

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Arizona Public Service Company)
Palo Verde Nuclear Generating)
Station (Units 1, 2, & 3))

Docket Nos. 50-528, 50-529, & 50-530
License Nos. NPF-41, NPF-51, & NPF-74
EA 90-147

ORDER IMPOSING CIVIL MONETARY PENALTY

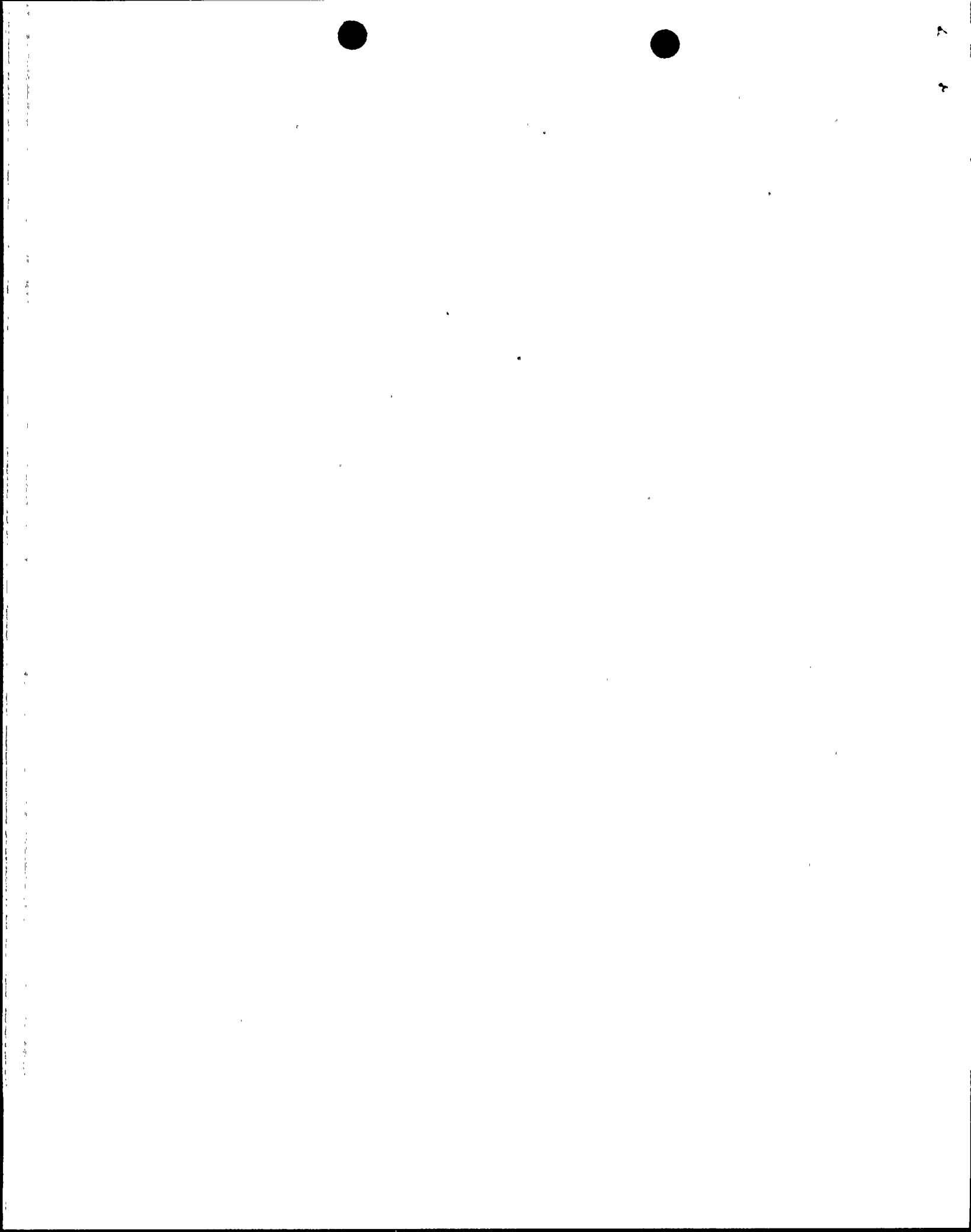
I

Arizona Public Service Company (Licensee or APS) is the holder of Operating License Nos. NPF-41, NPF-51, NPF-74 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 1, 1985, April 24, 1986 and November 25, 1987, respectively. The licenses authorize the Licensee to operate the Palo Verde Nuclear Power Station (PVNGS) Units 1, 2, and 3.

