



**Department of Energy**  
Washington, DC 20585

QA: N/A  
DOCKET NUMBER 63-001

December 23, 2008

**ATTN: Document Control Desk**  
Christian Jacobs, Senior Project Manager  
Project Management Branch Section B  
Division of High-Level Waste Repository Safety  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
EBB-2B2  
11545 Rockville Pike  
Rockville, MD 20852-2738

YUCCA MOUNTAIN – REQUEST FOR ADDITIONAL INFORMATION (RAI)  
RE: LICENSE APPLICATION (SAFETY ANALYSIS REPORT SECTION 1.6)  
SAFETY EVALUATION REPORT, VOLUME 2, CHAPTER 3, IDENTIFICATION OF  
HAZARDS AND INITIATING EVENTS

WITHHOLD ENCLOSED DOCUMENT FROM PUBLIC DISCLOSURE PURSUANT  
TO 10 CFR 2.390

Reference: Ltr, Jacobs to Williams, dtd 11/18/08, “Yucca Mountain – Request For  
Additional Information Re: License Application (Safety Analysis Report  
Sections 1.6.3.4.1 and 1.6.5)”

The purpose of this letter is to transmit the enclosed report, titled NUS-1416, Revision 1,  
requested by the U.S. Nuclear Regulatory Commission (NRC) in the above-referenced  
letter to the U.S. Department of Energy (DOE). The report provides DOE’s partial  
response to the RAI, first set, identified in RAI number 2.

DOE requests that NRC withhold this report from public disclosure pursuant to  
10 CFR 2.390. The enclosed affidavit, executed by Public Services of Arizona, provides  
the necessary information required in accordance with the Commission’s regulations and  
specifically applicable to Docket Number 63-001.

If you have any questions regarding this letter, please contact me at (202) 586-9620, or  
by email to [jeff.williams@rw.doe.gov](mailto:jeff.williams@rw.doe.gov).

*Steven E. Gombing* (Signature)  
Jeffrey R. Williams, Supervisor  
Licensing Support  
Regulatory Authority Office

RAO:SEG-0266

NM5525



Enclosures (2):

1. Affidavit of Terry L. Radtke, Arizona Public Service Company, in Support of Request to Withhold NUS-1416, Revision 1, From Disclosure to the Public
2. NUS-1416, Revision 1, "Estimate of the Probability That An Aircraft Will Impact The PVNGS" identified as Reference 2.2.54 in "Frequency Analysis of Aircraft Hazards for License Application," BSC 2007c

cc w/o encl 2:

B. J. Benney, NRC, Rockville, MD  
J. C. Chen, NRC, Rockville, MD  
J. R. Davis, NRC, Rockville, MD  
A. S. Mohseni, NRC, Rockville, MD  
N. K. Stablein, NRC, Rockville, MD  
D. B. Spitzberg, NRC, Arlington, TX  
J. D. Parrott, NRC, Las Vegas, NV  
L. M. Willoughby, NRC, Las Vegas, NV  
W. C. Patrick, CNWRA, San Antonio, TX  
Budhi Sagar, CNWRA, San Antonio, TX  
Mike Simpson, CNWRA, San Antonio, TX  
Rod McCullum, NEI, Washington, DC  
B. J. Garrick, NWTRB, Arlington, VA  
R. R. Loux, State of Nevada, Carson City, NV  
Alan Kalt, Churchill County, Fallon, NV  
Irene Navis, Clark County, Las Vegas, NV  
Ed Mueller, Esmeralda County, Goldfield, NV  
Ron Damele, Eureka County, Eureka, NV  
Jim Bilyeu, Inyo County, Independence, CA  
Chuck Chapin, Lander County, Battle Mountain, NV  
Wade Poulsen, Lincoln County, Pioche, NV  
Linda Mathias, Mineral County, Hawthorne, NV  
Darrell Lacy, Nye County, Pahrump, NV  
Joe Kennedy, Timbisha Shoshone Tribe, Death Valley, CA  
David Pound, White Pine County, Ely, NV  
K. W. Bell, California Energy Commission, Sacramento, CA  
Barbara Byron, California Energy Commission, Sacramento, CA  
Susan Durbin, California Attorney General's Office, Sacramento, CA  
C. J. Fitzpatrick, Egan, Fitzpatrick, and Malsch, PLLC, San Antonio, TX  
Jeff Van Neil, Nye County, Pahrump, NV  
Terry Radtke, Arizona Public Service Company, Phoenix, AZ  
Michael Green, Pinnacle West, Phoenix, AZ

