

EDO Principal Correspondence Control

FROM: DUE: 03/03/03

EDO CONTROL: G20030038

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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/Palo Verde  
Nuclear Generating Stations, Unit 1, 2 and 3

Travers  
Paperiello  
Kane  
Norry  
Craig  
Burns  
Merschhoff, RIV  
Cyr, OGC  
Skay, NRR  
Goldberg, OGC

DATE: 01/27/03

ASSIGNED TO:

CONTACT:

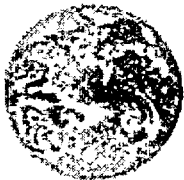
NRR

Collins

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001

E-RIDS: EDO-01



NEPC

**NATIONAL ENVIRONMENTAL PROTECTION CENTER**

January 17, 2003

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 take immediate actions to cause an agency investigation under 10 C.F.R. Part 19.20; 10 C.F.R. Part 30.7; 10 C.F.R. Part 40.7; 10 C.F.R. Part 50.7; 10 C.F.R. 60.9; 10 C.F.R. Part 70.7; 10 C.F.R. 72.10; and 10 C.F.R. Part 76.7 with respect to NRC licensee Arizona Public Service Company ("APS"), and with respect to the licensee's law firm known as Morgan Lewis and located at 1111 Pennsylvania Ave., NW, Washington, D.C. 20004 (202) 739-3000, and with respect to attorney John E. Matthews of the Morgan Lewis law firm.

**REQUEST #2**

NEPC requests that NRC issue a civil penalty against APS, and against the Morgan Lewis law firm, and against attorney John E. Matthews.

**REQUEST #3**

NEPC requests that NRC take actions to cause an investigation of the NRC licensee's Palo Verde Nuclear Generating Stations and specifically Unit 1, Unit 2, and Unit 3, to determine through extensive licensee employee interviews whether employees feel free to raise environmental safety concerns to the licensee.

**REQUEST #4**

NEPC requests that NRC take actions to cause an investigation of the NRC licensee's Palo Verde Nuclear Generating Stations and specifically Unit 1, Unit 2, and Unit 3, to determine through extensive licensee employee interviews whether employees feel free to raise environmental safety concerns **directly** to the NRC and **only** to the NRC without first

notifying the licensee about their safety concerns and without contemporaneously notifying the licensee and the NRC about their safety concerns.

**REQUEST #5**

NEPC requests that NRC take actions to cause an investigation of the NRC licensee's Palo Verde Nuclear Generating Stations and specifically Unit 1, Unit 2, and Unit 3, to determine through extensive licensee employee interviews whether employees feel free to raise environmental safety concerns to the licensee through use of any licensee "Employee Concerns Program" at the Palo Verde Nuclear Generating Stations.

**REQUEST #6**

NEPC requests that NRC take actions to cause an investigation of the NRC licensee's Palo Verde Nuclear Generating Stations and specifically Unit 1, Unit 2, and Unit 3, to determine through extensive licensee employee interviews whether employees are fully knowledgeable and aware of the employee protection provisions under 10 C.F.R. 50.7, and under the Energy Reorganization Act of 1974 as amended at 42 U.S.C. 5851 Section 211, and under OSHA EPA statues and regulations.

**REQUEST #7**

NEPC requests that NRC take actions to cause an investigation of the NRC licensee's Palo Verde Nuclear Generating Stations and specifically Unit 1, Unit 2, and Unit 3, to determine through extensive licensee employee interviews whether employees are knowledgeable and aware of how to file a discrimination complaint under 10 C.F.R. 50.7, and under the ERA, and under OSHA EPA statues. In addition, to determine whether the licensee employees are aware of the various statutory time frames allotted under the different forums in filing a discrimination complaint of retaliation for raising safety concerns.

**REQUEST #3**

NEPC requests that NRC take actions to cause an investigation of the NRC licensee's Palo Verde Nuclear Generating Stations and specifically Unit 1, Unit 2, and Unit 3, to determine through extensive licensee employee interviews whether employees receive any amount of training provided by the licensee with respect to the employee protection provisions under 10 C.F.R. 50.7, and under the ERA, and under OSHA EPA, and with respect to filing a complaint of retaliation under those environmental laws.

