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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

OFFICE OF SECRETARY  
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In the Matter of	)	Nos. 50-528-OLA-2, 50-529-OLA-2
	)	and 50-530-OLA-2
ARIZONA PUBLIC SERVICE	)	
COMPANY, et al.	)	(Allowable Setpoint Tolerance)
(Palo Verde Nuclear	)	
Generating Station,	)	ASLBP No. 91-633-05-OLA-2
Units 1, 2 and 3)	)	

LICENSEES' RESPONSE TO  
SUPPLEMENTAL PETITION OF MITCHELL PETITIONERS

In accordance with this Licensing Board's Memorandum and Order of February 19, 1991 ("Memorandum and Order"),<sup>1/</sup> Arizona Public Service Company, et al. ("APS" or "Licensees") file this response to the supplemental petition for leave to intervene and request for hearing submitted in this proceeding by Allan L. Mitchell and Linda E. Mitchell (the "Mitchell Petitioners"). For the reasons set forth below, the Petition, as supplemented, should be denied. A separate response is being filed regarding the amended and supplemented petition filed by Myron L. Scott, et al.

1/ Arizona Public Service Co., et al. (Palo Verde Nuclear Station, Units Nos. 1, 2 and 3), LBP-91-4, slip op. (Feb. 19, 1991). All page references to the Memorandum and Order are to the slip opinion.

### INTRODUCTION

In the Memorandum and Order, this Board ruled upon the petition for leave to intervene and request for hearing filed by the Mitchell Petitioners. The Board determined that the Mitchell Petitioners had "established their standing by virtue of their residence within 5 miles of the station" and Mrs. Mitchell's employment "as an onsite worker at the station."<sup>2/</sup>

The initial petition did not assert any specific contentions. However, having rejected the arguments of both the Licensees and the NRC Staff that the petition had failed to meet the "aspect" requirement contained in 10 CFR § 2.714(a)(2)<sup>3/</sup> and, in light of the provision contained in 10 CFR § 2.714(b)(1) authorizing the submittal of contentions for a limited period of time subsequent to the initial filing of petitions to intervene, the Board authorized the Mitchell Petitioners to file a supplemental petition by March 11, 1991, "which include[s] a list of contentions which petitioner seeks to have litigated in a hearing."<sup>4/</sup>

As authorized by the Board, a facsimile version of the "Supplemental Petition of Mitchell Petitioners for Leave to

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2/ Id. at 9.

3/ Id. at 12-13.

4/ Id. at 16.

Intervene" ("Mitchell Supplemental Petition") was served on "the Board and other parties" on March 11, 1991.<sup>5/</sup>

In the remainder of this response, we (1) describe the requested operating license amendment under consideration; (2) discuss the legal principles that control admission of contentions in an amendment proceeding and (3) analyze the contentions contained in the Mitchell Supplemental Petition as they relate to the requested amendment and demonstrate that none are admissible in this operating license amendment proceeding. Consequently, the request for hearing and petition to intervene should be denied.

#### I. THE REQUESTED AMENDMENT

On November 13, 1990, APS applied for amendments to the operating licenses for each of the three Palo Verde Nuclear Generating Station (PVNGS) units that would:

1. Reduce the minimum required auxiliary feedwater (AFW) flow from 750 gpm to 650 gpm;
2. Increase the allowable setpoint tolerance for the Pressurizer Safety Valves (PSV) from 2500 psia  $\pm$  1% to + 3%, - 1%;

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5/ Id. at 17.

3. Increase the allowable setpoint tolerance for the Main Steam Safety Valves<sup>6/</sup> (MSSV) from 1250 psig, 1290 psig, and 1315 psig  $\pm 1\%$  to the same settings  $\pm 3\%$ ; and
4. Reduce the response time for the High Pressurizer Pressure Reactor Trip (HPPT) from 1.15 seconds to 0.5 seconds.<sup>7/</sup>

Letter to NRC from W. F. Conway (APS) dated Nov. 13, 1990, Attachment 1 at 3-5 ("Application").

The Application states that APS evaluated the effect of the proposed changes on the Updated Final Safety Analysis Report (UFSAR) Chapter 15 safety analyses, the relevant design basis accidents in UFSAR Chapter 6, and the natural circulation cooling for PVNGS and concluded that the proposed license amendment fully preserves the results of the safety analyses. *Id.* (Transmittal Letter, Application at 2-3). The Application describes detailed safety evaluations for those event scenarios that could be adversely impacted by the proposed amendment. Two of these evaluations are pertinent to the contentions proposed by Petitioners -- Loss of Condenser Vacuum (LOCV) and Steam Generator Tube Rupture (SGTR).

