

March 10, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

STAFF'S RESPONSE TO PATRICIA LEE HOURIHAN'S MOTION  
FOR LEAVE TO FILE RESPONSE TO WEST VALLEY AGRICULTURAL  
PROTECTION COUNCIL'S MOTION FOR RULING ON CONTENTIONS, FOR  
DECLARATION THAT NEPA ANALYSIS IS INADEQUATE AND FOR A CONTINUANCE

I. INTRODUCTION

By motion of February 23, 1983, Patricia Lee Hourihan has requested leave to file a late<sup>1/</sup> response to West Valley Agricultural Protection Council's (West Valley) Februray 2, 1983 motion.<sup>2/</sup> Without first obtaining permission of the Board to file a late response, Ms. Hourihan has attached a copy of her response. This response supports the West Valley motion and is based upon an affidavit which she attaches of a former employee of

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1/ Ms. Hourihan's response was due on February 17, 1983.

2/ The West Valley motion was made shortly after West Valley was granted intervention in this proceeding. This motion requested that the Board: (1) accept the contentions West Valley filed with its intervention petition, (2) declare the Staff's NEPA analysis to be inadequate, and (3) order that there be a continuance in this proceeding until Staff prepares a new NEPA analysis.

DESIGNATED ORIGINAL

Certified By JW

*ASOP*

a Palo Verde subcontractor who alleges certain defects with respect to the Palo Verde evaporation pond.

The Licensing Board should not accept this filing since Ms. Hourihan lacks standing to raise new matters in relation to in West Valley's contention. Furthermore, the charges by the former employee patently lack merit and they are not relevant to West Valley's contention in this proceeding. Finally, this filing should not be accepted since it is inexcusably tardy.

## II. DISCUSSION

### A. Ms. Hourihan Lacks a Discernible Interest For Participation in West Valley's Contention

Although an intervenor should not be "benched on the sidelines during trial of contested issues other than those derived from his own petition" Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 & 2), ALAB-244, 8 AEC 857 (1974), aff'd CLI-75-1, 1 NRC 1 (1975), the intervenor must meet certain standards before he or she can participate and his or her participation thereafter will be subject to certain ground rules. An intervenor may file proposed findings. Id. at 863. He or she may "cross-examine on those portions of a witnesses' testimony which relate to matters which have been placed in controversy by another intervenor in the proceeding -- so long as [the intervenor] has discernible interest in the resolution of that particular matter." (emphasis added) Id. at 868. He or she may not adduce affirmative evidence, or do anything else during the course of the hearing other

than conduct cross-examination, with regard to an issue placed in contest by another party unless he obtains leave of the Licensing Board to amend his intervention petition to assert the issue on his own behalf. Id. at 869, fn.17.<sup>3/</sup>

Under these ground rules, Ms. Hourihan should not be allowed to participate in West Valley's contentions since she lacks a "discernible interest" in their resolution. In Northern States the Appeal Board defined the term "discernible interest" as:

. . . the extent of the intervenor's interest in the proceeding is to be ascertained on the basis of those relevant assertions in the intervention petition which were explicitly or implicitly accepted by the Licensing Board in connection with the grant of intervention. Id. at 868, fn.15.

Ms. Hourihan's interest in this proceeding, as set forth in her petition to intervene, pertains to potential injury to her health or property

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3/ In the interest of expediting the hearing process the Commission has suggested that even these types of participation should often be curtailed. Consolidation of intervenors is encouraged and ". . . single lead intervenors should be designated to present evidence, to conduct cross-examination, to submit briefs, and to propose findings of fact, conclusions of law and argument. Where such consolidation has taken place, those functions should not be performed by other intervenors except upon a showing of prejudice to such intervenors' interest or upon a showing to the satisfaction of the board that the record would otherwise be incomplete." (emphasis added). May 20, 1981 Statement of Policy On Conduct of Licensing Proceedings.

caused by the operation of the Palo Verde facility.<sup>3/</sup> These are substantially different from West Valley's contentions, which are strictly limited to the possible direct aerosol dispersal of salt on agricultural crop foliage in the vicinity of the Palo Verde facility. Under these circumstances, a requisite discernible interest is lacking to separately present an affirmative case on West Valley's contentions.