ENCLOSURE 1

Affidavit of Terry L. Radtke, Arizona Public Service Company, in Support of Request to  
Withhold NUS-1416, Revision 1, From Disclosure to the Public

United States  
Nuclear Regulatory Commission  
Washington, DC

In the Matter of  
U.S. Department of Energy's License  
Application for Authority to Construct a  
Geologic Repository at a Geologic  
Repository Operations Area at Yucca  
Mountain, Nevada

Affidavit of Terry L. Radtke in Support of  
Request to Withhold NUS-1416 Revision 1,  
Estimate of the Probability That an Aircraft  
Will Impact the PVNGS, from disclosure to  
the public pursuant to 10 CFR § 2.390

NRC Docket Number 63-001

Pursuant to 10 C.F.R. § 2.390, Terry L. Radtke submits this affidavit in support of Arizona Public Service Company's Request to Withhold NUS-1416 Revision 1, Estimate of the Probability That an Aircraft Will Impact the PVNGS, from disclosure to the public pursuant to 10 CFR § 2.390.

1. My name is Terry L. Radtke.
2. This affidavit is submitted in support of Arizona Public Service Company's ("APS" or the "Company") request that NUS-1416 Revision 1, Estimate of the Probability That an Aircraft Will Impact the PVNGS, June 1975, be withheld from public disclosure. This affidavit is consistent with the requirements in 10 CFR § 2.390(b) for withholding pursuant to 10 CFR § 2.390(a)(4) and is consistent with Department of Energy ("DOE") regulation 10 CFR §1004.10.
3. I am presently employed by APS as the General Manager of Emergency Services and Support for the Palo Verde Nuclear Generating Station ("Palo Verde" or "PVNGS"). In that position, I am responsible for the Security, Fire Protection, Emergency Planning, and other support departments at Palo Verde. I am the Palo Verde manager delegated the function of reviewing the information sought to be withheld and am authorized to make such a request.
4. In 1975, APS commissioned NUS Corporation ("NUS") to prepare a study that estimated "the annual probability that an aircraft will impact the PVNGS." The results of that study were documented by NUS in a report entitled NUS-1416 Revision 1, Estimate of the Probability That an Aircraft Will Impact the PVNGS, June 1975 (the "NUS Report"). The NUS Report was relied upon by APS in its license application to the Nuclear Regulatory Commission ("NRC") for the construction and operation of Palo Verde. The NUS Report is referenced in the Palo Verde Updated Final Safety Analysis Report.
5. In 2007, representatives from the Yucca Mountain Project contacted APS in order to determine whether APS would provide a copy of the NUS Report to DOE for DOE's use in preparation of its License Application for Authority to Construct a Geologic Repository at a Geologic Repository Operations Area at Yucca Mountain, Nevada (the "Yucca Mountain License Application").

6. Prior to responding to DOE's request, Palo Verde Security department staff, acting under my direction, conducted a review of the NUS Report using the guidance provided in NRC Regulatory Issue Summary ("RIS") 2005-26. This review determined that the NUS Report contained sensitive unclassified non-safeguards information ("SUNSI") that, if not properly controlled, could inadvertently provide assistance to those who might use the information for malevolent acts.

