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Arizona Public Service

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NUCLEAR

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Mr. John C. Hoyle  
Secretary  
Attention: Docketing and Service Branch  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

DOCKET NUMBER  
PROPOSED RULE **PR 50**  
(61FR15427) (36)

Dear Mr. Hoyle:

**Subject: Palo Verde Nuclear Generating Station (PVNGS)  
Unit 1, 2, and 3  
Docket Nos. STN 50-528/529/530  
Comments on the NRC's Advance Notice of Proposed Rulemaking, Financial  
Assurance Requirements for Decommissioning Nuclear Power Reactors  
(61 Federal Register 15427)**

Arizona Public Service Company (APS), as owner and operator of the Palo Verde Nuclear Generating Station (PVNGS), submits the following comments in response to the NRC's Advanced Notice of Proposed Rulemaking referenced above. APS is responding in its individual capacity and not as an agent for the other owners of PVNGS. In addition to the comments contained in this letter, APS also supports the comments submitted by the Nuclear Energy Institute (NEI).

APS believes that Palo Verde has a very important role to play in a competitive electric energy market. We operate this facility in the safest possible manner while constantly striving to improve efficiency. There is a lot of uncertainty and speculation around what will happen with the transition from regulation to competition. As long as nuclear power plants continue to improve their performance, they will be able to make a positive contribution to cover the fixed costs associated with their construction. These positive contributions will also fund decommissioning, which represents a small portion of projected revenue streams.

The Palo Verde owners had the foresight to craft their Participation Agreement to contain financial assurances for decommissioning the facility. We believe that many of the provisions that NRC is requesting have already been addressed at PVNGS. We support the NRC in this endeavor but would caution the agency not to adopt any rules that are too restrictive and which, in turn, could lead to premature decommissioning. The oversight role of the NRC is important as the industry transitions to competition and Palo Verde will work with the regulator throughout this process.

Should you have any questions, please contact Ms. Angie Krainik at (602) 393-5421.

Sincerely,

cc: W.H. Rasin - NEI

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APS Response to the NRC Inquiry into the  
Financial Assurance Requirements for Decommissioning Nuclear Power Reactors

**A. Timing and Extent of Electric Utility Industry Restructuring**

Throughout the electric utility industry, there exists a frenzy of activity, discussion, argument and concern about the effects of "introducing" competition to the electric service industry. Arizona is no exception, as evidenced by the Arizona Corporation Commission ("ACC") decision to open an investigative docket on this subject. The timing and extent of electric utility restructuring is uncertain and there exists numerous predictions as to the outcome. Restructuring is necessarily a long process. Eighteen years after deregulation began, the gas industry is only just (perhaps) completing restructuring, and full retail access has not yet been attempted, although many states are beginning to examine the possibility. Restructuring of telecommunications is still very much in the process 14 years after the AT&T consent decree and 28 years after *Careterfone*. Even if it keeps its schedule (doubtful at present), the UK will have taken 11 years to achieve the goal of universal retail access in electricity. Based on prior experience in these and other industries, deregulation or restructuring of a regulated industry is an evolutionary process. The process has historically taken a considerable amount of time in order to achieve an orderly transition without unduly burdening commerce or the public interest.

Competition in generation represents the greatest potential source of future efficiency gains from restructuring of the industry. Wholesale market restructuring and reform, either as imposed by Federal Energy Regulatory Commission ("FERC") or as it may develop in the marketplace, may eventually lead to a functional disaggregation of the traditional form of vertically integrated electric utility. This does not mean that legal disaggregation or forced divestiture of existing assets is necessary, practical or inevitable.

As the NRC is contemplating changes to its regulations, it is important to remember that restructuring does not necessarily mean deregulation of generation. State regulators will have to deal with decommissioning costs in any restructuring proposal. There currently is no reason to believe that state regulators will not effectively deal with the required decommissioning funding requirement (as is the case in California.). APS has received favorable rate treatment for decommissioning funds in its rate proceedings, including its recent settlement that runs through 1999. Even if a unit is uneconomic regulators must effectively address the required decommissioning funding out of concerns for public safety.

