



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

June 27, 2005

EA-05-037

Gregg R. Overbeck, Senior Vice
President, Nuclear
Arizona Public Service Company
P.O. Box 52034
Phoenix, AZ 85072-2034

SUBJECT: NOTICE OF VIOLATION (NRC INSPECTION REPORT 05000528/2005011,
05000529/2005011, AND 05000530/2005011)

Dear Mr. Overbeck:

This refers to the inspection of Palo Verde Nuclear Generating Station (Palo Verde) emergency plan changes, the results of which were documented in Palo Verde inspection report 2005-011 issued on April 5, 2005. On March 4, 2005, the results of this inspection were discussed with members of your staff during an exit meeting at the Palo Verde facility. We informed Arizona Public Service (APS) at that time that we had identified an apparent violation of NRC requirements for which escalated enforcement action was being considered.

The apparent violation involved making a change to the Palo Verde emergency plan which appeared to have decreased the plan's effectiveness. Specifically, certain emergency action level (EAL) definitions that relied on field radiation survey results were modified in a way that made them technically inaccurate and unable to be implemented as written. NRC regulations in 10 CFR 50.54(q) permit a licensee to make emergency plan changes without NRC approval only if the changes do not decrease the effectiveness of the plan.

In the letter transmitting the inspection report, we provided APS an opportunity to address the apparent violation at a predecisional enforcement conference or in a written response before NRC made a final enforcement decision. APS requested an opportunity for a conference, and on June 1, 2005, a predecisional enforcement conference was conducted in the NRC's Region IV office with members of the Palo Verde staff to discuss APS's position on the apparent violation, its significance, its root cause, and any corrective actions taken or planned.

At the conference, APS admitted the violation, and attributed it, in part, to inadequate radiation protection expertise in the emergency planning department, a failure to subject the plan change to cross-organizational reviews, and a failure to provide appropriate training when responsibilities for emergency plan changes were transferred from one organization to another. APS acknowledged that the resulting conflict in procedural guidance (i.e., the EAL changes were not consistent with existing implementing procedures) could delay classification of an emergency or result in an event being mis-classified. APS stated that the potential for these problems was minimal because the implementing procedures were still correct and because the

training and knowledge of the radiation protection staff would overcome any confusion created by the discrepant EALs.

APS's corrective actions were particularly comprehensive; most noteworthy was the action APS took to probe beyond the specific violation to identify root causes which revealed program weaknesses in knowledge transfer and cross-organizational reviews of plan changes. At the conference, APS stated that it had taken the following actions: (1) revised the affected EALs to their previous definitions; (2) reviewed other emergency plan changes involving EALs made since 1994; (3) evaluated changes made to the Palo Verde security, fire protection and quality assurance plans; (4) developed training and job qualification requirements for those making emergency plan changes; (5) assigned radiation protection and operations personnel to the emergency planning department; (6) coached emergency plan personnel in the need for rigor, attention to detail and questioning attitude; and (7) assigned a new emergency plan manager.

Based on the information developed during the inspection, and consideration of the information that APS provided during the conference, the NRC has determined that a violation of NRC requirements occurred. The violation is cited in the enclosed Notice of Violation (Notice) and involved violating the requirements of 10 CFR 50.54(q). Specifically, APS made an emergency plan change that decreased the plan's effectiveness, and did so without prior NRC approval. This violation was assessed in accordance with the NRC Enforcement Policy because making this plan change without NRC approval impacted the regulatory process.

While this violation did not result in any actual safety consequences, it created the potential for confusion caused by differences between EAL definitions and emergency plan implementing procedures. As APS acknowledged at the conference, this had the potential to delay classification or result in mis-classification of an emergency. Also, the violation was indicative of a larger problem in APS's review of emergency plan changes, as discovered during APS's root cause analysis following the identification of the violation.

Therefore, this violation has been categorized in accordance with the NRC Enforcement Policy at Severity Level III. In accordance with the Enforcement Policy, a base civil penalty in the amount of \$65,000 is considered for a Severity Level III violation. Because Palo Verde was not the subject of escalated enforcement action under the NRC Enforcement Policy in the 2 years preceding the identification of this issue,¹ the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy. The NRC determined that corrective action credit was warranted because APS's corrective actions, described earlier, were prompt and comprehensive. Compliance was restored by revising the affected EALs to their previous definitions. This results in no civil penalty being assessed for this violation.