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- 6/ The MSSV and PSV safety valves are mechanically operated and calibrated so that they will fully open or completely close at a "nominal" pressure. The actual pressure at which a particular valve will activate in any given instance will vary from the nominal actuation pressure (or "setpoint"). The amount by which the activation of these valves may vary is known as the setpoint tolerance and is the primary subject of this amendment. UFSAR § 5.1.4, ¶ O.
  - 7/ The HPPT response time is the period of time after high pressurizer pressure is sensed by plant equipment until a control rod insertion (trip) signal is generated to shut down the reactor (i.e., the reactor is tripped). Technical Specification 1.27.

A. Postulated Loss of Condenser Vacuum Event Scenario

In a Pressurized Water Reactor (PWR) such as those at PVNGS, heat is normally removed from the primary system (Reactor Coolant System) through the steam generators. The steam generators are large heat exchangers in which heat from the high pressure and temperature reactor coolant contained inside the steam generator tubes, is transferred through the tube walls to the lower pressure and temperature water on the "secondary" side of those tubes. Steam produced from heating the secondary side water passes through the main steam lines, into the main turbine and is then drawn through the condensers, cooling the steam into a liquid. Maintenance of a vacuum in the condensers improves thermodynamic efficiency and prevents over-pressurization of the condenser and turbine shell. UFSAR § 10.4.1.2.

In accordance with Standard Review Plan (NUREG-75/087) §§ 15.2.1-5, an applicant is required to analyze the potential consequences if condenser vacuum is lost and the flow of steam from the steam generators to the condensers is stopped. As described in the UFSAR, loss of condenser vacuum would result in a turbine trip and a main feedwater pump trip and consequent increase in the pressures and temperatures in both the primary and secondary systems. See UFSAR § 15.2.3. The Main Steam Safety Valves (MSSV) are relief valves designed to open automatically when the pressure in the secondary system reaches a preset level to prevent over-pressurization of the secondary system. To evaluate the proposed amendment, APS assumed for its



analysis that all 20 of the MSSVs open at three percent above their nominal pressure settings (for the analysis in the UFSAR the MSSVs were assumed to open at one percent above the nominal settings). Application at 5, 21; UFSAR § 15.2.3.2, Table 15.2.3-1.

The increase of reactor coolant system pressure would also result in an increase in the pressure in the pressurizer, and cause a High Pressurizer Pressure Trip (HPPT). Id. The analysis calculates the time until the reactor is tripped assuming the HPPT response time of 0.5 seconds (the UFSAR analysis assumes 1.15 seconds). Application at 3, 21. The reactor trip reduces the rate of energy release by the reactor core. The analysis calculates the maximum temperatures and pressures in both the primary and secondary systems, and finds that reactor pressure continues to increase after the reactor trip. UFSAR § 15.2.3.2, Table 15.2.3-1. When the reactor pressure reaches the setpoint of the Pressurizer Safety Valves (PSVs), those valves open. Id. Again, the PSVs are modeled as all four opening at three percent above their nominal pressure setpoints, rather than the one percent assumed in the UFSAR analysis. Id.; Application at 5, 21. The setpoints on the PSVs are designed to assure that the reactor trips before the PSVs open, and that the PSVs open soon enough to assure the maximum pressure in the reactor coolant system does not exceed its design limits. See UFSAR §§ 15.2.3.3.C, 15.2.3.4.

As shown in the Application, the evaluation of the Loss of Condenser Vacuum (LOCV) event scenario found that the plant response would continue to satisfy design limitations with the proposed reduced HPPT response time and the increased PSV and MSSV tolerances. Application at 21-23. The safety analysis supporting the proposed license amendment incorporates a number of conservative assumptions regarding the inoperability of control systems and was calculated in a manner similar to that described in Chapter 15 of the UFSAR and approved by the NRC. *Id.* at 11, 21-22; *see* UFSAR § 15.2.3.

**B. Postulated Steam Generator Tube Rupture**

The Application also describes an evaluation of the effects of the proposed amendment on the analyses of the effects of a postulated rupture of a tube in the steam generator. Application at 42-44. This analysis, performed in accordance with Standard Review Plan § 15.6.3, assumes that there is a complete rupture of a steam generator tube. UFSAR § 15.6.3.2. Such a rupture would result in the higher pressure primary reactor coolant flowing into the secondary system. A sensor would detect the decrease in the primary reactor system pressure and initiate a reactor trip signal. *Id.* at Table 15.6.3-6.

