EDO Principal Correspondence Control

FROM: DUE: 12/06/02 EDO CONTROL: G20020624
DOC DT: 10/27/02
FINAL REPLY:

Thomas Saporito
National Environmental Protection Center

TO:

Travers, EDO

FOR SIGNATURE OF : ** GRN ** CRC NO:

Collins, NRR

DESC: ROUTING:

2.206 - Arizona Public Service Company

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DATE: 11/01/02

ASSIGNED TO: CONTACT:

NRR Collins

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001 E-RIDS: EDO-01

NEPC

NATIONAL ENVIRONMENTAL PROTECTION CENTER

October 27, 2002

William D. Travers
Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: PUBLIC PETITION TO NRC UNDER 10 C.F.R. 2.206

Dear Executive Director Travers:

The National Environmental Protection Center ("NEPC") by and through its undersigned Executive Director submit this public petition to the U.S. Nuclear Regulatory Commission ("NRC") under 10 C.F.R. 2.206 requesting certain and specific actions by the NRC as delineated below.

REQUESTS FOR NRC ACTION UNDER 10 C.F.R. 2.206

REQUEST #1
NEPC requests that NRC provide a copy of this petition in its entirety to each and every NRC employee assigned for the benefit of the public across the United States of America.

REQUEST #2
NEPC requests that NRC issue directives to all NRC Regional Administrators requiring that they advise their entire staff that they have a right to raise safety and health concerns about perceived violations of NRC operations and/or regulations to any NRC supervisor or to any NRC manager at any level within the NRC's chain-of-command up to and including the Executive Director for Operations and/or the Commissioners of the NRC.

REQUEST #3
NEPC requests that NRC take actions to cause an investigation into circumstances surrounding DOCKET NO. STN 50-528 ARIZONA PUBLIC SERVICE COMPANY'S LICENSE AMENDMENT REQUEST with respect to any safety evaluation or review purported to have been completed by NRC as described in the Federal Register Notice Dated October 3, 2002 (Volume 67, Number 192) Pages 62079-62081.

REQUEST #4
NEPC requests that NRC on exigent basis provide NEPC a complete copy of NRC's purported safety evaluation as described in the Federal Register Notice Dated October 3, 2002 (Volume 67, Number 192) Pages 62079-62081.

BASIS FOR REQUESTS
The NRC places a high value on nuclear industry employee's freedom to raise potential safety concerns both to licensee management and to the NRC without fear of reprisal or actual harassment and intimidation. Section 211 of the Energy Reorganization Act (ERA), as amended and 10 CFR 19 20, 30 7, 40 7, 50.7, 60 9, 61.9, 70 7, 72.10, and 76 7 provide that no employer may discharge or otherwise

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discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee engaged in certain protected activities. These protected activities include notifying an employer of an alleged violation of the Atomic Energy Act or the ERA, refusing to engage in any practice made unlawful by those acts, testifying before Congress or in a Federal or State proceeding regarding any provision of these acts, or commencing, testifying, assisting, or participating in any manner in a proceeding under these acts. Licensees and contractors are responsible for ensuring that they do not discriminate against their employees for engaging in such protected activities. Licensees and contractors that discriminate against their employees who engage in protected activities are subject to sanctions by the NRC. These sanctions include notices of violation (NOVs) and civil penalties (CPs). In addition, under the Deliberate Misconduct Rule (see 10 CFR 30 10 and 10 CFR 50.5) licensee and contractor employees, including senior managers, are subject to sanctions by the NRC for discrimination against other employees who engage in protected activities. These sanctions include orders barring individuals from NRC licensed activities.

The federal employees employed by the NRC are entitled to the very same employee protection provisions of the ERA as described above to protect them from employment discrimination by NRC management for NRC employees exercising their rights under NRC authority to raise perceived safety and health concerns regarding violation of NRC's regulations and/or operations. Indeed, it is imperative that all NRC employees enjoy a work environment which encourages the reporting of violations of NRC regulations and/or operations in furtherance of NRC's Congressional mandate to ensure for the safety and reliable operation of all nuclear facilities licensed by NRC. In this light, it is extremely important that NRC employees perform their respective job functions without feeling pressured by any NRC manager, or any NRC supervisor, or any NRC licensee to act on an "**exigent**" basis to approve an operational license amendment request submitted by any NRC licensee. See, Federal Register Notice Dated October 3, 2002 (Volume 67, Number 192) Pages 62079-62081.

NEPC is unaware of any NRC employee concerns program in force at any NRC location that would provide a means for any NRC employee to "**confidentially**" raise safety concerns about violation of NRC regulations and/or NRC operations without fear of retaliation by NRC management.

