

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
Thomas E. Murley, Director

In the Matter of

ARIZONA PUBLIC SERVICE COMPANY, ET AL. }
(Palo Verde Nuclear Generating Station,) }
Units 1, 2 and 3 }

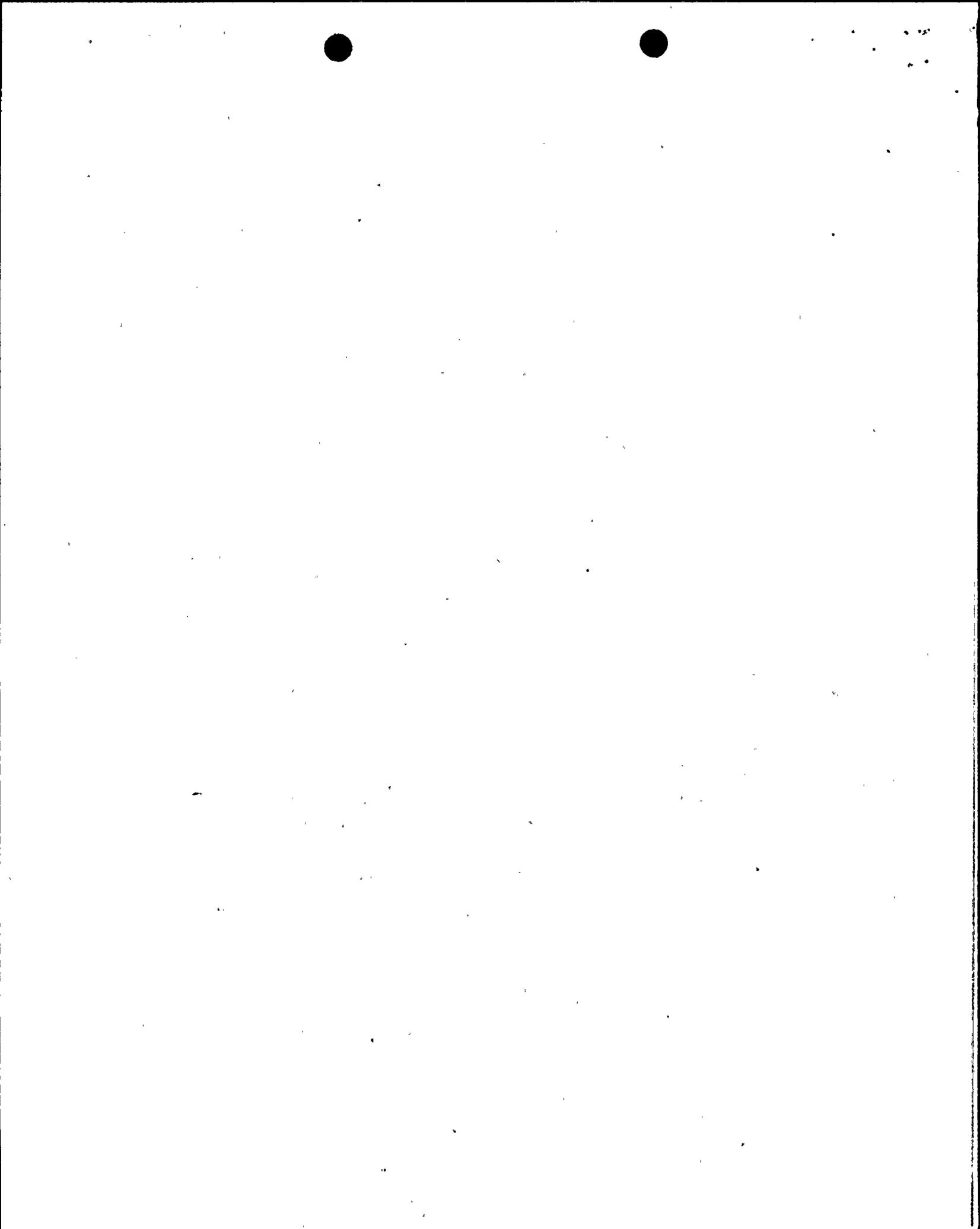
Docket Nos. 50-528, 50-529, 50-530
(10 CFR 2.206)