As described in the UFSAR at §§ 15.6.3.1 and 15.6.3.2, following the reactor and turbine trips the pressure in the secondary side would increase. The Main Steam Safety Valves (MSSV) would open automatically for a short period of time to relieve secondary system pressure. *See Id.* at § 15.6.3.2., Table

15.6.3-6. The Control Room reactor operators are conservatively postulated to open an Atmospheric Dump Valve to relieve the secondary pressure. Id. at § 15.6.3.2.2. The UFSAR conservatively analyzes the consequences of such an action, and assumes that the Atmospheric Dump Valve then becomes stuck open and remains open for the duration of the transient. Id. at § 15.6.3.2.1. The stuck open Atmospheric Dump Valve would constitute a path for release of radioactive gasses from the primary coolant that would flow through the rupture in the steam generator tube. The radiological impacts of the event would result from release of radioactive gasses through the temporarily open MSSVs and continuously open Atmospheric Dump Valve. See Id. at §§ 15.6.3.1.3.2, 15.6.3.2.2 and 15.6.3.2.3.

The gas that is most important to the dose calculation is iodine. The rate of iodine release depends on whether the ruptured steam generator tube is covered by water on the secondary side. Application at 43. If the iodine passes through secondary side water, much of it would be retained in the water through a process known as iodine "partitioning." Id. Thus, the amount of radioactive materials released during the event would depend on how long the tube remains uncovered. Id. The "uncovery" time is dependent on the rate at which the water that steams out of the steam generator through the open Atmospheric Dump Valve is replaced by the flow produced by the auxiliary feedwater pump. See Id. at 43-44.



The Application describes two evaluations performed to determine the effect of the proposed license amendment on the Steam Generator Tube Rupture analyses described in UFSAR Section 15.6.3.2. *Id.* at 42. One evaluation considered the changes in pressure setpoint for the MSSVs; the other evaluation considered the effects of the proposed reduction in required auxiliary feedwater flow. *Id.* The results of these two evaluations were summed and the total two hour dose at the exclusion area boundary was shown to be less than the 300 rem thyroid dose limit established by 10 CFR § 100.11(a). *Id.* at 44. Some of the conservative assumptions in the dose calculations are listed in the UFSAR in section 15.6.3.1.

## II. LEGAL PRINCIPLES REGARDING ADMISSIBILITY OF CONTENTIONS

The requirements for an admissible contention are specified in 10 CFR § 2.714(b). In summary a contention must consist of:

1. A specific statement of the issue of law or fact to be raised or controverted . . . . § 2.714(b)(2).
2. A brief explanation of the bases of the contention . . . . § 2.714(b)(2)(i).
3. A concise statement of the alleged facts or expert opinion which support the contention . . . . § 2.714(b)(2)(ii).
4. Sufficient information . . . . to show that a genuine dispute exists with the applicant on a material issue of law or fact . . . . § 2.714(b)(iii).

In its statement of considerations accompanying the most recent revisions to § 2.714 the Commission explained that:

The new rule provides that in ruling on the admissibility of a contention, the presiding officer shall not admit a contention to the proceeding if the intervenor fails to set forth the contention with reasonable specificity or establish a basis for the contention. In addition, the contention will be dismissed if the intervenor sets forth no facts or expert opinion on which it intends to rely to prove its contention, or if the contention fails to establish that a genuine dispute exists between the intervenor and the applicant (or, possibly, the NRC staff on a NEPA issue). 54 Fed. Reg. at 33171 (August 11, 1989).

As explained in the Notice of Opportunity for Hearing, "[c]ontentions shall be limited to matters within the scope of the amendment under consideration." 55 Fed. Reg. at 53221 (Dec. 27, 1990). "[T]he controlling principle [is] that an amendment proceeding is limited to a consideration of those issues 'directly arising from the proposed change.'" Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-14, 13 NRC 677, 697 (1981), aff'd ALAB-660, 14 NRC 987 (1981) (quoting Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-245, 8 AEC 873, 875 (1974)).

In order for a contention to be admitted, the Petitioners must show that their concerns arise as a specific result of the changes in the technical specifications to be authorized by the proposed amendment -- i.e. the contentions must bear a clear nexus to the proposed increase in allowable setpoint tolerances, or reductions in auxiliary feedwater flow or High Pressurizer Pressure Trip response time. Such a nexus exists only where the issue raised by the contention is a "direct consequence" or a

"necessary implication" of the proposed license amendment. Vermont Yankee, ALAB-245, 8 AEC at 875; ALAB-246, 8 AEC 933, 934, reconsideration denied, ALAB-250, 8 AEC 990 (1974); Turkey Point, LBP-81-14, 13 NRC at 697, aff'd, ALAB-660, 14 NRC 987; Consumers Power Co. (Big Rock Point Nuclear Plant), LBP-80-4, 11 NRC 117, 125 (1980).

