishes to have admitted, it must demonstrate that the criteria for reopening the record have been satisfied. As stated by the Appeal Board in Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9 (1978): "These criteria [for reopening a record] govern each issue to be reopened; the fortuitous circumstance that a proceeding has been or will be reopened on other issues has no significance." Id. at 22. West Valley has failed to address these criteria in either its Motion or supporting Memorandum. Therefore, Contention IV is not admissible.

C. Contention V

West Valley's Contention V alleges that the ER and EIS fail to consider the full economic impact of the cooling towers on the area surrounding PVNGS. It is obvious that before there can be an economic loss to the area surrounding PVNGS, it must first be shown that salt drift from PVNGS will cause significant impacts to local agriculture. It is Joint Applicants' position that salt drift from the PVNGS cooling towers will not cause significant impacts to the crops of West Valley members. In any event, additional information on this matter will be made part of the record. There is no need or basis, therefore, to admit Contention V.

D. Contention VI

It is axiomatic that the construction permit stage is the appropriate juncture at which to determine the design features of a nuclear generating facility. See Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 & 2), LBP-81-24, 14 NRC 175 (1981). In reliance on the decisions reached at the construction permit stage, an applicant will spend hundreds of millions of dollars to construct a facility in accordance with the approved design. Thus, an applicant need not address in the environmental report at the operating license stage those same matters which were evaluated at the construction stage, see 10 CFR §51.21, and an intervenor bears an appropriately heavy burden in establishing that an issue should be reconsidered on the basis that (1) it was not adequately considered at the construction permit stage or, (2) there exist "startling new circumstances" warranting further consideration. Cleveland Electric Illuminating Company, 14 NRC at 230. See also Cincinnati Gas and Electric Company (William H. Zimmer Nuclear Station), LBP-80-24, 12 NRC 231 (1980). West Valley has failed to make the requisite showing in this case under either of these alternative grounds.

The Joint Applicants, see ER-CP §10.1, and the Staff, see FES-CP, §9-2, considered a number of cooling tower design alternatives at the construction permit stage

and the Board adopted Joint Applicants' selected alternative in its initial decision. Arizona Public Service Company, et al. (Palo Verde Nuclear Generating Station, Units 1, 2 and 3), LBP-76-21, 3 NRC 662 (1976). The alternative cooling systems evaluated were: (1) Rectangular mechanical-draft cooling towers (FES-CP §9.2.1); (2) Round mechanical-draft cooling towers (FES-CP §9.2.2); (3) Wet-dry mechanical-draft cooling towers (FES-CP §9.2.3); (4) Fan-assisted natural draft cooling towers (FES-CP §9.2.4); and, (5) Dry cooling towers (FES-CP §9.2.5). On the basis of extensive testimony[1/] at the evidentiary hearings regarding Joint Applicants' selection of the round mechanical-draft towers, the Board concluded that in terms of environmental impact the round towers were acceptable. The Board further found that "operation of the Palo Verde cooling system will have no significant effects upon public health and safety, and the potential environmental effects will be acceptable." Arizona Public Service Company, 3 NRC at 687. Clearly, extensive consideration was given to the various cooling system alternatives, and no grounds exist, on that score, for reconsidering cooling system alternatives at this stage of the proceeding.

1/ Tr., pp. 428-29; 481-486; 489; 779-790; 793-800; 807-809; 813-813; 818-819; 824; 830; 960-966; 983-987; and, 1036-1049; App. Ex. 24-17 and 29-31.

The second possible ground for reevaluating cooling tower issues, i.e., that there exists "new information," is likewise unavailing to West Valley. The new information -- or more appropriately, the new allegations -- offered by West Valley, are new only in the sense that West Valley has delayed submission until late in these proceedings. The information certainly is not new in terms of being information that was unavailable at the construction permit stage. In its Memorandum and Order allowing West Valley to intervene here, the Board found West Valley's claim that it "only recently received indications that salt deposition might pose a major threat to agriculture in the PVNGS area" was without merit. Memorandum and Order at 5. As the Board found, such a claim does not constitute "new information." For the same reasons, the tardy interjection of a host of design modifications that were available at the construction permit stage does not rise to the level of the "new information" standard required to re-examine cooling tower alternatives.

