

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of)
)
)

ARIZONA PUBLIC SERVICE)
COMPANY, et al.,)
)

(Palo Verde Nuclear)
Generating Station, Unit 2))
)
)

DOCKET NO. STN 50-529

VIEWS AND COMMENTS ON PETITION FILED BY
COALITION FOR RESPONSIBLE ENERGY EDUCATION

1. INTRODUCTION

By letter, dated February 5, 1986, the Office of Nuclear Reactor Regulation (NRR) provided licensee Arizona Public Service Company (APS) with a copy of a petition, dated January 12, 1986 (filed January 17, 1986) and an addendum thereto dated January 20, 1986 (filed January 21, 1986) which had been submitted to the Director, NRR, pursuant to 10 CFR 2.206(a), by the Coalition for Responsible Energy Education (CREE). Such letter invited APS to express any views or comments respecting the petition that APS wished the Director to consider in arriving at a decision on the petition. The following views and comments are submitted in response to such invitation.

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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF
ARIZONA PUBLIC SERVICE
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COMMISSION FOR RESPONSIBLE ENERGY EDUCATION
VIEWS AND COMMENTS ON PETITION FILED BY

1. INTRODUCTION

The Commission for Responsible Energy Education (CREEE) is pleased to participate in the public process of the Arizona Public Service Company (APSC) regarding the proposed construction of a new nuclear power plant. The Commission's primary concern is the safety and security of the community and the environment. We believe that the APSC has not provided sufficient information to the public regarding the potential risks of the proposed plant. We urge the Commission to require the APSC to provide more detailed information regarding the safety and security of the proposed plant. We also urge the Commission to require the APSC to provide more detailed information regarding the potential impacts of the proposed plant on the environment and the community. We believe that the Commission should take these concerns into account in its decision regarding the proposed plant.

2. Legal Issues.

There appear to be three legal issues presented by the Petition. The first relates to the relief requested, the second, to the appropriateness of the adjudicatory process to deal with matters alleged, and the third, to the reopening of the issue of technical qualifications.

2.1 Relief Requested.

Paragraph 1 of the Petition states that "The petition requests service upon Arizona Public Service Company/Arizona Nuclear Power Project (APS/ANPP) of an order to show cause, pursuant to 10 CFR 2.202, why the low power license of PVNGS-2 should not be suspended and further licensing activity for PVNGS-2 deferred, pending completion of the requested regulatory and corrective actions, and a proceeding initiated under 42 U.S.C. 2239(a)."

On its face, this statement of relief requested appears to comply with the Commission's regulations and to comport with the standards of fairness required by the Atomic Energy Act of 1954 as amended, the Administrative Procedure Act (APA) and the due process clause of the United States Constitution. In short, the statement requests the initiation of an adjudicatory

The undersigned, [Name], of the County of [County], State of [State], do hereby certify that [Name] is a resident of the County of [County], State of [State], and is a member of the [Organization], and is entitled to the benefits thereof.

3. Request for Relief

The undersigned, [Name], of the County of [County], State of [State], do hereby certify that [Name] is a resident of the County of [County], State of [State], and is a member of the [Organization], and is entitled to the benefits thereof.

The undersigned, [Name], of the County of [County], State of [State], do hereby certify that [Name] is a resident of the County of [County], State of [State], and is a member of the [Organization], and is entitled to the benefits thereof.

"show cause" proceeding to determine whether or not the requested administrative action, i.e., suspension of a license, should be taken.

However, this opening statement is misleading and at odds with the relief which the petition actually seeks. Paragraph 78 of the Petition (page 80) baldly states the request that the PVNGS-2 license be suspended without any hearing! It is impossible to conceive of a more blatant violation of the basic rules of fairness mandated by law, absent some incontrovertible need for emergency action which is not present here.

Citations to statutory provisions and judicial decisions respecting the Commission's discretionary authority to suspend licenses are irrelevant to the question of whether it can do so without any hearing. Similarly, citations respecting the placement of the burden of proof in "show cause" proceedings are irrelevant to the Commission's authority to suspend licenses without a hearing.

Clearly, the Commission may take emergency action when there is an immediate threat to the health and safety of the public. But, such circumstances are not present here, nor does the petition offer any bases on which the Commission could take

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1. The Commission has been informed that the Government of the United States has been requested to provide information regarding the activities of the Communist Party in the United States. The Commission has been informed that the Government of the United States has been requested to provide information regarding the activities of the Communist Party in the United States.