As stated in the aforementioned Federal Register Notice Dated October 3, 2002 (Volume 67, Number 192) Pages 62079-62081, NRC licensee Arizona Public Service Company ("APS") submitted a request to NRC to amend its Facility Operating License No. NPF-41, issued to APS by the NRC for operation of the Palo Verde Nuclear Generating Station ("PVNGS") Unit-1 located in Maricopa County, Arizona The proposed amendment would revise item a.10, definition of steam generator ("SG") tube inspection in Section 5.5.9.4 "Acceptance Criteria" of Technical Specification ("TS") 5.5.9 SG Surveillance Program. See, Federal Register Notice Dated October 3, 2002 (Volume 67, Number 192) at Page 62079.

At Page 62080 of Federal Register Notice Dated October 3, 2002 (Volume 67, Number 192) Pages 62079-62081, NRC stated that:

> "The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration." . . . "The licensee is currently scheduling the entry of Unit 1 into Mode 4 for October 26, 2002, and requested in its application that NRC approve the amendment by October 24, 2002. However, by allowing for comments through October 25, 2002, the NRC will maximize the public comment period for the proposed amendment, and should provide a minimum of a 21-day notice period."

On October 14, 2002, NEPC by and through its undersigned Executive Director, Thomas Saporito, submitted a Request for Hearing and a Petition for Leave of the Commission to Intervene in the proceeding.

On October 22, 2002, NEPC sent Jack Donohew, NRC Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation an email letter stating in relevant part the following:

> "This serves to acknowledge your email letter this date regarding the above-described action. In your letter you seek my opinion about the federal register notice that the proposed amendment may be issued on and exigent basis (i.e., as soon as October 25, 2002). In response to your inquiry, I strongly disagree with that opinion and urge the NRC not to issue the amendment until after the conclusion of the public hearing that NEPC has petitioned the NRC ASLB to convene and until the ALSB renders a determination based on the record evidence and testimony received in that proceeding. To act otherwise would be to subject the general public and the environment to unwarranted risk of a nuclear accident or event which may result in the untimely release of radioactive particles and/or materials into the environment. Indeed **we strenuously object** to the NRC not providing the general public required notice of 30-days to act on the licensee's amendment request! Now, the licensee urges the NRC to rush to judgment and grant their license amendment on an exigent basis for **ECONOMIC** reasons! NEPC strongly objects to any action by NRC to act on an exigent basis in granting the licensee an amendment request at this early stage of evaluation and review, placing the general public and the environment at risk for economic reasons on behalf of the licensee!"

On October 26, 2002, NEPC sent Jack Donohew of the NRC two additional email letters stating in relevant part that.

> "This serves to acknowledge the telephone conversation between the U.S. Nuclear Regulatory Commission ("NRC") and the National Environmental Protection Center ("NEPC") on October 25th, 2002 regarding the above-subject matter. It is our understanding from the telephone conversation that the NRC is in agreement with NEPC that the NRC should **NOT** act on an exigent basis regarding the licensee's request that NRC act on an **"exigent"** basis in reviewing the license amendment request which would deny the public the normal 30-day comment period before issuance of an amendment in accordance with 10 C.F.R. 50.91(a)(6). Further it is NEPC's understanding that the NRC is now concerned that the licensee's proposed changes to its technical specifications to its Facility Operating License No. NPF-41 for Palo Verde Nuclear Generating Station ("PVNGS") Unit 1 are ambiguous and require further clarification prior to any action by the NRC with respect to the licensee's amendment request."

The National Environmental Protection Center ("NEPC") is a nonprofit educational organization advocating the enforcement of environmental laws and regulations under the U.S. Environmental Protection Agency ("EPA"), the enforcement of nuclear safety under the U.S. Nuclear Regulatory Commission ("NRC"), and the enforcement of "whistleblower" employee protection provisions promulgated under 29 C.F.R. Part 24 and implemented under the Clean Air Act ("CAA"), 42 U.S.C. 7622 (1988); the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2622 (1988); the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 300j-9(i) (1988); the Safe Drinking Water Act ("SWDA"), 42 U.S.C. 6971 (1988); the Solid Waste Disposal Act ("SWDA"), 42 U.S.C. 6971 (1988); and the Energy Reorganization Act ("ERA"), 42 U S C 5851 (1974) as amended. In general, these provisions prohibit employers from retaliating against employees who "blow-the-whistle" or otherwise engage in certain actions in furtherance of the enforcement of environmental statues. Thus, a central function of NEPC is to represent whistleblowers that act in furtherance of the enforcement of NRC regulations on behalf of the public and the environment in exposing NRC licensee wrongdoing at commercial nuclear power stations and at non-NRC regulated industries.