B. The Charges By the Former Employee Patently Lack Merit and They are not Relevant to West Valley's Contentions

In support of West Valley's motion for a new NEPA analysis and a continuance of the proceeding, Ms. Hourihan has filed the affidavit of a former employee of a Palo Verde subcontractor who had worked on the Palo Verde Environmental Report (the Turner affidavit). This affidavit charges that salt drainage (in contrast to aerosol sprays) from the Palo Verde evaporation ponds caused by an inadequate protective liner may damage the aquifer below the ponds.

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3/ According to her August 11, 1980 Petition to Intervene, Ms. Hourihan's standing in this proceeding was derived from the fact that she resided in Phoenix, Arizona, she owned land jointly with her father in Sun City, Arizona, she worked in Tempe, Arizona. Her specific interest in the proceeding was whether:

- "1. The routine operation of the plant will endanger the health, lives, civil rights, business interests and property of petitioners.
2. The operation of the plant may result in an accident which will endanger the interests of the petitioners."

The allegations in the Turner affidavit are not relevant to the West Valley contentions. West Valley is concerned with damage to its crops caused from aerosol spray by drift from the Palo Verde facility. The Turner affidavit deals with possible damage to the regional aquifer. Before this aquifer can even be considered to pertain to West Valley's crops, it would first have to be established whether the aquifer would be used to irrigate these crops and whether there would be enough salt in the aquifer caused by the evaporation ponds to adversely affect them. Moreover, even if a nexus between the aquifer and the crops were established, the two types of damage (damage from salt caused by aerosol spray versus damage from salt from groundwater irrigation) are very different and should not be considered as part of the same subject matter.

Furthermore, the allegations in the affidavit are irrelevant since they deal with the possible seepage of water from evaporation ponds having only concrete liners. However, the evaporation pond at Palo Verde will have a rubberized lining. The FES states (§ 4.2.4.1):

Soil-cement bottom liners originally were planned for the water storage reservoir and evaporation pond (FES-CP, Section 3.3); however, this has been changed. The bottom liners will now consist of spray-lined rubberized asphalt at least 200 mils thick, and the sides of the reservoir and pond will be lined with 45-mil-thick reinforced Hypalon (ER-OL Sections 3.6 and 3.7). The permeability of the liners is estimated to be about  $10^{-10}$  cm/sec.

This new design for the evaporation pond liner is in accord with Dr. Turner's original recommendations. (Turner Affidavit, ¶ 12).

As Dr. Turner admits, he has not been connected with the project since 1974 and his opinion was based upon his 1974 assessment which

is out of date (Turner Affidavit ¶¶ 10 and 4). As the FES-OL indicates, the new liner will consist of spray-lined rubberized asphalt at least 200-mils-thick for the bottom and of 45-mil-thick reinforced Hypalon for the sides. This new liner system has a permeability about 10,000 times lower than the original design which caused Dr. Turner's concern. As the FES-OL also states (§ 5.3.2.1):

The new liner systems for the water-storage reservoir and evaporation pond (Section 4.2.4) have a lower permeability (about 4 orders of magnitude) than the original design, thus reducing the amount of seepage expected to groundwater and reducing the potential for adverse impacts on groundwater quality.

The staff estimates that about  $210 \text{ m}^3$  (0.2 acre-ft) of water per year will seep from the storage reservoir down into the perched-water table. The reservoir water is projected to contain 100 mg/l of total dissolved solids (TDS), and because the TDS concentrations in the perched zone already are in the range of 1000 to 5000 mg/l, the seepage would have a small, but immeasurable, beneficial effect on the water quality of the perched zone.

The conclusion given in Section 5.2.3 of the FES-CP that very little water will seep through the evaporation pond liner remains valid. The applicant has determined that waste solutions discharged to the pond would be nonhazardous according to the EPA Resource Conservation and Recovery Act (RCRA) and Arizona Department of Health Services criteria. Final determination by EPA of RCRA compliance will not be made until the exact chemical composition is determined; the solution has already been determined nonhazardous according to the current criteria established by Arizona Hazardous Waste Regulations (ER-OL, Section 3A, Supplement 3). However, the evaporation pond will require approval/permits from the Arizona Department of Health Services, Bureau of Waste Control.