A corollary to this principle is that contentions in a license amendment proceeding may not be used as a vehicle for reconsideration of issues which were previously considered by the NRC in earlier license proceedings, absent any impact of the amendment on the issues in question. See Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Unit 1) LBP-88-10A, 27 NRC 452, 466 (1988). As the licensing board stated in an amendment proceeding authorizing continued operation of a plant pending correction of certain design deficiencies:

We are not authorized to examine matters that were explored at the construction permit or operating license stages, nor can we expand the issues beyond those related to the design deficiencies that resulted in the notice of hearing which described the issues we are empowered to consider.

Portland General Electric Co. (Trojan Nuclear Plant), LBP-78-40, 8 NRC 717, 745 (1978) (footnote omitted), aff'd ALAB-534, 9 NRC 287 (1979).

Numerous other cases have also applied the principle that an amendment proceeding is not an appropriate forum for re-examining previous NRC determinations that are not affected by the amendment. See, e.g., Florida Power & Light Co. (Turkey Point

Nuclear Generating Plant, Units 3 and 4), LBP-85-36, 22 NRC 590, 598-99 (1985) (contention related to the effects of hurricanes and tornados on a spent fuel pool is inadmissible in a spent fuel pool expansion amendment proceeding because such effects were considered in the Safety Evaluation at the operating license stage); Big Rock Point, LBP-80-4, 11 NRC at 127 (contention related to licensee's financial ability to care for an expanded spent fuel pool is inadmissible in a spent fuel pool expansion amendment proceeding because the licensee's financial qualifications were considered in granting the construction permit and operating license); Portland General Electric Co. (Trojan Nuclear Plant), LBP-78-32, 8 NRC 413, 415-16 n.1 (1978) (contention related to ability in a spent fuel pool to withstand earthquakes is inadmissible in a spent fuel pool expansion amendment proceeding because the contention challenged the selection of the safe shutdown earthquake for the entire facility).

### III. NONE OF THE PROPOSED CONTENTIONS ARE ADMISSIBLE

Examination of each of the five contentions enumerated in the Mitchells' Petition reveals that none of them meet the requirements of Section 2.714 because they are not specific, do not identify a sufficient basis or supporting facts, or are not material to the proposed amendment.

#### Contention 1



Contention No. 1: The request to amend the setpoint tolerances for the Main Steam Safety Valves (MSSVs) and the Pressurizer Safety Valves (PSVs) would cause a safety limit violation in the event of a loss of condenser vacuum (LOCV). Setpoint drift in the increasing direction of the pressurizer safeties setpoint with a setting high in the band would exceed the safety limits.

The first basis for this contention stated by the Mitchell Petitioners is that "the margin of error between the safety limit of 2750 psia and the peak pressure of 2740.9 psia is only approximately 9.1 psia." Petition at 2. They argue that this margin could be exceeded if the setpoints drift "plus or minus 1%," in the event of a LOCV trip. <sup>8/</sup> Id. at 2-3. Their concern is that "exceeding the safety limits during a LOCV trip could result in a plant shutdown each time a safety limit violation occurs." Id. at 3.

The premise of the contention is in error; the application shows that the safety margin would be increased by the proposed amendment, not decreased. As shown in the UFSAR at Table 15.2.3-1 the current margin of safety is 8 psi (2750 psi-2742 psi). The Application shows that with the proposed amendment the margin would be 9.1 psi. The Petitioners present no basis for concluding that an increase in the margin of safety could increase the risk of exceeding applicable safety limits. Moreover, their Petition cites no documents, anticipated expert

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<sup>8/</sup> Although not clearly recognized in the Petition, the peak pressure of 2740.9 is based on the assumption of plus three percent drift of all four of the PSVs. Application at 6, 11, 21-25.



testimony or other evidence that might be introduced in support of this unique theory,<sup>2/</sup> and therefore does not comply with 10 CFR § 2.714(b)(2)(ii). Neither does it comply with the requirement of 10 CFR § 2.714(b)(2)(iii) to supply "references to the specific portions of the application . . . that the petitioner disputes and the supporting reasons for each dispute."

The second basis stated by the Mitchell Petitioners is that "[i]f the amendment is granted, APS would reduce the frequency of testing which would result in unacceptable setpoint drift." Petition at 3.<sup>10/</sup> Petitioners appear to be concerned that the testing frequencies will not provide adequate assurance that the PSVs and MSSVs will be maintained within the proposed revised tolerances.

This aspect of the contention is likewise inadequate. The proposed amendment does not seek to change the requirement for valve surveillance testing frequency; this is established by NRC regulation. The Operating License, by reference to the American Society of Mechanical Engineers (ASME) Code, specifies a methodology for determining valve testing frequencies required to

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2/ The Petition alleges that the amendment will result in "a plant shutdown each time a safety limit violation occurs." Petition at 3. There is no explanation of how such a shutdown would be an "injury in fact" to Petitioners.

