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UNITED STATES OF AMERICA 83 MAR 23 P1:58
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

INTERVENOR PATRICIA LEE HOURIHAN'S RESPONSE
TO JOINT APPLICANTS' AND STAFF'S MOTION TO
STRIKE INTERVENOR'S MOTION FOR LEAVE TO FILE
RESPONSE.

Both Joint Applicants and the Nuclear Regulatory Commission ("NRC" or "Commission") oppose intervenor Patricia Lee Hourihan's participation in the licensing proceedings on the salt drift contention raised by the West Valley Agricultural Protection Council, Inc. ("West Valley.") Their basic arguments are:

(1) Intervenor Patricia Lee Hourihan has no discernible interest in the issue of environmental damage caused by salt drift from Palo Verde; and

(2) Dr. Turner's affidavit and other evidence concerning Joint Applicant suppression of material information on the harmful environmental effects of Palo Verde are not relevant to the issue before this Licensing Board.

The NRC Staff has misconstrued the relevant legal standard fashioned in the seminal Northern States decision which sets out the right of intervenors in operating license proceedings to partici-

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pate in issues which they themselves did not raise. See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 964-71 (1974), reconsideration denied, ALAB-252, 8 AEC 1175, 1178-81 (1975), aff'd., CLI-75-1, 1 NRC 1 (1975).

Further, both misunderstand the significance of Dr. Turner's affidavit. Dr. Turner describes in his affidavit how material information has been suppressed about the damaging environmental effects of the evaporation ponds. He casts doubt on the integrity of Joint Applicants, and the accuracy and thoroughness of both applicants' Environmental Report (ER-OL) and the Staff's final Environmental Impact Statement (FES). Dr. Turner's information is relevant to the question of the integrity and character of Joint Applicants, an issue which of necessity pervades all other issues heard by this Licensing Board.

Applicants in their response question Dr. Turner's competence and veracity. Because of the serious and misleading nature of the information contained in Dr. Morton Goldman and Mr. Bingham's affidavits, Ms. Hourihan will, with leave, submit a second affidavit from Dr. Turner within the next two weeks. Intervenor believes the information Dr. Turner has provided this Licensing Board is critical to its evaluation of Joint Applicants' evidence and the credibility of Joint Applicants' witnesses. Moreover, intervenor believes it places in question the accuracy of both the applicants' submissions to the NRC and the adequacy of the Staff's EIS.

I. MS. HOURIHAN HAS A DISCERNIBLE INTEREST IN RESOLUTION OF THE ENVIRONMENTAL ISSUE RAISED BY WEST VALLEY SUCH THAT SHE MUST BE ALLOWED TO PARTICIPATE IN THESE PROCEEDINGS.

The Appeals Board in Northern States Power Co., supra, 8 AEC at 868 , held that an intervenor may participate in issues which he or she did not raise so long as the "intervenor has a discernible interest in the resolution of a particular matter." The Appeals Board found that an intervenor "should be allowed the opportunity to cross-examine witnesses' testimony related to any contention." Ibid. The Appeals Board also made clear that the Licensing Board had wide powers to ensure that such cross-examination did not lead to repetitive, argumentative or cumulative cross-examination; Id.; 10 C.F.R. 2.757(c).

Moreover, the Appeals Board in Northern States found that intervenors' cross-examination on issues which they did not raise could aid a reasoned Board decision which is reached only upon "development of a full record on all disputed questions."¹

The Appeals Board stated that the contentions' requirement was designed to enable parties and the Board to discern at the outset of the proceedings the issue in contest. Cross-examination of a witness

¹ The Appeals Board noted that a party may be able to cross-examine effectively on contested issues regardless of whether he or she raised the issue. It noted, further, that there may be many reasons why an intervenor did not himself choose to raise a particular claim even though he could contribute to development of the issues before the Board.

Moreover, Ms. Hourihan's lack of resources has prevented her from appealing the Initial Decision of this Licensing Board on the "water issue." To block her participation in later licensing hearings on different issues on the basis that she did not appeal that decision, would raise serious due process questions.

called to testify on a matter already in controversy in no way defeats that purpose of clear and definite definition of the issues and scope of the hearings. Therefore, it is both unfair and unwieldly, to require each intervenor who wishes to participate to file a new intervention petition. Id. at 867.

The Northern States holding has been cited frequently for the principle that licensing boards have wide discretion to shape intervenors' participation on issues not their own to ensure proceedings are orderly and expeditious. Yet these decisions have affirmed the Northern States holding that Boards do not have the right to limit intervenors' participation to the specific contentions they have raised.

Intervenor Hourihan, as a longstanding resident of the Phoenix area, has an interest in ensuring that if Palo Verde operates, it does not cause unacceptable or unnecessary environmental damage. West Valley has raised the contention that salt drift from the plants will cause serious, perhaps fatal damage to their crops. While West Valley has a strong economic interest in this issue, Mr. Hourihan certainly has an interest that Palo Verde be operated without causing undue environmental damage to the environment or to agriculture as a mainstay of the Arizona economy. Thus, she has the necessary discernible interest in the resolution of the salt drift issue.