In addition, to assure that the redesigned evaporation pond liner works there will be a monitoring program which will insure the integrity of the evaporation pond liner by periodically monitoring the leak-detection system collection points and groundwater monitoring wells. The FES-OL (§ 5.3.2.3) states with respect to this program that:

The integrity of the evaporation pond liner will be confirmed by periodic monitoring of leak-detection system collection points and of groundwater monitoring wells. If a leak is detected, the applicant intends to isolate the affected area and locally repair or replace the defective lining (ER-OL, Section 3.6.3.1).

In his affidavit, Dr. Turner acknowledges that he has become aware of this new evaporation pond liner and admits that it is "a step in the right direction." However, he conjectures that since the FES-OL does not definitively state that the applicant will dredge and remove the salt which would build up in the evaporation pond, this buildup might cause the rubberized liner to become worn with time and eventually allow water with salt to percolate down into the soil and contaminate the aquifer. (Turner affidavit, ¶ 14). However, this conjecture ignores the periodic monitoring of leak detection system collection points to assure the integrity of the evaporation pond liner, and the applicant's commitment to repair or replace the liner in case a leak is detected. (FES-OL § 5.3.2.3). No issue is created that the present design of the evaporation ponds and the system of leak detection and repair will not prevent salt contamination of the aquifer.<sup>3/</sup>

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3/ In Ms. Hourihan's Response there are further conjectures that the applicant may have suppressed data. (See Hourihan Response, at 6). These charges are not relevant to the West Valley Contention. Moreover, the fact that the evaporation pond's liner was changed from concrete to rubber (which was not even mentioned in the Hourihan Response) shows the lack of materiality of this type of allegation to the matter here involved.

C. Ms. Hourihan's Response is Inexcusably Tardy

The only excuse furnished by Ms. Hourihan for her late response to West Valley's motion is that her attorney is located in Washington, D.C. and Dr. Turner, whose supporting affidavit according to Ms. Hourihan was necessary, is located in California.

This explanation is inadequate. Ms. Hourihan's filing was one week late yet only a few extra days at most should be involved when coast to coast mailings are necessary. Furthermore, at the very least Ms. Hourihan should have requested an extension of time if she believed she could not file on time.<sup>4/</sup> Having failed to do so, Ms. Hourihan is now foreclosed from submitting this filing.

III. CONCLUSION

For the above reasons, Ms. Hourihan's Response to West Valley's February 2, 1983 Motion should be rejected by the Licensing Board.

Respectfully submitted,

*Lee Scott Dewey*

Lee Scott Dewey  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 10th day of March, 1983

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4/ At p. 3 of Ms. Hourihan's response it is stated that she was "recently contacted" by Dr. Turner. This elliptic statement fails to establish that Ms. Hourihan was unable to submit the information she seeks to present long before now. Certainly the information has been available at least since 1974 when Dr. Turner worked for NUS.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF'S RESPONSE TO PATRICIA LEE HOURIHAN'S MOTION FOR LEAVE TO FILE RESTATEMENT TO WEST VALLEY AGRICULTURAL PROTECTION COUNCIL'S MOTION FOR RULING ON DEFENDANT'S MOTIONS, FOR DECLARATION THAT NEPA ANALYSIS IS INADEQUATE AND FOR A CONTINUANCE" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 11th day of March, 1983:

Robert M. Lazo, Esq., Chairman\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Richard F. Cole\*  
Administrative Judge  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dr. Dixon Callihan  
Administrative Judge  
Union Carbide Corporation  
P.O. Box Y  
Oak Ridge, TN 37830

Arthur C. Gehr, Esq.  
Charles Bischoff, Esq.  
Snell & Wilmer  
3100 Valley Center  
Phoenix, AZ 85073

Ms. Lee Hourihan  
6413 S. 26th Street  
Phoenix, AZ 85040

Atomic Safety and Licensing  
Board Panel\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Atomic Safety and Licensing  
Appeal Board\*  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Lynne Bernabei, Esq.  
Harmon & Weiss  
1725 I Street, N.W.  
Suite 506  
Washington, D.C. 20006

- 2 -

Rand L. Greenfield  
Assistant Attorney General  
P.O. Drawer 1508  
Santa Fe, New Mexico 87504-1508

Kenneth Berlin  
Winston & Strawn  
Suite 500  
2550 M Street, N.W.  
Washington, D.C. 20037

Docketing and Service Section\*  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

*Lee Scott Dewey*  
Lee Scott Dewey  
Counsel for NRC Staff