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May 23, 1983

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

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

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

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

Dear Administrative Judges:

On May 6, 1983, West Valley Agricultural Protection Council, Inc. (West Valley) filed a "Supplemental Motion" to buttress its arguments respecting the issues raised in its motion, filed February 2, 1983, as to which the Board has not made a decision, spec., whether or not the NRC Staff's Final Environmental Statement - Operations Stage (FES-OS) meets the requirements of the National Environmental Policy Act (NEPA), a procedural statute; and, if not, whether or not the issuance of a supplemental environmental statement by the NRC Staff must be issued before the reopened hearings on Palo Verde Units 2 and 3 may proceed.

Responses to the original motion were filed by the Joint Applicants on February 14, 1983, and by the NRC Staff on February 17, 1983. Additionally, the issues were argued orally and at length at the pre-hearing conference held on February 24, 1983.

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West Valley's attempt to reargue its case at this late date is impermissible under the established rules of practice, 10 CFR §2.730(c), which govern proceedings before the Board. The label, "Supplemental Motion," which West Valley has given its filing is nothing more than an artifice which does not alter the character of the filing nor provide an avenue to circumvent the Commission's regulations.

The Joint Applicants' position on the outstanding issues remains unchanged:

1. Compliance with NEPA requirements is not determinable solely by reference to the NRC Staff's environmental statement, but must include consideration of any modifications thereof made by the ASLB, the Appeal Board or the Commission and circulated pursuant to 10 CFR §51.52(b)(3).
2. At the construction permit stage, the procedural requirements of NEPA and 10 CFR Part 51 were fully met through:
  - (a) the publication by the NRC Staff of its draft environmental statement<sup>1/</sup> and the solicitation of comments from federal and state agencies and the public;
  - (b) the consideration by the NRC Staff of comments received and publication by the NRC Staff of its final environmental statement<sup>2/</sup>;
  - (c) the review of the NRC Staff's final environmental statement by the ASLB; and
  - (d) the modification of such statement by the ASLB's initial decision pursuant to 10 CFR 51.52(b)(3)<sup>3/</sup>.

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1/ NUREG-75/022.

2/ NUREG-75/078.

3/ 3 NRC 662.

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3. The ASLB's Initial Decision disposing of concerns of potential environmental effects from cooling tower drift and alternative cooling facilities<sup>4/</sup> is not subject to collateral attack in this proceeding.
4. The draft and final environmental statements of NRC Staff relating to the operation of Palo Verde<sup>5/</sup> fully meet the requirements of 10 CFR Part 51 (including specifically 10 CFR §51.24(e)) and provide full discussion of the NRC Staff's independent conclusions respecting potential impacts from cooling tower drift and the bases therefore.
5. Upon the conclusion of the reopened hearing and the issuance by this Board of its initial decision either affirming or modifying the NRC Staff's final environmental statement as provided by 10 CFR §51.52(b)(3), the procedural requirements of NEPA will have been fully met and the due process rights to a hearing for those claiming that their agricultural activities may be impaired will have been satisfied.

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<sup>4/</sup> Supra, paragraph 85 ("The Board finds that operation of the Palo Verde cooling system will have no significant effects on the public health and safety, and the potential environmental effects will be acceptable."); paragraph 144 ("Monitoring will provide the data base necessary for determination of the ecological effects of cooling tower drift on the environment surrounding the facility."); paragraph 150 ("The Board suggests that care be taken to assure that appropriate analysis and interpretation of the monitoring data . . . be carried out at periodic intervals during construction and operation of Palo Verde. The review procedures of the Commission should be frequently invoked to assure that construction and operating procedures are appropriately modified, if necessary, to minimize environmental degradation."); see also paragraphs 81, 114, 129 and 159.

<sup>5/</sup> NUREG-0841 (October 1981) and NUREG-0841 (February 1982).

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6. The issues raised by West Valley respecting the adequacy of the NRC Staff's environmental statements do nothing more than challenge the factual bases upon which the Staff's environmental conclusions are based.<sup>6/</sup> Thus, West Valley has challenged:
  - (a) The source terms to be used in predicting any environmental impacts (i.e., salt content of the cooling tower drift, the mass of the drift, the drift droplet size distribution, and drift sources other than the cooling towers);
  - (b) The validity of the predictions respecting the aerial depositions of salt from the drift;
  - (c) The number of acres of agricultural land which might be impacted by salt depositions.
  - (d) The evidence of the impacts of foliar salt depositions on agricultural productivity; and
  - (e) The adequacy of the salt deposition monitoring program.
7. The resolution of the purely factual questions raised by West Valley will not be advanced by issuance of supplemental environmental statements.
8. The adjudicatory process before this Board clearly provides the proper and time-tested means for the prompt resolution of questions of fact.

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<sup>6/</sup> In large measure, West Valley's challenges have been directed at the environmental reports prepared by the Joint Applicants; this is particularly true of the allegations in the "Supplemental Motion". Attacks of this nature are irrelevant under NEPA where the environmental assessment at issue is one made by a federal agency. This is especially true with respect to Palo Verde where it is clear that the NRC Staff's assessment was independent and did not rely solely upon the Applicants' report. For example, see the NRC Staff's Final Environmental Statement-Construction Permit Stage section where the staff compared its independent estimate of drift droplet size distribution with that of the applicant and concluded "[t]he staff's calculations suggest that the maximum depositions will be somewhat lower than those calculated by the applicant" (NUREG-75/078, §3.6.2, page 3-21).

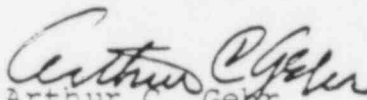
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9. Upon resolution of the factual questions raised by West Valley, the Board can, as it deems appropriate:
- (a) Through its Initial Decision modify with the NRC Staff's environmental statement as may be warranted by the record; and
  - (b) Impose such license conditions or prescribe such environmental specifications as it deems necessary to assure that the operation of Palo Verde will not result in unacceptable impacts on agricultural activities conducted in the vicinity.

In the event the Board determines that consideration should be given to West Valley's "Supplemental Motion" in spite of the strictures of 10 CFR §2.730(c), Joint Applicants request the opportunity to respond to such motion and argue the relevancy and interpretation of matters discussed therein.

Respectfully submitted,

  
Arthur C. Gehr  
SNELL & WILMER

Attorneys for Joint Applicants

ACG:jaw

cc: Atomic Safety and Licensing  
Board Panel  
Docketing and Service Section  
Atomic Safety and Licensing  
Appeal Board  
Kenneth Berlin  
Lee Scott Dewey