DIRECTOR'S DECISION UNDER 10 CFR 2.206

INTRODUCTION

By petition dated October 21, 1986, Mr. Myron L. Scott and Mr. Stephen M. Kohn, on behalf of the Coalition for Responsible Energy Education (CREE or Petitioner), filed a request pursuant to 10 CFR 2.206 with the Director, Office of Inspection and Enforcement. CREE asked the Nuclear Regulatory Commission (NRC) to provide relief by (1) issuing an Order to Show Cause why the licenses and permits for all three Palo Verde units should not be suspended or revoked because of management character, incompetence, and lack of integrity; (2) initiating an investigation to determine the severity and extent of apparent document falsification by APS officials; (3) ordering a public hearing on the foregoing; and (4) imposing a civil penalty or such additional enforcement action as may be deemed necessary. By letter dated December 12, 1986, the Director, Office of Inspection and Enforcement advised CREE that the allegations raised in the petition were under consideration, that Arizona Public Service Company (APS or licensee) had been asked to respond to the allegations, and that CREE would be informed of action taken with respect to its petition. By letter dated January 20, 1987, the licensee responded to the CREE allegations. The petition was subsequently referred to the Office of Nuclear Reactor Regulation for response. For the reasons set forth below, I have determined that the petition should be denied.

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A show cause proceeding under 10 CFR 2.206 must be based on substantial health and safety issues. See Washington Public Power Supply System (WPPSS) Nuclear Project No. 2, DD-84-7, 19 NRC 899, 923 (1984). The information provided by CREE fails to rise to this standard because its only evidence is Mr. Van Brunt's single alleged deceptive response to a control question which was to be used as a standard for comparing responses to other questions. The claims by CREE fail to consider the nature of polygraph tests. For polygraph tests to be reliable, they must include one or more control questions so that the examiner can have a point of comparison. Because polygraph tests, by design, include questions intended to elicit deceptive responses, it is expected that those being tested usually will give deceptive responses to control questions. In addition, because polygraph tests are designed only to test the truthfulness of relevant questions, they do not conclusively establish the truthfulness of control questions. To establish the truthfulness of control questions, a different set of questions would have to be asked so that the control questions would qualify as relevant questions.

In this instance, Mr. Van Brunt was asked a control question to elicit a deceptive response so that the polygraphist would have a basis for determining the truthfulness of his answers to relevant questions. (See Transcript at 13-14.) Because it is likely that most people would answer this control question deceptively, Mr. Van Brunt's response did not provide any information other than that expected. Moreover, this question did not qualify as a relevant question. Under these circumstances, the answer to the control question is not reliable information that Mr. Van Brunt falsified company paperwork or documents for personal gain. Even if he had been untruthful

DISCUSSION

This petition concerns the results of certain polygraph tests of APS officials that were conducted during an investigation of whether an APS employee leaked Safeguards Information to local news media. CREE alleges that the results of these tests (1) demonstrate that documentation at the Palo Verde Nuclear Generating Station was falsified and (2) raise serious questions about management competence and integrity. As a basis for its claim, CREE attached to its petition a portion of a transcript of an October 14, 1986 deposition of a polygraphist who performed the polygraph tests of these APS officials (Transcript). In that transcript, the polygraphist states that she obtained a deceptive response from APS Executive Vice President, Mr. E. E. Van Brunt, Jr., during his polygraph exam. Mr. Van Brunt's alleged deceptive answer was in response to the question: "[b]etween the ages 40 and 50 did you falsify company paperwork or documents for personal gain?" As the petition points out, this was a "control question" which was specifically intended to elicit a deceptive response so that the polygraphist would have a standard by which she could measure untruthful answers. CREE also alleges that other APS officials also answered the same control question deceptively during polygraph tests, but it has not furnished any documentary evidence or other proof of these allegations.

On the basis of these alleged deceptive responses to this control question, CREE contends that there has been apparent falsification of company documents for personal gain by APS management officials and that serious questions have been raised concerning the honesty of these officials. CREE also claims bad faith by these officials in ordering plant employees to be polygraphed when these officials, themselves, provided deceptive answers during the tests.



in his response to the control question, the generality of the question, as worded, could have elicited a deceptive response for numerous reasons unrelated to health and safety issues.

The initiation of a show cause proceeding would also be inappropriate in this instance because CREE's charges do not include any specific incidents of document falsification which feasibly could be investigated. Because Mr. Van Brunt has been manager of the Palo Verde facility for over ten years an attempt to locate falsified documents among all the documents he might have been involved with during this period would entail an improper "fishing" expedition without sufficient basis and with no realistic likelihood of success.

CONCLUSION

Based upon the foregoing discussion and the information contained in the referenced documentation, I have concluded that this petition fails to provide sufficient information to take further action under 10 CFR 2.206. Accordingly, CREE's request is denied. A copy of this decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations.



Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

Dated at Bethesda, Maryland
this 22nd day of June, 1987

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