II

An inspection of the Licensee's activities was conducted from July 16 to August 7, 1990. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 26, 1990. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in a letter dated October 25, 1990. In its response, the Licensee admitted the two violations that formed the basis for the proposed civil penalty, but requested that the NRC reconsider its application of the escalation and mitigation factors used to adjust the base civil penalty. The request was based on the Licensee's

9012140149 901213
PDR ADOCK 05000528
Q PDC



belief that the NRC had misunderstood the sequence of events associated with the stated violations, including the Licensee's immediate and long-term corrective actions upon learning of the violations.

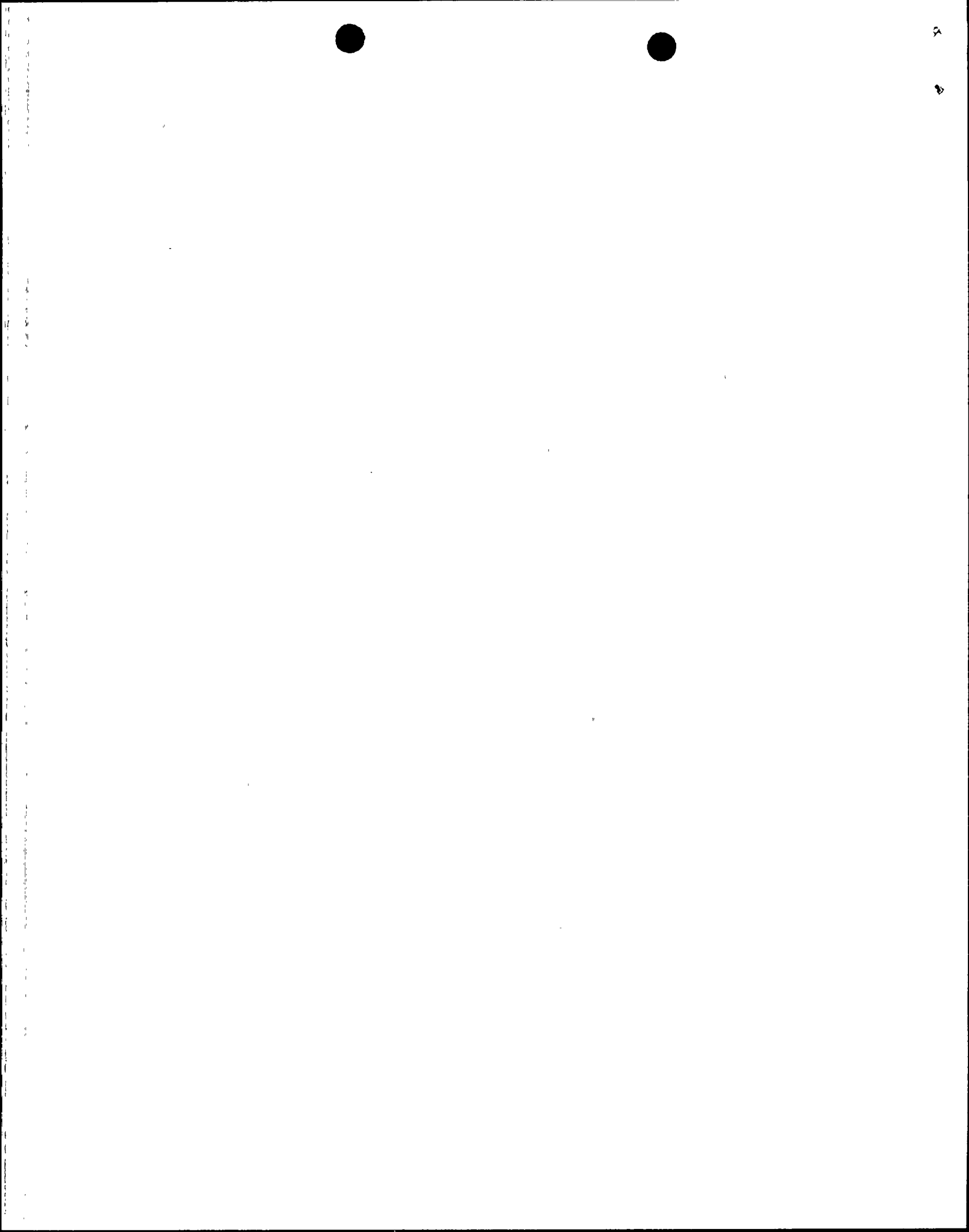
III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and the penalty proposed for the violations should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The Licensee pay a civil penalty in the amount of \$75,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555.



