

March 18, 2003

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

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

Dear Mr. Saporito:

In our response dated February 25, 2003, to your letter of January 17, 2003, addressed to Mr. William D. Travers, Executive Director for Operations, we informed you that your requests pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206 did not meet the NRC's criteria for review under 10 CFR 2.206, and that your requests would be reviewed as routine correspondence. We have completed our review of the issues raised in your letter.

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

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 January 17, 2003, letter 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. You also do not provide any new specific supporting information for the two APS managers that you indicate have retaliated against employees.

The NRC has conducted recent assessments of APS's work environment. As stated in NRC Inspection Report Nos. 50-528, 529, 530/01-04 and 50-528, 529, 530/02-05, dated March 20, 2001, and March 20, 2002, respectively, no conditions were found at the site that would challenge a safety conscious work environment. Based on interviews conducted during these inspections, workers at the site felt free to input safety issues into the problem identification and resolution program. The NRC teams concluded, based on these interviews, that APS employees were willing to identify issues and accepted the responsibility to proactively identify and enter safety issues into the corrective action program.

Based on the above, the NRC does not believe that augmented NRC investigation or inspection of the work environment or the two managers at APS, is warranted. Regarding the September 26, 2002, license amendment request, please note that this license amendment request was withdrawn by APS on November 19, 2002, as published in the *Federal Register* on December 13, 2002 (67 FR 76767).

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). Also, NRC regulations do not require that licensees make their employees publically available for interviews. In addition, you are not an employee of APS. Therefore, the NRC does not find the attorney's November 20, 2002, letter to be in violation of NRC regulations.

T. Saporito

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I trust that the above explanations are helpful in addressing your concerns. Please feel free to contact Tom Alexion at (301) 415-1326 to discuss any questions related to this request.

Sincerely,

/RA/

Herbert N. Berkow, Director
Project Directorate IV
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

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cc: Janet Smith Mueller, Esq.
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