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 50-529 50-530
	)	
(Palo Verde Nuclear Generating Station, Units 1, 2 and 3)	)	

APPLICANTS' RESPONSE TO
CARDAMONE CONTENTION
RE ALTERNATIVE REACTOR TYPES

Pursuant to this Board's Second Prehearing Conference Order, Intervenor Cardamone has filed an additional contention entitled Alternative Reactor Types. Applicants respectfully submit, for the reasons set forth below, that the contention should be excluded from these proceedings.

The Cardamone proposed contention boils down to the allegation that the chances of a class nine accident occurring vary with alternative reactor types and therefore a cost-benefit analysis of various reactor types is necessary to adequately protect the health and safety, and the environment. Such an analysis is not required under either NEPA nor the Commission's rules and regulations.

As stated by the D. C. Circuit Court of Appeals, the "rule of reason" must be applied to NEPA statements. NRDC v. Morton, 458 F.2d 827 (D.C. Cir. 1972). Intervenor would have

Applicants, in their environmental report, and staff, in the Draft and Final Environmental Impact Statements, analyze the costs, and environmental and safety effects of every conceivable type of nuclear reactor as it would apply to the prospective site. Such analyses, if at all humanly possible, would cost more than the building of a nuclear facility. Using the "rule of reason," the role of NEPA in this instance is obvious. The test must be whether the reactor type selected by Applicants is, from a cost-benefit analysis, acceptable. To decide otherwise would allow the Nuclear Regulatory Commission and its Boards to engage in the practice of dictating which manufacturers an applicant must deal with, etc. Nothing in the Atomic Energy Act of 1954, the Commission's regulations nor case law even suggest that such a course is warranted or desirable.

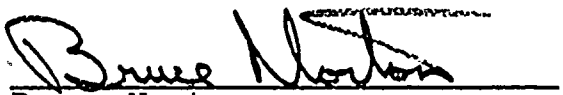
From a safety standpoint Intervenor Cardamone is once again attempting to interject the probability and consequence of class nine accidents into these proceedings. As this Board has previously ruled in its Second Prehearing Conference Order that consideration of class nine accidents is outside the scope of this licensing proceeding, Applicant simply cites the following authorities in accord with that ruling. Carolina Environmental Study Group v. U.S., Appeal No. 73-1869, ___ F.2d. ___ (D.C. Cir. 1975); Long Island Lighting Company (Shoreham Nuclear Power Station), ALAB-156, RAI-73-10, 831, 834-36 (October 26, 1973).

Further, however, even if one construes Intervenor's contention as simply alleging that Applicant's ER fails to adequately assess the risk of any accident, vis-a-vis alternative reactor types, such a contention is outside the scope of these proceedings. Again, the Atomic Energy Act of 1954, and the subsequent regulations of the Commission, require no more than a demonstration that the reactor type selected meets the design and safety criteria established by the Commission. Intervenor cites no authority to the contrary for the obvious reason that there is none.

For the reasons set forth above, Applicant requests that the Board exclude the proposed "Alternative Reactor Types" contention.

Respectfully submitted,

SNELL & WILMER

By 

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Dated at Phoenix, Arizona
this 4th day of June, 1975.

CERTIFICATE OF SERVICE

It is hereby certified that true and correct copies of the foregoing Applicants' Response to Cardamone Contention Re Alternative Reactor Types have been placed in the United States Mails, postage prepaid, this 5th day of June, 1975, to the following:

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