10/ Petitioners' elaboration states that some "recent" valve tests have found drift in excess of minus 5%. They speculate that "setpoint drift" in the range of plus or minus 10% to 20% could occur, and that such drift is "unacceptably high given the safety limits." Petition at 3. They provide no support for this speculation and the data they cite contain no values within this range.

provide adequate assurance that the valves are within required tolerance. Technical Specification 4.0.5; 10 CFR § 50.55a(g)(4); ASME Code Section XI, Subsection IWV.<sup>11/</sup> The proposed amendment makes no change with respect to those requirements.

Petitioners' argument that valves could drift to 10 - 20 percent out of tolerance lacks any factual support or reference to any expert opinion. There is no reason to expect that valves could drift so far from their setpoints, and Petitioners position in this regard is entirely speculative.

The Mitchell Petitioners' concern may be that if the allowed tolerance is increased to  $\pm 3\%$ , the valves would be less likely to fail the surveillance tests, and therefore, utilizing the ASME/10 CFR 50.55a methodology sample sizes will be increased less frequently. (See footnote 11). However, that concern is not significant in this case. A sample will be tested at each refueling outage and if valves in the sample are outside the tolerance, additional testing will be done per code requirements. The Code test frequency requirements have been set to provide reasonable assurance that valves are within their required

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<sup>11/</sup> Subsection IWV requires surveillance testing of the PSV and MSSV setpoints to be done on a sample of the valves during each refueling outage, with samples selected such that each valve is tested at least once in five years. Thus, one third of the valves are tested each PVNGS refueling outage (18 month refueling cycle). If a valve fails to function properly during a regular test, additional valves in the system must be tested. If one of the additional valves fails to function properly, all such valves in the system must be tested. ASME Code Section XI, Subsection IWV 3500.

tolerances. The safety analysis described in the Application demonstrates that the tolerance range proposed ( $\pm 3\%$  for MSSVs and  $+3\%/-1\%$  for PSVs) is acceptable, the required methodology for assuring that the new tolerance is met should be the same as that applicable to the previous tolerance (i.e.,  $\pm 1\%$ ).

Furthermore, on closer analysis, it is clear that Petitioners' argument is aimed not at the change in acceptable tolerances but at the surveillance testing frequencies relied upon to assure that those tolerances are met. In essence this is an attack on 10 CFR § 50.55a(g)(4). This is prohibited by 10 CFR § 2.758. Florida Power & Light Co., (Turkey Point Nuclear Generating Plant, Units 3 and 4), LBP-90-16, 31 NRC 509, 534 (1990). See also Mississippi Power & Light Co. et al. (Grand Gulf Nuclear Station, Unit 1), LBP-84-19, 19 NRC 1076, 1079-81 (1984).

The third and fourth alleged bases for this contention are that "[t]here is no evidence that the current...setpoint tolerances have in fact adversely impacted the restart schedules" and that because the PSVs are packaged and shipped offsite, "no man-rem exposure to testing personnel results." Petition at 3-4.

These assertions raise no issue as to whether the amendment would comply with applicable NRC requirements. Moreover, neither argument has any factual support. The Application cites the potential for economic impact if the requirement to re-set an expanded valve sample to within the current  $\pm 1\%$  tolerance could not be met within the time allotted to a refueling outage; it

does not state that such a delay had been experienced. The Petition does not cite any basis for rejecting the possibility that such a delay might occur. With respect to the radiological dose due to testing, the PSV testing is done by a vendor, but plant personnel must remove and package the valves for shipment to the vendor. The Petition cites no rationale for ignoring the radiological doses to these plant personnel.

As a final basis the Petition states that "licensee has been cited by NRC Region V Staff for deficiencies in the Surveillance Test (ST) program procedures, for inadequate training of ST personnel, and for the assignment of unqualified personnel to perform tests on the MSSVs. See, Contention No. 3." Petition at 4.

This statement has no logical connection to the proposed amendment or the general contention. The proposed amendment would not alter any of the requirements for ST program procedures or for the training or qualification of ST personnel. Neither would the amendment introduce greater challenges to the skill of ST personnel or a greater dependency on the adequacy of their performance. Moreover, as shown in the discussion of proposed Contention 3, below, the Petition does not cite any valid basis for its assertions. ."

Contention 1 should not be admitted, since the alleged bases of Contention 1 are wholly inadequate, and Petitioners have failed to comply with the requirements of 10 CFR §§ 2.714(b)(2)(ii) and (iii) to identify the disputed portions of

the Application and the alleged facts and expert opinion which support the contention in sufficient detail to demonstrate that there is a genuine dispute on a material issue of law or fact.