7. APS provided a copy of the NUS Report to DOE with the marking "WITHHOLD FROM PUBLIC DISCLOSURE PURSUANT TO 10 CFR §§ 2.390 AND 1004.10" and notified DOE in the transmittal letter that the NUS Report contains security sensitive information that could be useful to potential adversaries and that it also contained Company confidential information. APS requested, consistent with RIS 2005-26, that the NUS Report be withheld from public disclosure by the NRC pursuant to 10 CFR §§ 2.390 and by DOE pursuant to 10 CFR § 1004.10.

8. In November 2008, representatives from the DOE Yucca Mountain Project contacted APS and informed APS that NRC staff had submitted a Request for Additional Information ("RAI") to the DOE Yucca Mountain Project. The RAI apparently requested that DOE provide a copy of the NUS Report to NRC Staff for its review in support of the Yucca Mountain License Application.

9. As the owner of the NUS Report, APS requests that the NUS Report be withheld from public disclosure.

10. APS presently maintains a copy of the NUS Report as a SUNSI document and Company confidential document. The DOE Yucca Mountain Project Office maintains a copy of the NUS Report in its records management system technical information center as a confidential document pursuant to APS's request.

11. In making this request, I am mindful of the NRC's policy that, in order to achieve an effective balance between legitimate concerns for protection of competitive positions and the right of the public to be fully apprised as to the basis for and effects of licensing or rulemaking actions, it is within the discretion of the Commission to withhold such information from public disclosure.

12. Understanding NRC's policy regarding disclosure, and the elements of 10 CFR §§ 2.390 (b)(3)(i) and (b)(4), the NUS Report contains information that could be useful to a potential adversary with malevolent intent and should be withheld from public disclosure. Specifically, the NUS Report contains descriptions of air activity in the vicinity of Palo Verde, including commercial, military and general aviation aircraft, and analyzes probability of impact of those aircraft over a potentially affected plant area. Given the nation's tragic experiences suffered as a result of the terrorist attacks of September 11, 2001, and the subsequent heightened level of security imposed on licensees by the NRC, APS believes that providing the NUS Report to the public could potentially and unnecessarily impose certain risks to APS and to public health and safety.

13. With respect to the considerations listed in 10 CFR § 2.390(b)(4):

- a. The NUS Report has and presently is maintained in confidence by APS.
- b. The NUS Report, and similar information of this type, is customarily held in confidence by APS. When the NRC requests this type of information (*i.e.*

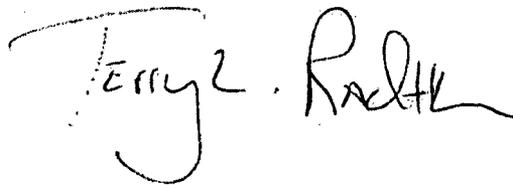
security sensitive) from APS, APS routinely requests that it be withheld from public disclosure.

- c. Although APS will not transmit the NUS Report to NRC, we have been assured by the DOE Yucca Mountain Project Office that it will transmit the NUS Report to NRC in confidence.
- d. The NUS Report is not available in public sources.
- e. Public disclosure of the NUS Report is likely to cause substantial harm to APS's position. While APS does not have actual knowledge of a specific credible threat, we take preventive measures regarding public release of this type of information to prevent a potential adversary from obtaining this type of information. Additionally, the interests of public health and safety are adequately protected through the plant's robust design and operational features, a defense in depth protective strategy, and well planned and exercised emergency response capabilities.

14. Furthermore, if an interested person seeks to obtain access to this type of information (including the NUS Report), NRC Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, 10 CFR § 2.311 (as amended 73 FR 12,627, March 10, 2008), provide an appropriate appellate review mechanism to ensure that SUNSI determinations appropriately balance protecting this type of information from disclosure against the public interest in obtaining this type of information. Therefore, withholding the NUS Report from the public at this stage of the Yucca Mountain License Application proceeding is necessary and appropriate to protect APS's interests.

15. I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of December 2008.

Terry L. Radtke

A handwritten signature in black ink that reads "Terry L. Radtke". The signature is written in a cursive style with a large, stylized initial "T" and "R".