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NEW YORK. - The United States Coast Guard cutter "Albatross" (CGC-17) is expected to arrive in New York City on Monday, June 1, 1942. The cutter is on a voyage from San Francisco, California, to New York City, and is carrying a cargo of supplies for the United States Navy. The cutter is commanded by Lieutenant Commander J. H. Smith, and is accompanied by a crew of 100 men. The cutter is expected to arrive in New York City at approximately 10:00 a.m. on Monday, June 1, 1942.

the drastic action requested. Assuming for purposes of argument that all of the allegations and conclusions in the Petition are true (and they are not) and that a prima facie case has been made justifying initiation of a "show cause" proceeding (and it has not), no evidence has been presented to justify the drastic emergency action of license suspension without a hearing.

2.2 Adjudicatory Proceedings vs. Enforcement Processes

The Petition puts at issue the question of the role of the adjudicatory process in the enforcement of the Commission's licenses and regulations. In essence, the Petition complains that "previous inspection and enforcement activities were inadequate" and questions whether such activities are likely to uncover "generalized organizational inadequacies." (Petn para. 22 at p. 11) But nowhere in the Petition is it explained how or why the adjudicatory process can cure the alleged inadequacies in a more effective way. Indeed, the Petition acknowledges that the adjudicatory forum is not the appropriate mechanism to address the questions raised since it proposes initiation of a "Special Management Inspection and Oversight Team" and other inspection and enforcement actions as may be deemed necessary. (Petn para. 78 at pp. 52-53)

It is difficult to discern the basis for CREE's complaint against the Office of Inspection and Enforcement

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the investigation. The investigator must identify the problem and the scope of the investigation. The investigator must also identify the objectives of the investigation and the methods to be used. The investigator must also identify the resources available for the investigation.

8.2 Adjudicatory proceedings vs. Enforcement Proceedings

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is assigned to the case. The investigator must first determine the nature of the problem and the scope of the investigation. This is done by interviewing the person who reported the problem and by reviewing the available information. The investigator must also determine the objectives of the investigation and the methods to be used. This is done by consulting with the person who reported the problem and by reviewing the available information. The investigator must also determine the scope of the investigation and the methods to be used. This is done by consulting with the person who reported the problem and by reviewing the available information.

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(I&E). Certainly, almost all of the facts and conclusions alleged in the Petition stem directly from inspection reports and notices of violations issued by I&E or from the latest Systematic Assessment of Licensee Performance (SALP) Report¹ which in major measure is based on analyses of such inspections and notices. Also certainly, CREE ought not complain about the increase in the number of resident inspectors from 3 to 5 during the last SALP period, nor the ten-fold increase in inspection activities at Palo Verde over the past 6 years. The following table illustrates the dramatic increase in inspections at Palo Verde. It also gives some perspective of the improvement in the effectiveness of Palo Verde management over the past two years.

| <u>YEAR</u> | <u>INSPECTION
HOURS</u> | <u>VIOLATIONS</u> | <u>INSPECTION
HOURS PER
VIOLATION</u> |
|-------------|-----------------------------|-------------------|-----------------------------------------------|
| 1980 | 1120 | 6 | 187 |
| 1981 | 1343 | 5 | 269 |
| 1982 | 1044 | 5 | 209 |
| 1983 | 5503 | 27 | 204 |
| 1984 | 7023 | 24 | 292 |
| 1985 | 12051 | 22 | 547 |

¹ U.S. Nuclear Regulatory Commission, Region V, Systematic Assessment of Licensee Performance for Palo Verde Nuclear Generating Station, Report Nos. 50-528/85-36, 50-529/85-38, and 50-530/85-28, Evaluation Period 4/1/84 - 9/30/85, Assessment Conducted 11/14/85.

| YEAR | INSPECTION
HOURS | ADULTATION | INSPECTION
HOURS |
|------|---------------------|------------|---------------------|
| 1960 | 1,000 | 100 | 1,000 |
| 1961 | 1,000 | 100 | 1,000 |
| 1962 | 1,000 | 100 | 1,000 |
| 1963 | 1,000 | 100 | 1,000 |
| 1964 | 1,000 | 100 | 1,000 |
| 1965 | 1,000 | 100 | 1,000 |

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In any event, however, an adjudicatory show cause proceeding against a licensee is not the proper mechanism for asserting a complaint against I&E. In fact, it is unlikely that CREE for all of its self-righteous posturing could establish standing to challenge any office of NRC as to its performance of its responsibilities. And even if it could establish standing, it could not establish that an Atomic Safety and Licensing Board (ASLB) has jurisdiction to order any NRC office in the performance of its duties.