The federal government is mandated through Congressional authority to ensure for the safe operation of all commercial nuclear power plants across the United States of America. The U.S. Nuclear

Regulatory Commission ("NRC") is the federal government agency tasked with this grave responsibility to act in furtherance of NRC laws and regulations to ensure for the safe operation of all nuclear power plants in the United States. The NRC accomplishes its mission by establishing and enforcing regulations, which nuclear power plant operators must adhere in operating a nuclear power plant. NRC's regulations prohibit companies like **Arizona Public Service Company** ("APS") from illegally discriminating against its own employees when its employees report perceived safety and health concerns regarding the operation of the Palo Verde Nuclear Generating Station, which appear to violate NRC regulations for the safe and proper operation of the nuclear power plant Although the NRC has resident NRC inspectors assigned at each nuclear power plant around the United States, the NRC has recognized over the years, the ***importance*** of all employees working at facilities like the Palo Verde Nuclear Generating Station, feel free to raise safety and health concerns so that the safety concerns can be quickly resolved. In this manner, the NRC depends on the eyes and ears of the thousands of employees working at nuclear facilities to report violations of NRC regulations at nuclear power plants so that the NRC can act to ensure that nuclear plant operators like APS take immediate corrective actions.

Over the last 10-years of operation at the APS Palo Verde Nuclear Generating Station several employees who reported significant violations of NRC safety regulations regarding operation of the nuclear plant were retaliated against by APS managers Notably, Senior APS managers involved in the employee discrimination cases (i e. Greg Overbeck and James Levine) are still employed by the licensee maintaining high-level positions with authority over nuclear power operations. NEPC notes here that APS Senior Manager Greg Overbeck is directly involved in APS's request to amend the PVNGS Unit-1 license, which is the subject of this petition.

These APS "whistleblowers" ***were harassed, threatened, humiliated, demoted, transferred, and FIRED***. These were loyal employees just doing their jobs to protect public safety and health by reporting significant safety concerns which could have resulted in a nuclear accident releasing radioactive particles and materials into the environment threatening the safety and health of children and others! These loyal employees suffered extreme financial hardship when APS caused them to loose their jobs at the nuclear power plant. These loyal employees had children and families of their own who also suffered from the **illegal** discriminatory conduct by APS managers at the Palo Verde Nuclear Generating Station.

Notably, in one or more of these employee discrimination cases, it was discovered that one or more APS managers lied under oath in testimony to the U.S. Department of Labor, Administrative Law Judge. In addition, attorneys representing APS in court apparently intentionally pressured an APS manager to make false testimony in court; and the APS attorneys submitted falsified record evidence to artificially create a defense for causing the termination of a whistleblower at PVNGS. Now, the very same NRC licensee urges the NRC to **RUSH** to judgment in approving their submitted license amendment request in making a "no significant hazards determination" based on NRC's review of the **LICENSEE's** safety analysis!

WHEREFORE, NEPC requests that NRC act on its 10 C.F.R. 2.206 Petition in a timely manner in the interest for the environment, the general public, NRC employees and APS employees.

Respectfully submitted,

Thomas Saporito
Executive Director, NEPC

APPLICATION FOR MEMBERSHIP

NAME: _____

MAILING ADDRESS: _____

_____

_____

PLEASE CHECK YOUR MEMERSHIP CHOICE BELOW

_____ Yes, I would like to become a member of the National Environmental Protection Center and I would like to donate $1.00 to NEPC.

_____ Yes, I would like to become a member of the National Environmental Protection Center and I would like to donate $_____ to NEPC.

_____ Yes, I would like to become a member of the National Environmental Protection Center and choose not to donate to NEPC at this time.

MEMBERSHIP APPLICATION MAILING INSTRUCTIONS

Please complete one application for each family member or friend and mail your NEPC membership application to:

THOMAS SAPORITO, EXECUTIVE DIRECTOR
NATIONAL ENVIRONMENTAL PROTECTION CENTER
POST OFFICE BOX 1234
BUCKEYE, ARIZONA 85326

SERVICE SHEET

CC: Hon. George W. Bush
President of the United States of America
The White House
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Secretary of the Commission
U.S. Nuclear Regulatory Commission
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Attention: Rulemakings and Adjudications Staff

Inspector General
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By: Thomas Lopoukhine