**B. Stranded Costs**

- B.1 How will restructuring affect large baseload plants that currently receive rate relief to cover construction costs or have a portion yet to be phased into rate base?

APS supports the NEI position that the issue of stranded cost associated with nuclear power plants should not be an issue of concern for the NRC. We firmly believe that prudent management of the variable costs (operating, maintenance and fuel) will assure a role for nuclear generating plants within the national energy mix. The investment in nuclear power was conceived with full support of local utility commissions and we believe the disposition of any stranded cost should be, and will be, addressed at that level. There is sufficient precedent that early shutdown of existing nuclear facilities have been allowed full recovery for decommissioning cost.

C. Nuclear Financial Qualifications and Decommissioning Funding Assurance

- C.1 If nuclear plants are shut down prematurely, how will licensees who can no longer pass costs through ratepayers provide for a shortfall of decommissioning funds?

This question pre-supposes that decommissioning costs would not be recovered under a premature decommissioning scenario when in actuality there is no precedent for this happening. NEI's comment that the economics of prematurely decommissioning a plant includes accounting for the effects of decommissioning costs is correct. The fact is that the annual contribution to the decommissioning fund represents a small part (usually less than 1%) of the total revenue stream for a utility.

- C.2. At what point does an operator of a nuclear power plant cease to be an "electric utility" as defined 10CFR 50.2 of the NRC's regulations?

In our opinion, even if generation is deregulated, and the utility remains vertically integrated, such a utility would still be defined as an electric utility as long as some form of cost recovery pricing remains in place. Most restructuring proposals contemplate continued regulation of transmission and distribution service.

- C.3 If a utility would reorganize and divest parts of itself such that the reactor is no longer covered by rate-setting agency, how would NRC have financial assurance for decommissioning in case of shut down? Should this assurance be done prior to NRC approval of reorganization?

It is important for the NRC to define "financial assurance" in order for the utilities to adequately respond to this question. If assurance is deemed to mean an adequate revenue stream to cover decommissioning from which cost may be recovered, it would be appropriate. If it means some cast-in-concrete guarantees, then it would not be appropriate. There are as many different situations and ways to deal with financial adequacy as there are utilities and the NRC should not be too prescriptive in defining this, as it may limit creative ways to finance decommissioning. Within the NRC's current authority, there will be many opportunities to evaluate the financial backing of a proposed reorganization into a generating company.

- C.4 Should the NRC require a licensee to provide a reasonable assurance of the availability of funds for decommissioning by imposing a minimum level of net worth, cash flow and other financial measures?

The NRC should not dictate the method of providing assurance, we agree with NEI that a performance vs. assumptions for each plant would be adequate. Palo Verde, through our Participation Agreement (PA), has established a method to assure that funding is being met by all participant owners. We acknowledge that some utilities could manipulate the assumptions or constantly change assumptions to the point where actuals vs. assumptions could be meaningless. However, we recommend that the NRC structure a process that is not overly prescriptive and allows some flexibility within the different utilities, similar to our PA.

- C.5. Would PUC's and FERC be willing to certify that licensees under their jurisdictions, both utility and Part 50 licensees other than electric utilities, would be allowed to collect sufficient revenues through rates to complete decommissioning funding?

It is our belief that decommissioning costs will be adequately addressed in any restructuring proposal at the state level. In response to the Arizona Corporation Commission Competition Docket investigation, the Company is proposing that decommissioning costs be considered and recovered as any other stranded investment. APS states, "decommissioning and (coal mine) reclamation are not optional social goods but legally required safety and environmental programs. Second, these costs were incurred in the performance of APS' public utility service obligation and should be addressed through the regulatory process." The state PUC can issue an order providing for recovery, but seeking certification from FERC or state PUC's that utilities will have the right to recover decommissioning costs as any restructuring would be premature and, in all likelihood, unnecessary.

- C.6. Impact of NRC required accelerate collection of decommissioning funds?