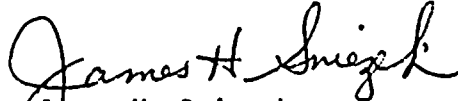
V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region V, 1450 Maria Lane, Walnut Creek, California 94596.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION



James H. Sniezek
Deputy Executive Director for
Nuclear Reactor Regulation, Regional
Operations, and Research

Dated at Rockville, Maryland
this 13th day of December 1990

APPENDIX

EVALUATION AND CONCLUSIONS

On September 26, 1990, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Arizona Public Service Company (APS or Licensee) responded to the Notice on October 25, 1990 (Response). APS admits that the violations occurred as stated in the Notice, but requests reconsideration of the amount proposed for the penalty. The NRC's evaluation and conclusions regarding the Licensee's response are presented below.

Restatement of Violation

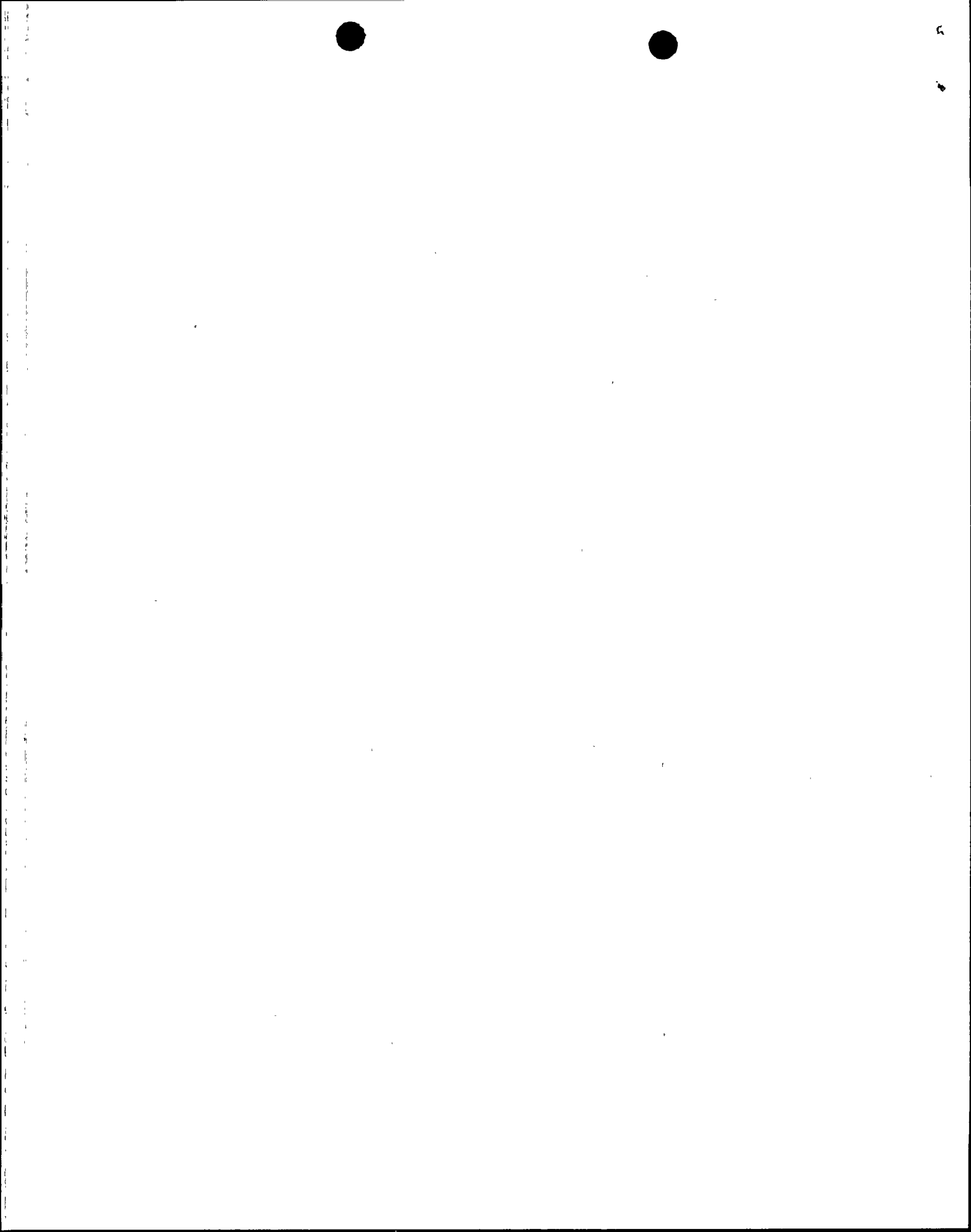
- A. 10 CFR 55.25 requires the facility licensee to notify the NRC within 30 days if, during the term of a licensed operator's license, the facility licensee learns that the operator has developed a physical or mental condition that causes the operator to fail to meet the requirements of 10 CFR 55.21. 10 CFR 55.21 requires, by reference to 10 CFR 55.33(a)(1), that a licensed operator's medical condition and general health will not adversely affect the performance of assigned operator duties or cause operational errors endangering public health and safety.