#### Contention 2

Contention No. 2: During a Steam Generator Tube Rupture (SGTR) event the offsite radiological releases would exceed acceptable limits if the proposed changes in Technical Specifications for auxiliary feedwater flow (AFW), High Pressurizer Pressure Trip (HPPT) response time, PSVs and MSSVs are permitted.

The first basis for this proposed contention is that "The APS analysis is dependent upon the assumption that all steam generator tubes are in good condition (i.e., that there are no leaks or ruptures). Petitioners argue that APS has not justified such an assumption, and that a recent amendment to the Palo Verde Unit 1 operating license somehow demonstrates a deficiency in this regard. Neither statement has adequate foundation, and neither fulfills the requirements of 10 CFR §§ 2.714(b)(2)(ii) and (iii) to cite the specific portions of the Application that are disputed, and to identify specific sources or documents which might establish Petitioners' positions.

The Petition does not cite anything in the proposed amendment that would affect the condition of the steam generator tubes. Moreover, Petitioners cite no basis for the assertion that the analysis assumes the steam generator tubes are in good condition. To the contrary, the calculation, which is done in accordance with assumptions specified in the Standard Review Plan



(NUREG 75/087), utilizes conservative assumptions for reactor coolant activity and primary to secondary leakage. Obviously one assumption of the analysis is that a steam generator tube ruptures. With respect to the remaining steam generator tubes, as shown in the UFSAR at Section 15.6.3.1.3.2 (incorporated by reference in UFSAR Section 15.6.3.2 and the Application at 43), the analysis assumes the maximum primary system activity concentrations permitted by the Technical Specifications. See Technical Specification Section 3.4.7. It also assumes there is primary to secondary leakage of 1 gpm, the maximum permitted by Technical Specification 3.4.5.2.C. There is no assumption that the tubes are "all in good condition," and no attempt by the Petitioner to cite any support for this claim.

Moreover, the Petition's citation to Amendment 53 to the Unit 1 Operating License highlights another infirmity in the Petition. The Operating Licenses of the three units contain requirements for assuring the integrity of the steam generator tubes (see Technical Specification Section 3.4.4), and those requirements are not affected by the proposed amendments. Any questions Petitioners seek to raise about amendment 53 to the Unit 1 license should have been raised in that amendment proceeding, and are not within the scope of this proceeding. Turkey Point, LBP-85-36, 22 NRC at 598-599; Big Rock Point, LBP-80-4, 11 NRC at 127; Trojan, LBP-78-32, 8 NRC at 415-16 n.1.

The second basis for Contention 2 is a criticism that the analysis regarding tube recovery "in general is suspect." The

only "particulars" cited in support of this assertion are the references to "lack of testing and the lack of data on heat exchange and iodine spike." Petition at 5. These unsupported assertions do not meet the Commission's requirements for specificity or for an indication of some evidentiary support. The UFSAR contains a detailed description of the analyses of various Steam Generator Tube Rupture accident scenarios. UFSAR Section 15.6.3. The Application identifies the limited extent to which those analyses would be affected by the proposed amendments and describes these effects. The Petition does not identify any issue of material fact regarding the effects of the proposed amendment on the SGTR analyses.

The third basis stated by the Petition is that the radiological dose calculations "appear to be subjective and are suspect given the above-stated factors." Petition at 6. As shown in UFSAR at 15.6.3.2.1, the dose calculations were done in accordance with Standard Review Plan 15.6.3. Again, no specific aspects of the calculation are challenged by the Petition, and therefore no dispute as to a material issue of fact is identified, nor is there any citation to a supporting document or expert opinion, as required by 10 CFR § 2.714(b)(2).

The fourth basis is that the Application's projected thyroid dose increase to 260 rem "is alarming." If the inference of the contention is that 260 rem is unacceptable, it must be rejected because the Commission's acceptance standard is 300 rem. 10 CFR § 100.11(a). Thus a contention on this basis would constitute a

challenge to a Commission regulation without compliance with 10 CFR § 2.758.

Finally, the Petition asserts that the Application does not specify "the geographical area upon which its radiological estimates are based." Petition at 6. The dose calculation is adequately described in Section 15.6.3.2 of the UFSAR, which is incorporated by reference at page 43 of the Application. As shown in the UFSAR the thyroid dose is calculated at the exclusion area boundary. There is no explanation, citation to the Application or identification of documents or expert opinions that might support this alleged basis for the contention, as required by 10 CFR § 2.714(b)(2)(ii) and (iii).

Since none of the bases for proposed Contention 2 identify an issue of material fact or law, and Petitioners have not cited any documents or other evidence that would support this contention, it should not be admitted.