Finally, and perhaps most importantly, the need to consider design alternatives now, rests upon the assumption that West Valley will prevail on its contention relating to the underprediction of the amount of salt that will be dispersed by the existing cooling towers. That is, West Valley has argued, in connection with Contention III, that salt

deposition will occur at levels sufficient to cause harm to surrounding agricultural crops. Joint Applicants have noted, see Introduction, supra, that that issue will be fully examined in the course of addressing the "salt deposition issue." However, if Joint Applicants prevail in their assertion that the predicted levels of salt deposition are accurate, and further, that at such levels no harm will result to the surrounding agriculture, it would be a colossal waste of time to engage in an evaluation of "modifications" to correct a problem that does not exist.

On the other hand, if it is concluded on the record that there is a potential for reduction in productivity, there will be time enough to deal with remedial measures, including imposition of license conditions.

E. Contentions VII and VIII

Little need be said about West Valley's last two contentions. Contention VII states that the EIS prepared by the Staff should be revised; Contention VIII states that a supplemental EIS should be prepared. These are not properly stated contentions at all, but rather requests for relief. As such they are inadmissible for litigation in this proceeding.

ARGUMENT II

PREPARATION OF A REVISION OR SUPPLEMENT TO THE FINAL ENVIRONMENTAL IMPACT STATEMENT IS INAPPROPRIATE AND UNNECESSARY UNDER THE COMMISSION'S REGULATIONS

West Valley has requested in its Motion that the Board rule that the environmental statements prepared by the NRC fail to comply with NEPA and order that additional data be developed to be used in the preparation of a supplemental environmental statement. Motion at 2; Memorandum at 7-8. In its Petition to Intervene, West Valley specifically requested that "the ASLB and the NRC . . . (C) prepare a revised or supplemental EIS. . . ." Petition to Intervene at 19.

The Commission's licensing tribunals have had frequent occasion to address supplementation and recirculation of a final environmental statement ("FES") in instances where there are inadequacies in the FES or where changes to the FES are required. The Commission has adopted the procedure that defects in an FES can be cured by the receipt of additional evidence subsequent to issuance of the FES. See Ecology Action v. United States Atomic Energy Commission, 492 F.2d 998, 1000-02 (2nd Cir. 1974); Florida Power & Light Company (Turkey Point Nuclear Generating Station, Units Nos. 3 and 4), ALAB-660, 14 NRC 987, 1013-14 (1981); Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2),

ALAB-262, 1 NRC 163, 195-97 (1975). The Commission's regulations explicitly provide that a licensing board decision based on the evidentiary record before it shall be deemed to modify the FES:

> In . . . a proceeding [in which a hearing is held for the issuance of a permit, license or order], an initial decision of the presiding officer may include findings and conclusions which affirm or modify the content of the final environmental impact statement prepared by the staff. To the extent that findings and conclusions different from those in the final environmental statement prepared by the staff are reached, the statement will be deemed modified to that extent and the initial decision will be distributed as provided in § 51.26(c). If the Commission or the Atomic Safety and Licensing Appeal Board in a final decision reaches conclusions different from the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarly distributed. 10 CFR § 51.52(b)(3).

Three courts of appeal have approved of this rule. New England Coalition v. United States Nuclear Regulatory Commission, 582 F.2d 87, 93-94 (1st Cir. 1978); Citizens for Safe Power v. Nuclear Regulatory Commission, 524 F.2d 1291, 1294 & n.5 (D.C. Cir. 1975); Ecology Action v. United States Atomic Energy Commission, supra.

The Appeal Board has noted that there may be instances in which a deficiency in an FES may be so significant as to call for recirculation of the FES. In Florida Power & Light Company (Turkey Point Nuclear Generating,

Units Nos. 3 and 4), ALAB-660, 14 NRC 987 (1981), the Appeal Board considered an order of the licensing board authorizing the issuance of license amendments to effect steam generator repairs at Turkey Point. The licensing board had found that the impact of a hurricane or tornado on low level waste to be stored at the plant during the repair would not endanger the health and safety of the public. The intervenor in that case argued that NEPA had been violated because the Turkey Point FES did not treat the impact of severe storms on low level waste. The Appeal Board rejected that argument and also found no reason to require recirculation of the FES.