Accelerating the funding and collection of decommissioning costs may increase the costs of nuclear energy in the near term. Such an increase in costs could have the opposite effect intended by making nuclear energy less economical and, ultimately less attractive in a competitive market, even though the true incremental cost of nuclear power remains competitive. Accelerating decommissioning costs which shifts the burden from future rate payers to existing ones. The ratemaking principle is that whichever "generation" of rate payers receives the benefit of a new plant should be the same generation who pays for it. Any orderly transition of the industry must avoid economic policies that involve such intergenerational cost shifting. If customer prices are not allowed to increase to cover the arbitrary cost increase, then the impact also involves plant owners making an additional cash investment to cover the additional funding contribution being proposed. Accelerated decommissioning funding or collection is not necessary where plant owners already are obligated to fully fund decommissioning costs over the licensed life of plants.

- C.7. How to remedy low estimates for decommissioning?

We support the NEI position that, with technological improvements, the current estimates will probably decrease rather than be inadequate. Standard decommissioning estimates will allow the NRC to compare differences between facilities to gain assurance than no one is overly optimistic. Palo Verde is one of the younger plants and we firmly believe that the lessons learned by the owners of facilities that precede us in decommissioning will provide opportunities for substantial cost savings.

- C.8. Would it be feasible for the nuclear industry to develop a captive insurance pool to pay for decommissioning funding shortfalls that result from premature decommissioning?

We believe that insurance is typically for "unknowns", not planned activities such as decommissioning. With the creation of an insurance pool, a utility that is considering the economies of premature closure of a nuclear facility would have a distorted perspective if the liability of decommissioning no longer existed (because of this insurance). This may make closure and premature decommissioning more probable. An insurance pool could also lead some utilities that are considering premature closure to under estimate their decommissioning expense to

minimize their premium payments. Moreover, Palo Verde owners are already funding at the highest level in the industry, and there is no justification to further increase plant owners costs to fund a nationalized pool.

- C.9. If PUC or FERC oversight is either substantially limited or eliminated, are there other options for financial assurance of decommissioning that the NRC should consider?

Annual decommissioning costs are a small percentage of the operating costs associated with the nuclear plants. The NRC will have to approve any transfer of nuclear assets and licenses and could at that time evaluate whether there will be adequate revenue streams for all operating costs, including decommissioning.

D Decommissioning Funding Assurance and a Federal Government Licensee

This issue is not applicable to Palo Verde, so we take no position on it.

E Status of Decommissioning Trust Funds During Safe Storage Period

- E.1 What real rate of return should the NRC allow licensees to use as credit for earnings on the decommissioning trust funds during the extended safe storage period?

All decommissioning funds are unique. They are subject to different state tax rates and different state regulatory requirements. We support an approach that allows licensees to be able to use rates of return that they can justify and support under THEIR unique circumstances. The NRC will be able to review annually whether the assumptions seem reasonable.

- E.2 What time period should the NRC allow licensees to use in estimating the credit for earnings on the decommissioning trust funds during the extended safe storage period?

Same comment as for E1.

F Reporting on the Status of Decommissioning Funds

- F.1 What information should the NRC require to be included in the periodic reporting requirements?

We support the NEI proposal to provide the following information:

- a) Current decommissioning estimate
- b) Present value funding requirement
- c) Percent funded to date
- d) Fund performance.

Reports exist today regarding this information and they should be sufficient to meet the NRC's needs.

- F.2 How often should the NRC require licensees to report on the status of decommissioning funding?

We would recommend no more than yearly or when significant changes in the cost estimate or funding occur.

### Additional Comments

APS believes the issue of plant life extension is an important factor for the NRC to consider when determining the funding required for decommissioning. The NRC should examine the positive impact life extension will have on the funding of decommissioning which should provide a positive economic benefit for the utilities.

An issue that should be addressed through federal legislation concerns the status of termination funding balances in the event of a bankruptcy. Relatively minor changes to the Bankruptcy Code could ensure that decommissioning fund balances, regardless of form in which they are held, are exempt property and not subject to general claims of creditors. In addition, decommissioning obligations that accrue during the pendency of a bankruptcy should be granted administrative priority over other claims of the estate.