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SUBJECT: Responds to NRC 900926 ltr re violations noted in Insp Repts
50-528/90-36, 50-529/90-36 & 50-530/90-36. Corrective actions:

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WILLIAM F. CONWAY
EXECUTIVE VICE PRESIDENT
NUCLEAR

102-01877-WFC/TRB
October 25, 1990

Director, Office of Enforcement
U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
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- Reference: (1) Letter from J. B. Martin, Regional Administrator, NRC to W. F. Conway, Executive Vice President Nuclear, Arizona Public Service, dated September 26, 1990.
- (2) Letter from R. P. Zimmerman, Director, Division of Reactor Safety and Projects, NRC to W. F. Conway, Executive Vice President Nuclear, Arizona Public Service, dated August 23, 1990.

Dear Sirs:

Subject: Palo Verde Nuclear Generating Station (PVNGS)
Units 1, 2, and 3
Docket No. STN 50-528 (License No. NPF-41)
Docket No. STN 50-529 (License No. NPF-51)
Docket No. STN 50-530 (License No. NPF-74)
Reply to Notice of Violation and Proposed Imposition of
Civil Penalty - \$75,000 (Inspection Report Nos.
50-528/90-36, 50-529/90-36, and 50-530/90-36)
File: 90-070-026

As directed by Reference (1), Arizona Public Service Company (APS) hereby responds to the Notice of Violation and Proposed Imposition of Civil Penalty (Notice). A restatement of the violations and APS's response are provided in Appendix A and Attachment 1, respectively, to this letter.

As stated in Attachment 1, APS agrees that the violations did occur as stated in the Notice. APS appreciates the significant nature of these violations and the appropriateness of a civil penalty. However, based on the discussion in the referenced letter, APS believes that NRC may not have considered all relevant facts in weighing the escalation and mitigation factors. APS is, therefore, providing additional information in this letter and requesting that NRC reconsider the amount of the proposed civil penalty.

It is important to keep in mind that subsequent reviews have shown that the violations had no actual and very little potential impact on the public health and safety. The first violation involved four examples in which a licensed physician evaluated an operator's changed medical condition and determined that the operator was capable of performing his functions but APS failed to

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report such changes in the operator's medical conditions to the NRC.¹ In each case the physician had evaluated the condition in light of the operator's duties and imposed restrictions, as necessary, on his work activities. There is no information to suggest the operators failed to conduct themselves in accordance with those restrictions or that the condition affected the operators' performance. The principal failure was that the medical department did not recognize either the need to advise APS's licensing department of the condition or the specific requirements of the applicable standard. The second violation involved 15 instances in which a licensed physician performing physical examinations of operators omitted one or more tests required by the applicable standard, but an APS representative certified that the examinations had been performed in accordance with that standard. In each of these cases the operator was subsequently found to be medically qualified based on a physical examination which completed the requirements of the applicable standard. As a result, although there had been some possibility that an incapacitating medical condition could have been overlooked in the previous incomplete examinations, that did not occur.

The NRC should reconsider the escalation of the civil penalty because the NRC's consideration of the applicable factors appears to be based on a misunderstanding of the actual sequence of events. The pertinent events are as follows:

- In response to suggestions from the NRC inspector in May 1990, the APS medical department reviewed the medical records of PVNGS licensed operators. The review identified a number of discrepancies, including an operator whose changed physical condition had not been reported to the NRC in accordance with NRC requirements, a number of operators whose biennial physical exam had been outside the required two year frequency and six operators whose medical certifications were based on physical exams that did not meet all of the applicable requirements. These findings were reported to NRC (LER 90-09), and the APS Quality Assurance (QA) organization issued a Corrective Action Report (CAR) documenting the deficiencies.
- To assure that the potentially significant issues were reviewed first, APS decided to have QA review these issues in two stages. First, a QA monitoring review was initiated to assure currently

¹One of the four examples, concerning an operator with diabetes mellitus, involved an error in a 1988 license renewal application, rather than a changed medical condition. The individual's initial license application in 1986 had disclosed this medical condition, and the individual's initial operator license in 1986 and amendment in 1987 was appropriately conditioned.



licensed operators' compliance with the requirement for biennial medical examinations. Second, a more comprehensive review of the historical medical records would be performed during a full QA audit of the Training and Qualification program that was already scheduled for October 1990. APS decided to retain this audit schedule so that the audit could also assess the effectiveness of APS's programmatic corrective actions.

- The NRC inspection in July 1990 identified additional examples of the same types of problems that APS had previously identified and reported to the NRC. Consequently, the corrective actions that APS took were not significantly affected by this NRC inspection. Indeed, APS believes that the additional examples identified by the NRC inspector would have been identified in the activities required to resolve the CAR and in the scheduled QA audit.

Reference (1) appears to criticize the initial QA review for being limited and for failing to identify certain deficiencies. Reference (1) also states that "as of the date of the enforcement conference a comprehensive independent review of this program had not been made nor had a date for such a review been determined." These observations are not justified, since the initial QA review was intentionally limited in scope to focus on the question of whether, within the previous two years, each of the licensed operators had received a medical examination meeting the ANSI/ANS 3.4-1983 standard. This scope was appropriate because it directly addressed the area of concern expressed by the NRC inspector and the area most likely to have current safety significance. The CAR and the scheduled QA audit were specific documented processes that constituted a significant portion of the APS process for performing a comprehensive review of this area and for resolving the identified concerns. Thus, a comprehensive independent review of this program had been scheduled (this audit is currently in progress) and its schedule documented on the overall APS QA audit schedule. Although APS mentioned this fact at the enforcement conference, it apparently was not fully recognized by the NRC staff.

APS recognized the importance of this issue and acted promptly to implement comprehensive programs to control, not only the operator medical examinations, but all facets of licensed operator qualification. NRC regional management has reviewed these programs and concluded in Reference (2) that if properly implemented, the programs appear to be appropriate to correct the deficiencies which APS and the NRC have identified.



APS respectfully requests that based on the information provided above, the NRC reconsider the escalation and mitigation factors and reduce the amount of the civil penalty.

Should you have any questions or comments relative to the Reply to the Notices of Violations, this letter, or any other matter, I would appreciate the opportunity to respond to them.

Very truly yours,



WFC/TRB/dmn

Attachment

cc: J. M. Taylor
J. B. Martin
C. M. Trammell
J. R. Newman
A. C. Gehr
D. H. Coe