> [T]he Grotenhuis and Gould affidavits submitted by the staff and licensee showed the consequences of a hurricane to be small. In sum, the FES did not disregard important alternatives or broad areas of environmental impact, nor fail to apprise the public of the nature of the project or its expected consequences. In these circumstances we hold that the omission of discussion from the FES of the impact of severe storms on low level waste was a minor failing which did not call for recirculation of the FES. It was cured by the evidentiary submissions to the Licensing Board and by the Board's decision. Id. at 1014.

West Valley has not directly asked that the FES be recirculated. It has requested, however, that additional data be developed[2/] and a supplement to the FES-OL be pre-

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2/ As noted in the Introduction, supra, Joint Applicants are in the process of compiling information respecting the effects of salt deposition on agriculture and will be prepared to make such information part of the record in this proceeding.

pared. As to the request that a supplement to the FES-OL be prepared, it would seem that West Valley's request is beyond the Board's jurisdiction based on the regulatory scheme established by the Commission and discussed in New England Power Company, et al. (NEP, Units 1 and 2), LBP-78-9, 7 NRC 271 (1978):

> The Commission has established a carefully articulated regulatory scheme for the processing and adjudication of applications for the licensing of nuclear power plants. The Staff is responsible for an extensive and continuing review of massive amounts of data and plans related to the construction and operation of nuclear plants . . . . The Staff, among other documents, produces the Safety Evaluation Report (SER) and the Draft and Final Environmental Statements (DES and FES). The studies and analyses which result in these reports are made independently by the Staff, and licensing boards have no role or authority in their preparation. The reports themselves are subject to review and amendment by the Board in an adjudicatory setting, in which all parties with a demonstrated interest may participate in evidentiary hearings. Initial decisions on these matters are subject to appeal or sua sponte review by the Appeal Board, and by the Commission itself if it so elects. Accordingly, it is apparent that the Board does not have any supervisory authority over that part of the application review process that has been entrusted to the Staff. Id. at 279 (emphasis added, footnotes omitted.)

See Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194, 206-07 (1978). Based on the NEP case, even if a licensing board concludes that the deficiencies in

an FES preclude it from rendering a decision on the evidentiary record, there is serious question as to whether the board has the authority to order that a supplement be prepared.

Furthermore, even if it is assumed that the Board in this case could order the preparation of a supplemental FES based on a consideration of the factors specified in Turkey Point, West Valley must demonstrate that any deficiencies in the FES rise to the level required by that case. At this point West Valley has made no such demonstration. All it has done is make numerous allegations based on the unverified reports of its consultants who were not subject to cross examination. Furthermore, as pointed out by Joint Applicants in their November 9, 1982, Response to West Valley's Petition to Intervene, many of the points made by West Valley's consultants are based on misunderstandings resulting in incorrect or unsupportable conclusions.

West Valley has also attempted to use the Board's statement that the question of salt deposition is both serious and significant and that available information is sparse to support its request for a supplemental FES. Memorandum at 5. Joint Applicants submit that West Valley is attempting to expand the Board's comment far beyond its intended reach. Analysis of the Board's Memorandum and Order makes clear that insofar as the adequacy of the information contained in the FES may be brought into question, the Board's

principal concern is focused on the effects of salt drift on agriculture. Memorandum and Order at 8-9, 13. The Board did not suggest in any respect that there is a lack of information or discussion in the FES on the substantial number of other matters which are subsumed under West Valley's Contention III. Such other matters, which include the sources of salt, the quantity of salt drift, the dispersion of salt drift, and the amount of salt deposition, received substantial attention in both the FES-OL and FES-CP.[3/] See, e.g., FES-OL §§ 4.2.6.2, 5.4.1, 5.5.1.1; FES-CP §§ 3.6.2, 5.3.2, 5.5.2.