### Contentions 3.

In their Contention No. 3 Petitioners aver:

The Surveillance Test (ST) program procedures are deficient and some licensee engineers have not been adequately trained. In addition, qualified personnel have been replaced by personnel who are unqualified to perform and/or direct Section XI Testing on MSSVs and PSVs.

Petition at 6. As discussed above in connection with the bases of Contention 1, while this contention mentions the valves whose setpoints are the subject of the proposed amendment, the issue

sought to be raised by Contention 3 is not impacted by the amendment. Moreover, the Petitioners have failed to provide sufficient or accurate information to raise a material issue of fact.

Petitioners allege that "APS has been cited by the NRC Region V Staff for deficiencies in its Surveillance Test (ST) program procedures." Petition at 6 (citing Region V Inspection Report Nos. 50-528/90-28, 50-529/90-28, and 50-530/90-28 at pp. 5-6 (Sept. 24, 1990)("Report No. 90-28")). However, the cited material contains no foundation for Petitioners' allegation. No violations, deviation or deficiency was found by the inspector, and the item was simply kept open "pending review of programmatic changes resulting from the [outside] contractor's report," which recommended changes to procedures governing the ST program. Petition, Exhibit 3 (Report No. 90-28 at 6). These changes were implemented and this item has since been reviewed by NRC and closed. NRC Inspection Report Nos. 50-528/90-34, 50-529/90-34, and 50-530/90-34 at 3-4 (Nov. 2, 1990).

Additionally, Petitioners allege that APS has been cited for "inadequate training of engineers assigned to perform ST's for the MSSVs and for assigning unqualified personnel to perform and direct such tests." Petition at 6-7 (citing Report No. 90-28, at 15-16). No such deficiencies were found or implied in Report No. 90-28, and the Report itself concluded that "[n]o violations of NRC regulations or deviations were identified." Petition, Exhibit 3 (Report No. 90-28 at 16). The inspector had found that

in light of the limited training of one contractor, the ST procedures in question "lacked sufficient detail," and the matter has since been resolved after review of the revised procedure. NRC Inspection Report Nos. 50-528/90-54, 50-529/90-54, and 50-530/90-54 at 6-7 (Feb. 19, 1991).

Petitioners have failed to establish any relevant error in the Application for license amendment, and have failed to meet the procedural requirement to "include references to the specific portions of the application." 10 CFR § 2.714(b)(2)(iii).

Although Contention No. 3 has no factual basis and therefore raises no material issue of fact, the Board need not even reach the point of deciding upon the sufficiency of the allegations contained in the Contention because the Contention fails to meet the minimal legal requirements for admissibility. While it is clear that deficiencies in the ST procedures or training of personnel may be relevant to safety, ST procedures and personnel training are not impacted by the proposed changes in the Technical Specifications. No modification is requested which will change the Licensees' obligation to have adequate ST procedures and to adequately train personnel who conduct ST. There is therefore no requisite nexus between the issues raised in this contention and the proposed license amendment. The alleged deficiency in training and/or procedures is in no way a "direct consequence" or a "necessary implication" of the proposed amendment. Vermont Yankee, ALAB-245, 8 AEC at 875; see, e.g., Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit 1),



LBP-82-108, 16 NRC 1811, 1819-21 (1982) aff'd on other grounds ALAB-719, 17 NRC 387 (1983) (conditions relating to existing deficiencies or deterioration in management/operator performance are not relevant to amendment permitting steam generator replacement).

Finally, the issues raised in Contention No. 3 are more appropriately addressed in a 10 CFR § 2.206 request, and are beyond the scope of this proceeding. Even if these allegations were true, they would not entitle the Petitioners to any relief in this proceeding. See 10 CFR § 2.714(d)(2)(ii). Nor would the Licensing Board be permitted to grant relief on these issues, since the Licensing Board has no jurisdiction to consider issues which are beyond the scope of the license amendments under consideration.

#### Contention 4.

In their Contention No. 4 Petitioners allege that "the licensee has failed to maintain a Quality Assurance program in accordance with 10 CFR Part 50, Appendix B." Petition at 7. This contention does not provide sufficient specific information to raise any issue of material fact, and it has no clear nexus to the proposed amendment. The proposed amendment does not in any way alter or affect the Licensees' QA program. There is therefore no requisite nexus between the issues raised in this contention and the proposed license amendment. The alleged deficiency in quality assurance measures is neither a "direct

consequence" nor a "necessary implication" of the proposed amendment. Vermont Yankee, ALAB-245, 8 AEC at 875; see, e.g., Point Beach, LBP-82-108, 16 NRC at 1819-21 (contention relating to deterioration of management/operator performance found to be related to existing plant and not to proposed license amendment).