Contrary to the above, the facility licensee failed to notify the NRC within 30 days of learning of the diagnosis of the medical conditions of licensed operators of which the facility licensee was aware, and which caused the respective operators to fail to meet the requirements of 10 CFR 55.33(a)(1), as evidenced by the following examples:

1. Diagnosis of active Meniere's Disease disclosed by a licensed operator to the facility licensee on a medical history form on December 29, 1989.
2. Diagnosis of a licensed operator with diabetes mellitus on December 15, 1988 through a medical examination by the facility licensee's medical personnel.
3. The need for corrective lenses by a licensed operator on August 2, 1988 through a medical examination by the facility licensee's medical personnel.
4. The taking of a pain medication by a licensed operator during the period of March - June 1990.

- B. 10 CFR 55.23 requires an authorized representative of the facility licensee to certify the medical fitness of an operator license applicant by completing and signing Form NRC-396, "Certification of Medical Examination by Facility Licensee." Form NRC-396 is a certification that a medical examination has been conducted in accordance with ANSI/AHS 3.4 - 1983 or ANSI/ANS 15.4 - 1977 (N380).

Contrary to the above, on November 7, 1987, September 12, 1988, and July 18, 1989, an authorized facility representative certified on Form NRC-396 that operator licensing medical examinations were performed in accordance



with the guidance contained in ANSI/ANS 3.4 - 1983 or ANS/ANS 15.4 - 1977 (N380) when, in fact, for 15 individuals the examination failed to meet those requirements.

This is a Severity Level III problem (Supplement I).

Summary of Licensee's Response

APS admits the violations as stated in the Notice, and acknowledges the appropriateness of a civil penalty. However, APS believes that the NRC may not have considered all relevant facts in weighing the escalation and mitigation factors listed in the NRC's Enforcement Policy, and thus requests reconsideration of the amount of the civil penalty.