Therefore, in recognition of the corrective actions taken, and in accordance with the provisions of the NRC Enforcement Policy regarding treatment of prior escalated enforcement actions, I have been authorized, after consultation with the Director, Office of Enforcement, not to propose a civil penalty in this case. However, significant violations in the future could result in a

¹ APS was issued a Severity Level III violation and \$50,000 civil penalty on April 8, 2005, for a 1992 violation of 10 CFR 50.59. However, that violation was reflective of performance more than a decade earlier, and the citation for it was not within the 2-year period preceding the identification of the emergency plan change issue.

civil penalty as there are now two examples of escalated enforcement action taken against APS since April 2005.

APS is required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing a response. The NRC will use this response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

APS's extent of condition review identified another violation involving an emergency plan change made without NRC approval and which reduced the effectiveness of the plan. Specifically, APS identified a change to an EAL definition involving core exit thermocouple temperature readings which APS concluded was a decrease in plan effectiveness. This violation would have warranted classification at Severity Level III. However, the NRC is exercising enforcement discretion, as provided for in section VII.B.4 of the NRC Enforcement Policy, and is electing not to consider enforcement action for this issue. Specifically, APS identified this violation as part of its corrective action for the violation identified by the NRC and took corrective action within a reasonable time following discovery, ultimately deciding to revise the EAL to its previous version. In addition, the violation appears to have resulted from similar weaknesses in the plan change process, and it would not substantially change the safety significance of the initial violation.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and APS's response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, the response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

Sincerely,

/RA/

Bruce S. Mallett
Regional Administrator

Dockets: 50-528, 50-529, 50-530
Licenses: NPF-41, NPF-51, NPF-74

Enclosure: Notice of Violation

Arizona Public Service Co.

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NOTICE OF VIOLATION

Arizona Public Service Company
Palo Verde Nuclear Generating Station

Dockets: 50-528, 50-529, 50-530
Licenses: NPF-41, NPF-51, NPF-74
EA-05-037

During an NRC inspection conducted on September 29, 2004 to March 4, 2005, a violation of NRC requirements was identified. In accordance with the NRC Enforcement Policy, the violation is listed below:

10 CFR 50.54(q) states in part, "A licensee authorized to possess and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in §50.47(b) and the requirements in appendix E of this part The nuclear power reactor licensee may make changes to these plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of §50.47(b) and the requirements of appendix E to this part.

Contrary to the above, on September 29, 2004, and lasting until February 8, 2005, the licensee made a change to its emergency plan without prior Commission approval which decreased the plan's effectiveness. The licensee removed a classifiable condition from two emergency action level (EAL) definitions, which made the EALs technically inaccurate and unable to be implemented as written. For example, with respect to EAL 3-16, the licensee removed the condition, "Site Boundary dose rate > 100 mrem/hr Deep Dose Equivalent as measured with portable instrumentation," and replaced it with "Field survey result or valid dose assessment indicates > 100 mrem TEDE or > 500 mrem thyroid CDE at the Site Boundary" Similar revisions were made to EAL 3-19. The revised EALs could not be effectively implemented because field survey instruments cannot directly determine TEDE (Total Effective Dose Equivalent). This revision to the EALs decreased the effectiveness of the plans because it had the potential to create confusion and delay an emergency classification or result in mis-classifying an emergency classification.

This is a Severity Level III violation (Supplement VIII).

Pursuant to the provisions of 10 CFR 2.201, Arizona Public Service Company is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Regional Administrator, Region IV, and a copy to the NRC Resident Inspector at the facility that is the subject of this Notice, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; EA-05-037" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. The response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not

be taken. Where good cause is shown, consideration will be given to extending the response time.

If APS contests this enforcement action, it should also provide a copy of the response, with the basis for its denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Because APS's response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of the response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If APS requests withholding of such material, it must specifically identify the portions of your response that it seeks to have withheld and provide in detail the bases for its claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Dated this 27th day of June 2005

Arizona Public Service Co., Palo Verde, EA-05-037

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