Tested by the standards referred to in Turkey Point, the matter of salt deposition does not warrant preparation of a supplement to or recirculation of the FES-OL. The Board has decided to reopen the record so that further information can be received. Joint Applicants are in the process of compiling additional information respecting the effects of salt deposition on agriculture and will be prepared to make such information part of the record in this proceeding. Under 10 CFR § 51.52(b)(3), the Board's

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3/ As Joint Applicants noted in their response to West Valley's Petition to Intervene, the calculations and figures contained in the FES-CP reflect data utilizing rectangular cooling towers. Subsequent to the preparation of the FES-CP, it was decided to convert to round cooling towers. The conversion is expected to result in substantially less off-site deposition than was anticipated utilizing rectangular towers. See Arizona Public Service Company, et al., 3 NRC at 687.

decision on the issue of salt deposition, including the various sub-issues identified in the Introduction, will serve to modify or supplement the FES-OL to the extent modification or supplementation is necessary. The Board's Memorandum and Order is consistent with this approach. After noting that the record on salt deposition is sparse, the Board added: "Had further information been made available before the close of the hearing, we would have incorporated it into the record." Memorandum and Order at 13. Accordingly, it would be both inappropriate and unnecessary to prepare a supplemental FES prior to a hearing on this matter.

ARGUMENT III

A WORST CASE ANALYSIS SHOULD BE REJECTED BECAUSE IT IS NOT REQUIRED BY EITHER THE COMMISSION'S OR CEQ'S REGULATIONS

In its Motion, West Valley seems to have renewed to some extent its earlier request that a worst case analysis should be performed. Memorandum at 8-9; see Petition to Intervene at 10-11. Rather than simply reasserting its original position that a worst case analysis is required, however, West Valley now indicates that such an analysis is required only if additional studies of the salt deposition issue are inconclusive. Memorandum at 9. In support of its request, West Valley relies on the regulations of the Coun-

sel on Environmental Quality ("CEQ") on the evaluation of significant adverse effects in an environmental statement where there are gaps in relevant information. See 40 CFR § 1502.22. West Valley specifically refers to the following regulation:

> If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence. 40 CFR § 1502.22(b).

As a threshold question, it must first be determined to what extent the CEQ regulations apply to the preparation of an FES by the NRC. This question was squarely addressed by a licensing board in a recent proceeding.

> The Commission's own regulations implementing NEPA are set forth in 10 CFR Part 51. The Commission has consistently taken the position that the substantive requirements of the CEQ guidelines are not binding upon the NRC because it is an independent regulatory agency. . . . [T]he Staff was governed by the provisions of 10 CFR Part 51, not the CEQ regulations as alleged by the Intervenor, in preparing and issuing a Final Environmental Statement. Florida Power and Light Company (Turkey Point Nuclear Generating, Units 3 and 4), LBP-81-14, 13 NRC 677, 684 (1981).

Part 51 of the Commission's regulations simply provides that the Commission shall be guided by the CEQ regulations in determining the contents of an environmental statement. 10 CFR § 51.23(d). Part 51 does not impose the CEQ regulations on the Staff as requirements; nor does Part 51 require a worst case analysis. As discussed in Joint Applicants' Response to Petition to Intervene of West Valley ("Joint Applicants' Response"), which discussion is incorporated herein by this reference, the applicable standard for the evaluation of enviromental impacts is a "rule of reason." Joint Applicants' Response, Volume I, at 42-44.

Even assuming that the CEQ guidelines were binding on the Staff, before 40 CFR § 1502.22(b) comes into play, there first must be gaps in relevant information. With reference to the questions related to resolution of the salt deposition issue set out in the Introduction, supra, Joint Applicants submit that the basic information needed to examine such issue is known and was used as the basis for evaluation in the FES-CP and FES-OL. Such information would include sources of salt drift, amounts of salt drift, the dispersion of salt drift and the amount of salt deposition. There are no gaps in such information. West Valley's consultants simply do not agree with the analysis performed by Joint Applicants and the NRC Staff. As is obvious from the CEQ regulations, that complaint is not a basis for a worst case analysis. And as to the environmental analysis of such

matters, there is no question that NEPA's rule of reason applies.

