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DOCKETED
USNRC

November 27, 2002 (11:19AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

John E. Matthews
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November 20, 2002

Thomas Saporito
Executive Director
National Environmental Protection Center
P.O. Box 1021
Tonopah, AZ 85354

Dear Mr. Saporito:

We are in receipt of your letter dated November 9, 2002, to Gregg R. Overbeck, Senior Vice President, Nuclear of our client the Arizona Public Service Company (APS). Please be advised that Morgan Lewis & Bockius LLP (Morgan Lewis) is acting as counsel to APS with regard to the matters being raised by the National Environmental Protection Center (NEPC) and you. As such, further communications with APS should be directed to Morgan Lewis and not to individual managers or employees of APS. In this regard, we note that, despite your extensive "Service Sheet" for your letter to Mr. Overbeck, you did not serve Morgan Lewis.

As you know, NEPC and you have initiated or sought to initiate formal legal proceedings regarding various matters addressed in your letter, including petitions to intervene and requests for a hearing on a license amendment request (LAR) before the Nuclear Regulatory Commission (NRC) that is referenced in your letter, a 10 CFR 2.206 Petition, and proceedings with the Department of Labor (DOL) that we understand are before Judge Jennifer Gee. Each of these proceedings provides for formal legal processes with respect to requests for testimony, documents, or other action. We expect NEPC and you to use those formal processes, rather than informal ones. As such, you will need to direct your future requests and other communications to Morgan Lewis as counsel for APS.

With respect to the substance of your November 9, 2002 letter, NEPC and you have requested a hearing on that LAR, and that request is now before an Atomic Safety and Licensing Board. In addition, the LAR addressed in your 10 CFR 2.206 petition dated

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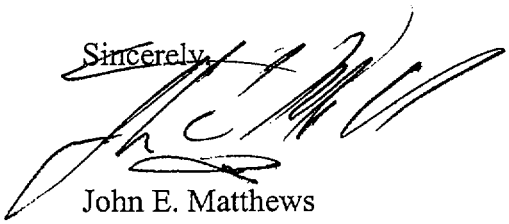
October 27, 2002, which is presumably being processed by the NRC Staff. APS will comply with applicable NRC regulations and processes with respect to these matters.

We have reviewed your letter to APS's Emergency Planning Program Leader, David W. Crozier, regarding the PVNGS security perimeter. Please be assured that APS has a robust security program, and both the NRC and the nuclear industry have enhanced security at nuclear reactor sites across the United States in response to the events of September 11, 2001. In addition, APS has a well-developed and effective program for assessing and responding to any nuclear safety-related concerns.

Your letter also requests testimony from Mr. Overbeck in a DOL proceeding that we now know as *Thomas Saporito v. GE Medical Systems and ADECCO Technical*, Case Nos. 2003-CAA-01/02. I have received your email note of November 15, 2002, which advises that you are seeking the testimony of James M. Levine as well as Mr. Overbeck. Counsel for GE Medical systems has provided me with a copy of your November 11, 2002 submittal to Judge Gee, which purports to articulate a basis for seeking the testimony of Messrs. Overbeck and Levine. The issues that you have identified do not appear to have any relevance to your employment with ADECCO/GE Medical Systems, and neither Mr. Overbeck nor Mr. Levine has any knowledge of your employment or claims with respect to these companies, other than your own statements in your letters of November 11 and 15. We will therefore vigorously resist any attempt to subpoena these senior APS executives. If you continue to pursue their testimony, please be advised that Morgan Lewis will accept service on behalf of Mr. Overbeck and Mr. Levine of any pleadings or subpoenas.

Finally, we are very concerned regarding your solicitation of an assignment from APS -- relating to your proposal to come to the plant and interview numerous Palo Verde employees. Although you are, of course, free to raise concerns and engage in any other form of protected activity, this request to take on an assignment – whether paid or unpaid -- appears to be a violation of the spirit, if not the letter, of your 1993 Settlement Agreement with APS. As you know, that agreement imposes certain continuing obligations on both APS and you. APS has continued to meet its obligations, and we expect you to continue to meet your obligations.

Sincerely,



John E. Matthews

c: Service List

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

ASLBP No. 03-804-01-OLA

In the Matter of	)	
	)	
ARIZONA PUBLIC SERVICE COMPANY	)	Docket No. 50-528-OLA
	)	
(Palo Verde Nuclear Generating Station, Unit 1)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing letter to Thomas Saporito were served upon the persons listed below by U.S. mail, first class, postage prepaid, with copies by electronic mail as indicated by an asterisk, this 20th day of November, 2002.

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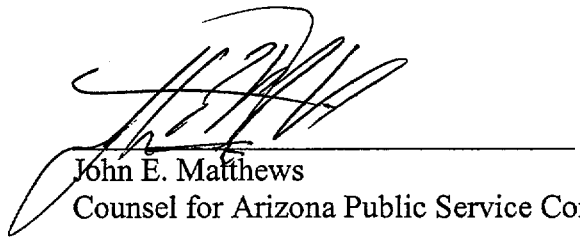
*** Service also by Fax.



John E. Matthews
Counsel for Arizona Public Service Company