To the extent that CREE professes to have some magical measure of licensee performance (see Petn. para. 68 at page 46) that is better than the well-established SALP reviews on which CREE relies so heavily, its remedy lies in the rulemaking process - not in an adjudicatory hearing.

2.3 Reopening the Issue of Technical Qualifications

A challenge respecting the competence of licensee management is nothing more than a challenge of licensee technical qualifications. This matter has already been explored fully by NRC, and APS has been found to be technically qualified. The opportunity to raise such an issue has long since expired.

Clearly, the burden upon CREE to reopen this issue now is heavy indeed.² But the Petition does not address in any manner the established criteria which must be satisfied to warrant reopening.³ Presumably, if it were to have done so, the argument would have been made that reopening is justified, because the "new information" obtained from the SALP Report and other inspection reports would have led to a different result than had been reached initially. However, such an argument, if made, must fail, because the "new information" does not meet the required standard.

When one looks at the latest SALP Report, one finds it clearly stated at the outset that:

"Overall, we find that your performance of licensed activities at the Palo Verde Site was considered to be satisfactory during this assessment period."

This conclusion, which is borne out by the ratings assigned in 19 functional areas, provides no basis for reopening the issue of APS' technical qualifications. In every functional

² Kansas Gas and Electric Company, et al., 7 NRC 320, 338 (1978).

³ The citations and discussion in the Petition respecting the authority of the NRC to conduct "discretionary" hearings simply beg the question of the standards for reopening issues that have been previously decided.

area the performance rating was Category 2 or better. By definition, the rating in Category 2 means that:

" . . . Licensee management attention and involvement is evident and are concerned with nuclear safety; licensee resources are adequate and are reasonably effective such that satisfactory performance with respect to operational safety and construction quality is being achieved."

In light of the conclusions from the SALP Report, the Petition simply does not meet the standards required for reopening a proceeding.

3. Other Relief Requested.

3.1 Systems Interactions and Reliability Studies.

One item of relief requested by the Petition is the completion of systems interactions and reliability studies as recommended by the Advisory Committee on Reactor Safeguards (ACRS) in its report to the Commission dated December 15, 1981. (Petn para. 78 at pp. 52-53) In its discussion of this matter, (Petn para. 56 at pp. 34-35) it is apparent that CREE relied solely upon newspaper accounts of the ACRS meeting on

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1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States.

3. Other Relief Requested.

1. Systems Interactions and Reliability Studies.

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is responsible for the study. The investigator must first identify the problem and then determine the scope of the study. The next step is to design the study. This involves determining the methods to be used and the data to be collected. The third step is to collect the data. This is done by the investigator who is responsible for the study. The fourth step is to analyze the data. This is done by the investigator who is responsible for the study. The fifth step is to interpret the results. This is done by the investigator who is responsible for the study. The sixth step is to write the report. This is done by the investigator who is responsible for the study. The seventh step is to present the results. This is done by the investigator who is responsible for the study. The eighth step is to discuss the results. This is done by the investigator who is responsible for the study. The ninth step is to conclude the study. This is done by the investigator who is responsible for the study. The tenth step is to publish the results. This is done by the investigator who is responsible for the study.

November 7, 1985, in arriving at the conclusion that the failure to make such studies reflected upon APS management competence.

If, instead of relying upon unreliable newspaper accounts, CREE had performed some simple research, such as looking at Supplement No. 1 to the Safety Evaluation Report (SER Supp. 1) or examining the transcript of the ACRS meeting, it would have become apparent that the decision to defer the additional studies as recommended by ACRS was not made by APS management. Rather, it was a reasoned decision deliberately arrived at by the Regulatory Staff on the basis that the focus and direction of the studies should await resolution of Unresolved Safety Issue (USI) A-17 - Systems Interaction.

Clearly, this well-reasoned decision of the Regulatory Staff has no relevance to APS' managerial competence, and the inaccurate newspaper account provides no basis for modifying that decision.