The licensing Board acknowledged at the construction permit stage for PVNGS that there was little information available on the effects of salt drift on vegetation. 3 NRC at 686. As noted in the Introduction, supra, substantially more information has since become available. Such information argues against the need for a worst case analysis. Furthermore, even assuming that there is a "gap in information" respecting the effects of salt deposition on agriculture, then under section 1502.22(b), a worst case analysis should be included only in those situations where "(1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known." (Emphasis added). Clearly, neither of these situations exist here. In its Motion West Valley has conceded that the information can be obtained and has offered plans to get it. Motion at 2-3. In addition, Joint Applicants have already noted herein that they are undertaking additional studies to supplement the record on the effects of salt deposition. In sum, even under the CEQ guidelines, there is no basis for requiring a worst case analysis.

As a final matter, a worst case analysis might make some sense if the potential impacts were both significant and irreversible. The potential effects to the West Valley members certainly are not irreversible. Even if a particular crop were damaged in one year, this would not preclude taking steps to avoid similar damage in subsequent years.

ARGUMENT IV

THERE IS NO BASIS FOR CONTINUING DISCOVERY OR HEARINGS

After urging a number of specific factual contentions upon the Board in an effort to gain entrance to these proceedings, West Valley now reverses its position and argues that further proceedings will serve no purpose since there is "simply not enough data on salt damage to crops" to warrant discovery or hearings related to West Valley's contentions. However, the plethoric factual allegations made by West Valley in its Petition to Intervene and West Valley's challenges to the accuracy and validity of Joint Applicants' studies, reports and modeling procedures, provide the basis for necessary discovery. Joint Applicants believe that prompt discovery will dissipate the great majority -- perhaps all -- of West Valley's gossamer contentions. Unfortunately, instead of assisting the Board in the expeditious resolution of the issues raised by its intervention, West Valley appears more intent on delaying such reso-

lution. Obviously, that delay would operate to the severe prejudice of Joint Applicants.

If the Board allowed only ninety days for discovery, to begin immediately after the prehearing conference, and allowed the parties two weeks after the close of discovery to file motions for summary disposition, it would be near the end of June, 1983 before the summary disposition motions could even be resolved. The hearing, the closing of the record, filing of proposed findings and responses thereto, an initial decision and the conclusion of the appeal process will likely consume eleven months to a year, which means that an optimistic time-frame for resolving the issues raised by West Valley would be mid-to-late summer of 1984. Given a projected fuel-loading date for Unit 2 of August, 1984, the impact of continuing these proceedings is obvious and serious.

Joint Applicants continue to believe that the alleged concerns of West Valley have no basis, but since West Valley chose to interject itself into the proceedings and to allege specific errors and insufficiencies in Joint Applicants' studies, Joint Applicants are certainly entitled to proceed with appropriate discovery and to obtain a resolution of this matter as soon as feasible. There is plainly no justification for continuing these proceedings.

West Valley is correct to a degree in its observation that licensing boards have considerable flexibility

in scheduling discovery and hearings. 10 C.F.R. §2.718(e); Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975). However, scheduling discovery and hearings is quite a different matter from continuing or postponing them. Continuances are not favored since they are in derogation of the Congressional mandate to decide licensing cases. Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2), LBP-82-10, 15 NRC 341 (1982). Accordingly, the Commission has issued a Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452 (1981), to the effect that licensing boards are to set and adhere to reasonable schedules for the proceedings and that "good cause" must be shown in order to justify any deviation from the times fixed by the Board or prescribed in Part 2 of the Commission's regulations. Part 2, of course, provides that discovery shall begin after the prehearing conference, 10 CFR §2.740(b)(1), since that conference will identify the "key issues in controversy" upon which discovery may be had and to which discovery will be limited. 10 CFR Part 2, Appendix A(IV). The ostensible bases advanced by West Valley for continuing the proceedings do not even begin to approach the necessary standard.

West Valley's own Petition to Intervene argues forcefully against the position now adopted by West Valley.