**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 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

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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 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 ("SDWA"), 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 statutes. 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, to 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 was directly involved in APS's Sept. 2002 request to amend the PVNGS Unit-1 license, which was the subject of a NEPC petition for hearing and leave to intervene.

Former APS "whistleblowers" *were harassed, threatened, humiliated, demoted, transferred, and FIRED.* These were loyal employees were simply performing their jobs to

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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.

NEPC notes here that APS Senior Manager Greg Overbeck was directly involved in APS's Sept. 2002 request to amend the PVNGS Unit-1 license, which was the subject of a NEPC petition for hearing and leave to intervene. Specifically, NEPC was fully engaged in a NRC proceeding before the Atomic Safety and Licensing Board Panel identified as ASLBP No. 03-804-01-OLA regarding a License Amendment Request authored by APS. During NEPC's engagement in that NRC proceeding, APS by and through their legal counsel, John E. Matthews and the Morgan Lewis Law firm constructed a letter on Nov. 20<sup>th</sup>, 2002 specifically addressed to the undersigned NEPC Executive Director. Within the licensee's letter, NEPC, and its membership, and its Executive Director were cautioned with respect to "protected activities" in which NEPC was actively involved. Thus NEPC views the actions of APS, the Morgan Lewis law firm, and John E. Matthews in authoring the Nov. 20<sup>th</sup>, 2002 letter to the undersigned and to NEPC to be intimidating, coercive, threatening, and in violation of NRC regulations and requirements identified above. Moreover, APS through counsel copied the Nov. 20<sup>th</sup>, 2002 letter to the Court and to the parties in a whistleblower proceeding in which the undersigned is the Claimant. Thus, NEPC believes the latter conduct by APS and counsel to also be in violation of NRC regulations and requirements as identified above.

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

**National Environmental Protection Center**



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Thomas Saporito, Executive Director  
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[nepc@thepostmaster.net](mailto:nepc@thepostmaster.net) (email)

cc: John E. Matthews, Esq.  
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1111 Pennsylvania Ave., NW  
Washington, D.C. 20004

James Levine  
Gregg R. Overbeck  
Arizona Public Service Company  
P.O. Box 52034  
Phoenix, Arizona 85072-2034

Russell Wise  
Senior Allegations Coordinator  
U.S. Nuclear Regulatory Commission  
611 Ryan Plaza Dr., Suite 400  
Arlington, Texas 76011-8064

NATIONAL ENVIRONMENTAL PROTECTION CENTER

APPLICATION FOR MEMBERSHIP

NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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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.

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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 1021  
TONOPAH, ARIZONA 85354

Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel: 202.739.3000  
Fax: 202.739.3001  
www.morganlewis.com

**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

John E. Matthews  
202-739-5524  
jmatthews@morganlewis.com

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

November 20, 2002  
Page 2

Morgan, Lewis  
& Bockius LLP

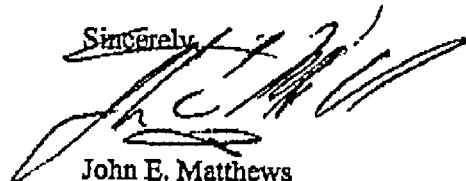
October 27, 2002, which is presumably being processed by the NRC Staff. APS will comply with applicable NRC regulations and processes with respect to these matters.

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**

ASLEP No. 03-804-01-OLA

In the Matter of

ARIZONA PUBLIC SERVICE COMPANY

(Palo Verde Nuclear Generating Station, Unit 1)

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Docket No. 50-528-OLA

**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.

Office of the Secretary\* \*\*  
ATTN: Rulemakings and Adjudications Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555  
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National Environmental Protection Center  
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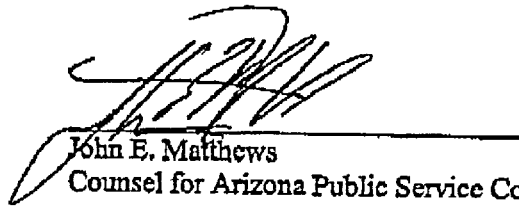
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Counsel for Arizona Public Service Company