

February 25, 2003

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

SUBJECT: NATIONAL ENVIRONMENTAL PROTECTION CENTER (NEPC) REQUESTS FOR NRC ACTION UNDER 10 CFR 2.206 REGARDING PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3 (TAC NOS. MB7373, MB7374, MB7375)

Dear Mr. Saporito:

Your Petition dated January 17, 2003, addressed to Mr. William D. Travers, Executive Director for Operations, has been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). You requested that the U.S. Nuclear Regulatory Commission (NRC) take certain and specific actions pursuant to 10 CFR 2.206.

On February 5, 2003, we discussed your petition with you during a telephone call. We informed you that NRC's Petition Review Board (PRB) met and the PRB's preliminary conclusion was that your petition offered no specific supporting new information. Therefore, your petition did not appear to meet NRC's criteria for a 10 CFR 2.206 petition. We offered you an opportunity to address the PRB by telephone or in person, and you indicated that you would be available for a phone call during the following week, preferably February 11 or 12, 2003.

On February 12 and later during the week, we attempted to contact you to finalize the details for the phone call. However, the phone number you provided us no longer works (we now get a recording that indicates that the phone number is no longer in service). In addition, we attempted to contact you via the e-mail address that you provided in your petition; however, we have not had any response. Accordingly, we have decided to respond to your January 17, 2003, petition at this time.

The PRB reviewed your requests in determining whether your requests meet the criteria in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions," for consideration under 10 CFR 2.206. The NRC staff has concluded that your requests do not meet the criteria in Management Directive 8.11 because, in general, no new specific supporting information is provided. A more detailed explanation for our conclusion is discussed below.

In your letter of January 17, 2003, you requested that NRC take certain and specific actions. Your requests have been grouped and our responses follow.

Request You request that NRC investigate and issue a civil penalty against Arizona Public Service Company (APS) and their attorneys under the regulations that pertain to discrimination against employees for engaging in protected activities. You

request that NRC investigate whether employees feel free to raise environmental safety concerns to the licensee and/or only to the NRC. You also request that NRC investigate whether APS's employees feel free to raise these concerns through the licensee's employee concerns program, whether employees are knowledgeable about their protection provisions, whether employees are knowledgeable about filing complaints, and whether employees are trained in filing complaints.

As basis for your requests, you provide extensive discussion on the NRC's regulations that pertain to discrimination against employees for engaging in protected activities, the NEPC's function of representing whistle blowers, and the importance of employees at nuclear power plants to feel free to raise safety and health concerns. You also state that two APS managers retaliated against employees who reported significant violations over the last 10 years, in that the employees were harassed, threatened, humiliated, demoted, transferred, and fired. You add that these managers are involved in employee discrimination cases and are involved with a license amendment request of September 2002, which is the subject of a NEPC petition for hearing and leave to intervene.

As further basis for your requests, you refer to a November 20, 2002, letter from APS's attorney, which you also enclosed. Within the letter, you refer to text which you believe cautions NEPC with respect to protected activities. You also indicate that you view this letter as intimidating, coercive, threatening, and in violation of NRC's regulations.

Response

Although your petition provides general background information on NRC's regulations, NEPC's function, and the importance of employees to feel free to raise safety concerns, it does not provide any specific supporting information warranting further inquiry. You also do not provide any new specific supporting information for the two APS managers that you indicate have retaliated against employees.

Regarding the November 20, 2002, letter from APS's attorney, your petition does not provide specific supporting information on how the attorney's concern with your proposal to come to Palo Verde and interview numerous APS employees relates to a violation of NRC regulations (i.e., employees being discriminated against for engaging in protected activities, such as raising safety concerns to the licensee or to the NRC).

In sum, the request does not provide any new specific supporting information; hence, it does not meet the criteria for review under 10 CFR 2.206.

T. Saporito

- 3 -

Accordingly, your request of January 17, 2003, for consideration as public petition under 10 CFR 2.206, is denied. However, your request will be treated as routine correspondence for further NRC review and response under separate cover.

Please feel free to contact Tom Alexion at (301) 415-1326 to discuss any questions related to this request.

Sincerely,

/RA/

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

cc: Janet Smith Mueller, Esq.
Director of Law Department
P.O. Box 53999
Mail Station 8695
Phoenix, AZ 85072-3999

T. Saporito

- 3 -

Accordingly, your request of January 17, 2003, for consideration as public petition under 10 CFR 2.206, is denied. However, your request will be treated as routine correspondence for further NRC review and response under separate cover.

Please feel free to contact Tom Alexion at (301) 415-1326 to discuss any questions related to this request.

Sincerely,

/RA/

John A. Zwolinski, Director
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

cc: Janet Smith Mueller, Esq.
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NRR-106

***see previous concurrence (no legal objection)**

OFFICE	PDIV-1/PM	PDIV-1/LA	PDIV-2/SC	OGC*	PDIV/D	DLPM/D
NAME	TAlexion	MMcAllister	SDembek	JGoldberg	HBerkow	JZwolinski
DATE	02/24/2003	02/24/2003	02/24/2003	02/24/03	02/24/2003	2/25/03

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