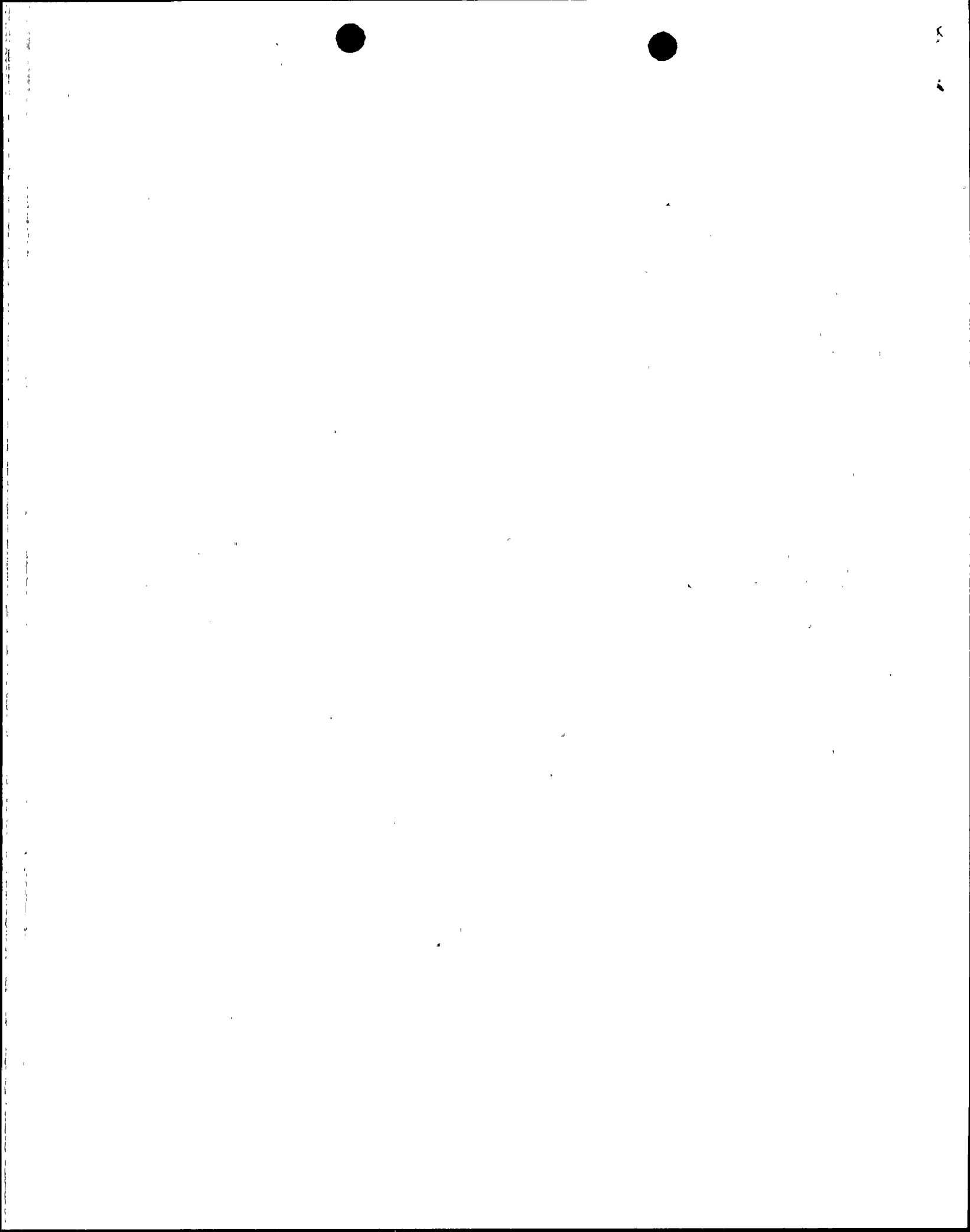
APS asserts that the NRC's consideration of the applicable factors may have been based on a misunderstanding of the actual sequence of events. APS supports this position with a discussion of the role of the Quality Assurance (QA) organization in reviewing the medical record discrepancy problem identified by the NRC during May 1990. APS states that the initial QA review was intentionally limited in scope to focus on whether each licensed operator had received a medical examination in accordance with applicable standards within the last two years, as this directly addressed the NRC inspector's area of concern and was most likely to have current safety significance. In addition, a comprehensive independent program review had been scheduled on the overall APS QA audit schedule for October 1990, as discussed during the Enforcement Conference. Based upon this chronology, APS appears to suggest that mitigation of the proposed civil penalty was warranted for the corrective actions taken.