The basis for Contention III, already admitted by the Board, alleges, inter alia, that:

> 1. Very low salt deposition rates in a dry environment such as that near the PVNGS may produce the same effects as higher salt deposition rates in more humid environments which are subject to rain events with high frequency and greater intensity (III.A.).
>
> 2. [T]he PVNGS region has a history of a large number of small rain events . . . of such low intensity that it is unlikely that they would remove salts accumulated on crop leaves. (III, A.(i))
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> 3. [C]limatic conditions at the PVNGS will wet the leaves of crops in a manner that will dissolve much of the salt . . . causing movement and concentrations of the salts . . . where general chlorosis and necrosis would likely occur. (III.A.(ii))
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> 4. [S]alt accumulation . . . would cause plants to exhibit symptoms of general drought stress. (III.A.(iv))
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> 5. [Recent studies] have established that crops tolerant of saline soils may not exhibit the same level of tolerance to aerosol deposition of salts on leaves. (III.B.(i)(A))
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> 6. [Recent studies] have established that aerosol salt deposition can harm a variety of crops at comparatively low levels, and at high enough deposition levels can harm virtually all crops. (III.B.(i)(c))
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> 7. [S]alt injury to cotton would: (a) cause a reduction in the number of bolls per plant, and thus a reduction in crop yields and (b) result in a reduction in leaf area caused by necrosis induced salt injury . . . resulting in

thin-walled, weak and poorly developed fibers of lower economic value than normal fibers. (III.B.(ii))

8. Salt deposition from the PVNGS will occur at levels sufficient to cause harm to surrounding agricultural crops. (III.C)

9. In the area surrounding the PVNGS, deposition levels of 2-4 lbs. per acre per week will occur near the plant . . . . (III.C.(iii))

In the face of these specific factual allegations and particularly against the backdrop of consultants' reports totalling some 105 pages, West Valley's claim that the proceedings should be continued until information can be developed is either without merit or the previous filing by West Valley misrepresented the factual basis for the specific allegations which led the Board to permit these proceedings to be reopened. Further, in its Memorandum in Support of Petition to Intervene, West Valley claimed that the "NRC Staff, whether through inadequate investigation or otherwise, has furnished the public with erroneous or misleading information on matters of basic fact." Memorandum at 8. Joint Applicants, and the Staff, are entitled now to know the factual and substantive basis for that allegation, the factual support for the multitude of other allegations made by West Valley in Contention III, as well as the facts supporting the other numerous contentions which West Valley now requests be admitted. Finally, since West Valley's most vitrolic attack has been leveled at the adequacy of the FOG

dispersion model, Joint Applicants are certainly entitled to discover the basis -- or lack thereof -- for West Valley's attack on those modeling procedures. The cases quite clearly support that view.

In Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), LBP-81-24, 14 NRC 175 (1981), the Board denied an intervenor's request for a stay of the operating license proceedings where the request had been prompted by the fact that "certain key documents" had not been filed by the staff. Absent such documents, the intervenor contended, it could not adequately prepare its contentions. The Board accorded appropriately short shrift to that argument, noting that the rules provide a method by which intervenors may raise new contentions if they were unable to do so prior to the availability of such key staff documents. Id. at 180.

Also, in Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-277, 1 NRC 539 (1975), the Appeal Board addressed the question of whether discovery and hearings should proceed notwithstanding the applicant's announcement of a five-year delay in anticipated operations. The Board noted that one intervenor had alleged potential adverse affects from the cooling towers, and that among the issues which could be resolved immediately was "whether there has been an adequate inquiry

by the applicant and staff into the environmental effects of the proposed cooling towers and alternative cooling systems. . . ." Id. at 549-50.

The teachings of Cleveland Electric and Potomac Electric are that once a contention is admitted, it is presumptively endowed with sufficient substance and specificity to accommodate discovery and support a hearing -- otherwise it would be incapable of admission for lack of specificity. 10 CFR §2.714(b) requires intervenors to file "a list of the contentions which petitioner seeks to have litigated in the matter, and the basis for each contention set forth with reasonable specificity." As one licensing board specifically stated: "This contention requirement and procedure is for the purpose of framing the issues which will be the subject of subsequent discovery and proof in an evidentiary hearing." Commonwealth Edison Company (Byron Nuclear Power Station, Units 1 and 2), LBP-80-30, 12 NRC 683, 686-87 (1980). Thus, "[i]f facts pertaining to the licensing of a particular nuclear power plant are at issue, an adjudicatory proceeding is the right forum. But 'if someone wants to advance generalizations regarding his particular views of what applicable policies ought to be, a role other than as a party to a trial-type hearing whould [sic] be chosen.'" Id. at 687, quoting, Duke Power Company (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973).