3.2 Resolution of Auxiliary Pressurizer Spray System (APSS) Issues.

The Petition also requests that an "acceptable permanent resolution of all outstanding APSS issues [be required] prior to the reinstatement of the PVNGS-2 operating license." (Petn para. 78, p. 53) Again, the basis for this requested relief

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8.2 Resolution of Auxiliary Presentation Gray System (APSS)
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appears to rest on newspaper accounts of the ACRS meeting. (Petn para. 57, p. 35-36)

The fact is that the modifications which enhanced the reliability of the APSS constitute the final resolution of the APSS issues in a manner that meets all regulatory requirements applicable to Palo Verde -- and the ACRS so understood these facts. (ACRS transcript, p. 51, Meeting Nov. 7, 1985)

Apparently, CREE has confused the resolution of the APSS issues with the open question of whether or not pressure operated relief valves (PORV's) should be required on all Combustion Engineering plants. The Commission has decided, with the concurrence of ACRS, that the resolution of this question should await the resolution of USI A-45 - Shutdown Decay Heat Removal Requirements. It is our understanding that the Regulatory Staff's report on this generic issue is scheduled for completion in 1986.

4. Management Competence of APS.

Response to each and every allegation and conclusion asserted in the Petition does not appear to be warranted. For the most part they stem from recommendations and criticisms found in the SALP Report. The point has already been made that the SALP Report does not support CREE's contentions.

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1. The first of these is the fact that the United States is a country of immigrants. It is a country of people who have come from many different parts of the world and who have brought with them their own languages, customs, and traditions. This has made the United States a very diverse country, and it is one of the reasons why it is so strong and so successful.

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respecting the operating experience during the Unit 1 power ascension program. (Trans. pp. 40-44, ACRS Meeting, 11/7/85; see also Trans. pp. 41-55, ACRS Subcommittee Meeting, 11/5/85) As to operating crews, the conclusions were that the "experience reflects well on the training and qualifications of the operating crew", and "overall, we rate performance of the operating crew quite high."

As to the technical support organization, Mr. Crews concluded that "performance has been acceptable" and added that "licensee management has taken steps to improve upon the utilization of the technical staff as the testing program has progressed and experience has been gained . . . their utilization of performance has improved, as experience has been gained, particularly in the area of post-trip and post-event review and evaluation."

As to management, Mr. Crews stated: "We have been generally satisfied with the performance, and there has again been steady improvement. Management has demonstrated a healthy attitude toward critically examining the performance of the programs and the managing systems upon which they must rely for effective control for operational activities."

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10. characteristics and its own history.

The final conclusion reached by Mr. Crews was:

"The improvements, which have come about as the result of Unit 1 experience, we feel, should fully expect to result in measurable improvements in the overall performance of Unit 2 . . . "

It would be without reason to find that this record of achievements and improvements was the result of anything except good, competent management.

The observations reported by Region V to ACRS are supported by comparing the most recent SALP Report with the preceding report. The comparison shows that the only Category 3 ratings in the earlier SALP Report (Preoperational Testing and Startup Testing) improved to Categories 1 and 2, respectively.

The following information is being furnished to you for your information and guidance. It is requested that you advise the Bureau of any changes or additions to the information furnished herein.

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The number of Category 1 ratings doubled from 2 to 4.⁴ Additionally, improved trends were observed with respect to three Category 2 ratings. In only one area - Emergency Preparedness - was a decline in the SALP rating reported from Category 1 to Category 2. However, in this area the latest SALP report concluded "based on the licensee's response to the identified program weaknesses and performance the October 2, 1985 exercise, some improvement has been noted." This improvement trend is also confirmed by Inspection Report Nos. 50-528/85-34 and 50-529/85-34, issued November 27, 1985, which shows that the deficiencies noted in SALP Report respecting the emergency preparedness training program had been corrected.

⁴ The table summarizing the SALP results by functional areas on page 3 of the SALP Report shows a rating of Category 2 for item 18 - Preoperational Testing. The text discussion of this functional area clearly shows an assessment rating of Category 1.

"Conclusion

"Performance assessment - Category 1. Performance steadily improved during the assessment period. The licensee's corrective measures implemented during the previous SALP period were effective in improving previously noted weakness as demonstrated by successful completion of the remainder of the Unit 1 preoperational test program and the performance of the Unit 2 test program with virtually no problems noted."

The results of the study are presented in Table 1. The data show that the mean score for the control group was significantly higher than the mean score for the experimental group. This difference was statistically significant at the 0.05 level. The results suggest that the intervention had a negative effect on the outcome variable.

The table summarizes the data results by treatment group. The data show that the mean score for the control group was significantly higher than the mean score for the experimental group. This difference was statistically significant at the 0.05 level. The results suggest that the intervention had a negative effect on the outcome variable.

Discussion

The results of the study are consistent with the hypothesis that the intervention had a negative effect on the outcome variable. The data show that the mean score for the control group was significantly higher than the mean score for the experimental group. This difference was statistically significant at the 0.05 level. The results suggest that the intervention had a negative effect on the outcome variable.