With the exception of the materials relating to Contention No. 3 which were explained above, the only documents cited by Petitioners as support for Contention No. 4 are the 1990 SALP Report -- in which Palo Verde Quality Verification/Safety Assessment was rated Category 2 (a rating which designates performance that meets NRC requirements) -- and certain correspondence regarding a Notice of Violation and civil penalty related to the Palo Verde fire protection program. The 1990 SALP rating in the area of Safety Assessment/Quality Verification improved to Category 2 from Category 3. Even had the rating been lower it would not provide the basis for this contention. Compare Point Beach, LBP-82-108, 16 NRC at 1821. With respect to the issues raised in the Notice of Violation and civil penalty, those issues are not related to the amendment, and they have already been addressed by NRC and are being resolved. No current issue or concern is raised in Petitioners' contention.

There is no adequate factual foundation to admit Contention No. 4, however, the Board -- once again -- need not even reach the issue of factual sufficiency in this contention, because Petitioners have failed to meet the legal requirements for an admissible contention. Petitioners have not met the procedural

requirement to make reference to specific disputed portions of the license amendment application, nor could Petitioners -- the QA issues sought to be raised in Contention No. 4 are in no way relevant to the proposed amendment.

Finally, the issues raised in Contention No. 4 are more appropriately addressed in a 10 CFR § 2.206 request, and are not within the scope of this proceeding. Even if these allegations were true, they would not entitle the Petitioners to any relief in this proceeding. See 10 CFR § 2.714(d)(2)(ii). Nor is the Licensing Board authorized to grant relief on these issues, since the Licensing Board's jurisdiction is limited to issues that are within the scope of the proposed amendment.

#### Contention 5.

The licensee has harassed and intimidated and otherwise retaliated against personnel for raising safety concerns related to the testing of MSSVs and PSVs.

Petition at 9. This proposed contention does not identify any issue of material fact regarding the proposed operating license amendment. There are no aspects of the amendment that would alter the legal right of any individual to raise safety concerns without fear of retaliation. That right is guaranteed by federal law (42 U.S.C. § 5851 (1988)) and NRC regulation (10 CFR § 50.7 (1990)). The enforcement of those rights is not within the jurisdiction of this Licensing Board, but is instead entrusted to other forums. In fact, these very Petitioners, represented by

the same counsel, are actively pursuing such allegations in other forums.

In September 1990 Mrs. Mitchell filed a complaint before the U.S. Department of Labor (DOL) in which she demanded \$1 million in monetary damages and other relief regarding alleged harassment for engaging in protected activities. APS has denied that any terms or conditions of her employment were changed as a result of her protected activity. The October 19, 1990 finding of the DOL investigator that APS did not act improperly has been appealed by Mrs. Mitchell, and a hearing is now scheduled for July 1991. on August 24, 1989 Mr. and Mrs. Mitchell sued APS' top management for ten million dollars in a civil proceeding presently pending in the Arizona court system. Trial of the civil suit is scheduled for June 1991. In addition, on May 22, 1990 Mrs. Mitchell petitioned the NRC under 10 CFR § 2.206 to fine APS (and named executives) and to revoke the operating licenses for the Palo Verde units.<sup>12/</sup>

Not only is Contention 5 outside the scope of the proposed license amendment, but the bases cited are insubstantial. Two DOL decisions are referenced, one involving a 1985 complaint against a contractor organization, and the other involving a 1988 complaint against APS. Petition at 9-10. There is no factual allegation in the Petition tying either of those cases to current

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<sup>12/</sup> As noted in the petition filed by Myron L. Scott, et al., those Petitioners have also filed petitions under § 10 CFR 2.206 in the past.

activities at Palo Verde or to the requested Operating Licenses Amendment.

The balance of the Petitioners' discussion of Contention 5, merely alleges that NRC investigators are presently investigating allegations. Since the results of that investigation are not, and cannot be, identified by Petitioners, no inference can be drawn from the allegation, and it cannot provide any basis for the proposed contention.

Since allegations and alleged bases of Contention 5 do not identify a dispute as to a material fact or issue of law, Contention 5 should be rejected.

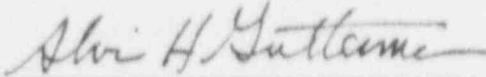
#### **CONCLUSION**

None of the five contentions proposed by the Mitchell Petitioners comply with the requirements of 10 CFR § 2.714(b). The contentions are not supported by adequate bases, are not sufficiently specific and do not relate to issues that are material to the proposed amendments. The Commission's regulations are clear that "[a] petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one contention will not be



permitted to participate as a party." 10 CFR § 2.714(b)(1).  
Since the Mitchell Petition fails to satisfy those requirements,  
it should be dismissed.

Respectfully submitted,



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