West Valley cannot have it both ways. Either its contentions are specific enough to support admission (as the Board has already ruled as to Contention III), or they are not. If they are, then there is no reason to continue the proceedings as the Joint Applicants are entitled to know the issues, and the alleged factual bases for such issues, against which they will be required to defend. Commonwealth Edison Company, supra, at 689. If the contentions lack the sufficient particularity and are merely vague and conclusory arguments, they cannot be admitted as contentions.

In sum, West Valley has come to this proceeding alleging possession of considerable factual information bearing on the issues advanced by its numerous contentions:

> "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 of the salt deposition issue." (Memorandum in Support of Petition to Intervene at 15.)
>
> "West Valley's detailed preparation should assure that the salt deposition issues are resolved as expeditiously as possible." (Memorandum at 15).
>
> "They [West Valley members] acted as soon as they had concrete evidence of the adverse effects of salt deposition." (Memorandum at 19.)
>
> "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." (Memorandum at 22.)

Joint Applicants are entitled to discovery regarding West Valley's demonstrated and detailed knowledge, its concrete evidence and its scientific and technical facts. Unless the above-quoted avowals were merely hollow make-weights calculated only to secure intervention to these proceedings, then this is not a case where there is "not enough data" to address West Valley's contentions in a meaningful way. Based upon the foregoing, Joint Applicants respectfully request that West Valley's Motion for Continuance of Proceedings be denied.

ARGUMENT V

THE LICENSING BOARD LACKS JURISDICTION TO DIRECT CONSTRUCTION-RELATED ACTIVITIES

West Valley's final argument can be quickly dispatched since it requests a form of relief that is simply beyond the jurisdiction of this Board. Issues relating to construction, including, obviously, the design of the cooling towers, have been previously considered and ruled upon, and construction permits have been granted. Thus, even if West Valley could somehow demonstrate the need for relief, and define what "alternatives" it thinks are being foreclosed, this Board would not be the appropriate body to direct such relief.

West Valley apparently recognizes the obvious -- this Board would have no jurisdiction to order a halt to the construction. Consumer's Power Company (Midland Plant, Units 1 and 2), ALAB 674, 15 NRC 1101 (1982). Thus, instead of asking for such relief, West Valley adopts the more circuitous ploy of requesting the Board to "direct the NRC Staff and Joint Applicants to demonstrate that cooling tower construction will not limit reasonable alternatives." However, the Board is likewise without jurisdiction to direct or order that relief.

A licensing board in an operating license proceeding, of course, does not have general jurisdiction over the previously authorized and ongoing construction of the plant. Consumer's Power Company, supra, at 1103. Therefore, even if a need existed for corrective action relating to construction issues, and no such need exists here, the Board would have no jurisdiction to compel such action. As the Board noted in Consumer's Power Company, the fact that a request relating to ongoing construction is beyond the province of a licensing board does not preclude an intervenor from seeking relief in the appropriate forum, i.e., by filing a petition with the Director of Nuclear Reactor Regulation pursuant to 10 CFR §2.206(a). Indeed, West Valley threatens to do just that. Clearly, whatever relief may be accorded West Valley relative to construction lies properly

within the aegis of the Director, not within that of this Board.

Finally, and perhaps most practically significant, is the fact that the relief requested by West Valley is simply unavailable at this point. Construction on the cooling towers for Unit 2 is complete; construction on the Unit 3 cooling towers is almost complete. Whatever "alternatives" may have existed at an earlier stage are gone, and it would serve no purpose to pursue a remedy which is simply unavailable.

CONCLUSION

For the foregoing reasons, Joint Applicants respectfully request that the Board deny West Valley's Motion in its entirety.

SNELL & WILMER

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Date: February 14, 1983

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
ARIZONA PUBLIC SERVICE COMPANY, et al.	)	Docket Nos. STN 50-528 STN 50-529 STN 50-530
	)	
(Palo Verde Nuclear Generating Station, Units 1, 2 and 3)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Joint Applicants' Answer to West Valley Agricultural Protection Council, Inc.'s Motion for Ruling on Contentions, for Declaration that NEPA Analysis is Inadequate and for Continuance of Proceedings" were mailed to the following individuals, properly addressed and with postage prepaid, this 14th day of February, 1983.

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