The achievements reported by Mr. Crews and reflected in the latest SALP report demonstrate aggressive and effective management and competent technical qualifications. The steady improvements noted belie the CREE contentions.

5. Impacts of Incentive Plans.

The Petition raises the spectre that incentive plans and other rate matters may impose schedular and financial pressures on management which could interfere with the safe and reliable operation and maintenance of Palo Verde Unit 2. The same issue was raised in the CREE petition filed in 1984 with respect to the licensing of Unit 1. The decision by the Director, NRR, rejected such petition on the grounds that the NRC was alert to the potential impact of incentive plans and had instituted a generic study of such plans and their potential impacts. Moreover, the decision noted that increased inspection of Palo Verde was planned and would provide evidence of any deterioration in licensee performance. As previously noted, the inspection activity at Palo Verde increased dramatically in 1985 and did not produce any evidence of a reduction in management's commitment to achieve safe and reliable operation and maintenance of Palo Verde. On the contrary, the ratio of infractions-to-inspection manhours decreased significantly in 1985.

The record shows that the power ascension test program for Unit 1 was conducted in a deliberate, conservative fashion. There is no evidence that the incentive plans imposed upon APS by the Arizona Corporation Commission (or on the other Palo Verde licensees by their respective rate regulatory authorities) led to any shortcuts that undermined the safety of Unit 1 operation.

Accordingly, the spectre raised by CREE must be viewed as no more than what it is -- pure speculation so tenuous that it can provide no support for the requested suspension of the Unit 2 operating license.

7. Conclusion

In summation, it is evident NRR and Region V, together with the ACRS, have engaged in a comprehensive and penetrating scrutiny of Palo Verde in all of its aspects, but with particular emphasis on management qualifications and involvement in day-to-day activities. The record shows that criticisms and recommendations generated by this close scrutiny have been taken seriously and responded to affirmatively by management.. The examples of this kind of response are numerous: e.g. employment at upper management levels of additional personnel with nuclear operating experience; institution of programs to improve response time for disposition of (CAR's); efforts by top management to improve compliance with technical specifications and FSAR commitments;

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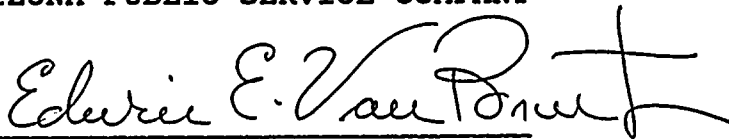
Conclusion

The first of these is the fact that the
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timely completion of the equipment qualification program; successful implementation of fire prevention measures; remarkable operation by shift crews; improvements in preoperational testing; and currently, management direction in the preparation of LER reports. All of these examples and more are indicative of responsible management seeking to achieve excellence.

Accordingly, it is submitted that the CREE Petition is without merit. I&E activities have identified areas where improvements can be made, and APS management has responded aggressively to achieve improved performance. The suspension of the Unit 2 operating license is totally unwarranted and the other relief requested is ill conceived.

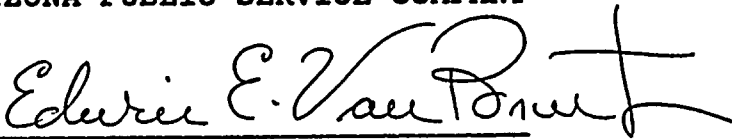
ARIZONA PUBLIC SERVICE COMPANY

By 
Edwin E. Van Brunt, Jr.
Executive Vice President-ANPP

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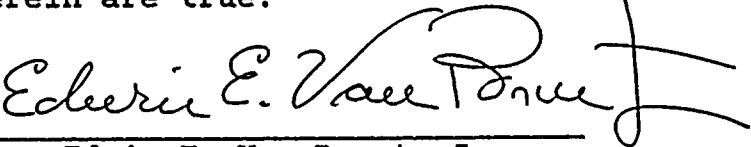
ARIZONA PUBLIC SERVICE COMPANY

By 
Edwin E. Van Brunt, Jr.
Executive Vice President-ANPP

Dated: February 21, 1986

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Edwin E. Van Brunt, Jr., represent that I am the Executive Vice President-ANPP, that the foregoing document has been signed by me on behalf of Arizona Public Service Company with full authority to do so, that I have read such document and know its contents, and that to the best of my knowledge and belief, the statements made therein are true.



Edwin E. Van Brunt, Jr.

Sworn before me this 21st day of February, 1986



Notary Public

My Commission Expires Feb. 11, 1989