The cases cited by Joint Applicants are simply irrelevant to this discussion. In Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 1 and 2), 1 NRC 451 LBP-75-22 (1975), the Licensing Board considered the right of an intervenor to participate in a second, distinct hearing on modification of an opera-

ting license which had some time before been granted. Here, in contrast, the Licensing Board has re-opened the record for Palo Verde Units 2 and 3 in order to hear evidence on the salt drift contention presented by West Valley. The licensing proceedings currently reopened are the same licensing hearings in which Ms. Hourihan presented her contention on the lack of adequate water for the operation of Palo Verde.

In Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC _____ (1982), the Appeal Board had before it the question of an intervenor's request to reopen the hearing record to present a new contention not previously raised. Ms. Hourihan is not requesting a reopening of the record so that she may raise a new contention on salt drift. Instead she merely wishes to participate through cross-examination of witnesses in the ongoing proceedings on the West Valley contention. Thus the Fermi case is simply irrelevant.

II. INFORMATION SUBMITTED BY MS. HOURIHAN ON JOINT APPLICANTS' SUPPRESSION OF MATERIAL INFORMATION ABOUT THE HARMFUL ENVIRONMENTAL EFFECTS OF PALO VERDE RAISES QUESTIONS ABOUT THE ACCURACY OF JOINT APPLICANTS' ENVIRONMENTAL REPORT AND THE NRC STAFF'S FINAL ENVIRONMENTAL IMPACT STATEMENT.

Both Joint Applicants and the NRC Staff appear to misconstrue the significance of Dr. Turner's affidavit. Dr. Turner explained in his affidavit that the NUS Corporation, on contract to the Arizona Public Service Company, conducted an environmental study on the environmental effects of the operation of Palo Verde. During that study, NUS suppressed material information about the harm the plants could cause. If Joint Applicants deliberately suppressed significant

information on the environmental harm caused by the Palo Verde plants, this Licensing Board would have no choice but to question all Joint Applicants' submissions on environmental harm.

The Commission and the courts have consistently ruled that all licensees of the NRC must be totally candid and forthright with the Commission in all submissions. Only if licensees fully disclose all relevant information can the Commission carry out its paramount duty to protect the public health and safety. Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), 4 NRC 480, 491-92 n.11 (1976), aff'd., Virginia Electric Power Co. v. Nuclear Regulatory Commission, 571 F.2d 1289 (4th Cir. 1978); Matter of Hamlin Testing Laboratories, Inc., 2 AEC 423, 428 (1964). The United States Court of Appeals for the District of Columbia Circuit has upheld the Commission's stringent interpretation of the Atomic Energy Act's requirement that licensees be completely honest. 42 U.S.C. 2201, et seq. (1973); Virginia Electric and Power Company v. Nuclear Regulatory Commission, supra, 571 F.2d at 1291.

If Joint Applicants were not totally candid and thorough in their submissions to the Commission on contamination of the aquifer from the evaporation ponds, then one doubts the accuracy of the entire Environmental Report, including the section on salt drift.

Joint Applicants and NRC Staff protest that it is irrelevant if information has been suppressed. This is incomprehensible in the regulatory framework set out by the Atomic Energy Act and the Commission decisions.

As stated above, because of the misleading statements in Dr. Goldman and Mr. Bingham's affidavits, Ms. Hourihan will submit a

second affidavit from Dr. Turner to refute their statements.

III. CONCLUSION

For the foregoing reasons, Intervenor Patricia Lee Hourihan requests that this court deny Joint Applicants' and NRC Staff's motions to strike her pleading and grant her Motion for Leave to File a Response to West Valley's Motion for Ruling on Contentions, for Declaration that NEPA Analysis is Inadequate and for Continuance.²

Respectfully submitted,



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DATED: March 20, 1983

² Intervenor did not address Joint Applicants' argument that her pleading must be stricken because it was filed inexorably late. As explained in intervenor's motion for leave to file, she did not wish to file a pleading until her counsel had the opportunity to consult personally with Dr. Turner in California. It is always preferable to request an extension within the time allowed. However, Ms. Hourihan did not wish to burden this court with a decision on her late filing unless she was certain that she would make such a filing. In addition, until Ms. Hourihan's counsel had the opportunity to consult with Dr. Turner, it was impossible to determine the scope and effect of the information he disclosed.

Intervenor also notes that Dr. Turner contacted Ms. Hourihan on his own initiative because he believed it was important for these proceedings. Under those circumstances Ms. Hourihan was unable to calculate and control the timing of Dr. Turner's disclosure as would be possible if she had hired him as an expert witness.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Intervenor Patricia Lee Hourihan's Response to Joint Applicants' and Staff's Motion to Strike Intervenor's Motion for Leave to File Response have been served upon the following persons by deposit in the United States mail, first class, postage prepaid, this 23rd day of March, 1983.

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*Served by deposit in the NRC Internal Mails.