NRC Evaluation of Licensee's Response

The Licensee requested the NRC to reconsider the escalation and mitigation factors and reduce the amount of the proposed civil penalty. The Licensee's response does not appear to challenge or provide new information regarding the 50% escalation applied for NRC identification. Rather, the response is limited to a discussion of the corrective action factor, for which neither escalation nor mitigation was deemed appropriate when the civil penalty was proposed. No mention was made by the Licensee in its Response regarding the application of the other factors in the NRC Enforcement Policy. The subsequent analysis is therefore limited to the identification and corrective action factors.

Mitigation is not warranted for either identification or corrective action. It is recognized that the Licensee discovered significant aspects of the breakdown in its medical qualification program for licensed operators in June 1990. However, this occurred only after a May 1990 NRC inspection found potential problems with licensed operator requalification records and a lack of administrative controls for ensuring that licensed operators received a physical examination that conformed to the requirements for operator licensing and renewal. Consequently, escalation for NRC identification of the violation is judged appropriate.

No mitigation was proposed for the Licensee's corrective actions because the Licensee's actions were not considered prompt or extensive. In fact, the Licensee's response to the May 1990 inspection findings were of limited scope



and untimely. This is most clearly demonstrated by the identification of additional violations by the NRC at a subsequent inspection in July 1990. Though the Licensee's Response stated that a review had been scheduled as part of a QA audit to be conducted in October 1990, and that this planned review was discussed during the Enforcement Conference, the NRC also does not consider this action to have been prompt enough to merit credit. APS approached its audit schedule incrementally rather than aggressively, after being prodded a number of times by the NRC. This APS approach was untimely considering the significant programmatic weaknesses identified at that time. Consequently, the Licensee's corrective action does not warrant mitigation.

In its response, APS asserted that the violations had no actual and very little potential impact on the public health and safety. APS failed to discuss the operator diagnosed with Meniere's disease, a condition that could have significantly affected his performance with little warning. The operator disclosed this diagnosis to APS on his December 29, 1989 medical examination history, but APS failed to take appropriate action until the operator was reexamined on June 20, 1990 due to missed laboratory tests. The operator was subsequently removed from licensed duties more than a year after APS initially learned of his vertigo and almost six months after he had disclosed the diagnosis of Meniere's disease on his APS medical examination history. The NRC medical reviewer has concluded that he should remain off-duty until the condition is corrected.

NRC CONCLUSION

The NRC staff has concluded that the Licensee has not provided an adequate basis for mitigation of the proposed civil penalty. The 50% escalation applied for NRC identification was not challenged, and no new information regarding the promptness or comprehensiveness of the corrective actions was provided by the Licensee. Consequently, the NRC concludes that the proposed civil penalty in the amount of \$75,000 should be imposed.

Arizona Public Service Company

DISTRIBUTION:

PDR
LPDR
SECY
CA
JTaylor, EDO
JSniezek, DEDR
JLieberman, OE
JBMartin, RV
JGoldberg, OGC
TMurley, NRR
JPartlow, NRR
Enforcement Coordinators
RI, RII, RIII, RIV, RV
Resident Inspector
FIngram, GPA/PA
BHayes, OI
DWilliams, OIG
EJordan, AEOD
WTroskoski, OE
Day File
EA File
DCS
DDanDois, RM

Wm T
OE
WTroskoski
12/5/90

Wm T /hor
RA:RV
JBMartin
12/11/90
*per telecon
w/ Mr. Skene*

Wm T /hor
OGC
JGoldberg
12/7/90
*per telecon
w/ Dr. Hrothling*

E. B. J.
D:OE
JLieberman
12/11/90

JS
DEYR
JSniezek
12/13/90

