

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NATIONAL REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
ARIZONA PUBLIC SERVICE)
COMPANY, et al.)
Palo Verde Nuclear)
Generating Station,)
Units 4 & 5)
_____)

Docket Nos. STN 50-592
STN 50-593

REPLY OF THE PEOPLE
OF THE STATE OF CALIFORNIA AND
THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
TO THE JOINT APPLICANTS' RESPONSE TO
THE PETITION FOR LEAVE TO INTERVENE
OF THE ENVIRONMENTAL DEFENSE FUND

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May 24, 1979

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III

Joint Applicants cited Sierra Club v. Morton 405 U.S. 727 (1972) as a primary basis for their contention that EDF has no "standing" in the proceeding and its participation as requested be denied. CPUC believes that the legal basis for determining "standing to sue" in equity in a Federal court is not the same criterion the Board should use to determine whether EDF should be allowed to participate as an intervenor in an Atomic Safety and Licensing Board administrative licensing proceeding for participation in the limited area it seeks intervention. Moreover, there appears to be a question as to whether the salient findings of Morton are really pertinent to the instant proceeding.

It appears EDF does have a significant membership who will be affected by the proposed nuclear generating unit and attendant transmission lines in Arizona and California. Attempting to dissect the precise interest of each of their members who will be affected in some way by the "project" would appear fruitless, hypertechnical and unnecessary. The fact exists that EDF does have a legitimate basis to be a party and contribute to the record in this proceeding.

Joint Applicants claim that certain EDF members in Arizona named as those who will be affected by the project have not specifically indicated their "wishes" to have their interests represented by EDF. This assertion is not sound. Obviously, a member of the Bar would need to take whatever steps necessary with his client before representing or making assertions on their behalf. An attorney of law likewise should not have to spell out the steps taken to acquire the attorney-client relationship. The authorization to legally represent

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the interests of the EDF membership in this matter may be presumed from the assertions made by a member of the Bar of a sovereign state.

IV

Joint Applicants' untimely Response also asserts that the Petition of EDF is untimely. EDF asserts it became aware of its essential interests in this matter as a result of an inadequate and inappropriate discussion in the DEIS regarding the issues of conservation and alternative energy sources. The Board has discretion to allow intervention based upon a concern discerned from the DEIS. CPUC believes that although EDF could "comment" appropriately on the DEIS during the comment stage, its proposed involvement entailing a "systematic comparison between the utilities plans on the one hand, and alternative energy supply sources ... currently available to the same utility ... on the other", may be a very important issue in this case which EDF believes it can contribute to helping the ASLB resolve.

The CPUC verifies EDF's assertion (Petition, p.3) that the California Commission did find very beneficial EDF's analysis which was presented and tested on an evidentiary record in a recent case involving another utility. But only if EDF is permitted to present evidence subjected to cross examination and rebuttal evidence on a formal record will it contribute to helping the ASLB resolve an important issue in this case. Joint Applicants should not be apprehensive about EDF's contention if they believe it has little weight or their own evidence will refute it. Joint Applicants may believe that to limit EDF's participation in these important areas to "commenting" only on the EIS may enable Joint Applicants to side step the issue at

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hearing. EDF would appear to have a major contribution to make in this proceeding and should be allowed to have their contentions tested.

V

Joint Applicants also assert (Response, p. 14) that the CPUC will be considering "need for new capacity and availability of alternatives" and this fact somehow should be considered by the ASLB as the basis for determining that intervention be disallowed. In response to this allegation, CPUC states that EDF has not indicated to the PUC whether or to what extent it will be involved in the future California proceeding. Whether the CPUC will be considering these issues in its proceedings is of no moment and, nevertheless, would not enable the Board to consider such evidence in this licensing proceeding. Evidence that may be offered in the CPUC proceedings will not enable the NRC to review and consider EDF's "model" in this Federal proceeding without that evidence being introduced in this record. Therefore, it will be necessary for EDF to make and offer evidence substantiating their contentions in this NRC proceeding.

Joint Applicants' statements (p. 14) that the California Energy Commission and the CPUC "are concerned with alternative energy sources and conservation measures" which should somehow suggest that "being concerned" will necessarily mean that the interested California agencies will be raising the identical issues and offering identical proof that may be proposed by EDF is improper and offers no basis for denial. EDF's scenario on the supply and demand issue, as well as its energy conservation contentions, may well be different than California's proposals or "statement of issues" in these areas. The Board should not, in effect, require or expect the "interested states" to make the same contentions and offer the same proof on

issues which a private "environmental" entity wishes to prove. This interested state representative will not purport to "adequately represent" EDF's contention in its "statement of issues" and evidence offered. EDF and the CPUC do not have "common interests" to be represented by a spokesman under 2.714(e)(2).

CONCLUSION

Based on the foregoing the CPUC believes the untimely Response of the Joint Applicants does not significantly present a basis for the Board to deny the Petition of EDF for Leave to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply of the People of the State of California and the Public Utilities Commission of the State of California to the Joint Applicants' Response to the Petition for Leave to Intervene of the Environmental Defense Fund have been mailed, all postage prepaid this 24th day of May, 1979, to the following:

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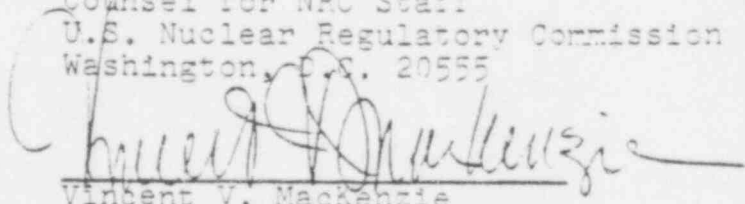
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