



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION V

1450 MARIA LANE
WALNUT CREEK, CALIFORNIA 94596-5368

SEP 30 1992

Docket Nos. 50-528, 50-529, and 50-530
License Nos. NPF-41, NPF-51, and NPF-74
EA 92-139

Arizona Public Service Company
ATTN: William F. Conway
Executive Vice President, Nuclear
Post Office Box 53999
Phoenix, Arizona 85072-3999

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTIES -
\$130,000
(U.S. Department of Labor Case Nos. 89-ERA-19 and 91-ERA-9)

This letter refers to the results of two administrative proceedings conducted by the U.S. Department of Labor (DOL), each proceeding consisting of an investigation and hearing, regarding complaints filed October 21, 1988 and September 24, 1990, respectively, by Sarah C. Thomas and Linda E. Mitchell, employees at the Palo Verde Nuclear Generating Station (PVNGS). In each case, a DOL Administrative Law Judge (ALJ) has issued a Recommended Decision and Order (1) finding that Arizona Public Service Company (APS) discriminated against Ms. Thomas and Ms. Mitchell because they engaged in protected activity, in violation of Section 210 of the Energy Reorganization Act, and (2) directing APS to take specific actions to remedy that discrimination. In each case, APS has filed an appeal with the Secretary of Labor.

Based on the two decisions, the NRC finds that violations of the Commission's regulations have occurred. On September 17, 1992, you notified me that APS had waived the opportunity to have an enforcement conference regarding this matter.

The violations described in the enclosed Notice of Violation and Proposed Imposition of Civil Penalties concern two findings of discrimination in violation of 10 CFR 50.7, "Employee Protection." Specifically, according to the ALJ decision, shortly after Ms. Thomas engaged in protected activity, her supervisor retaliated against her because of that activity. According to the other ALJ decision, APS management failed to take prompt, effective remedial action regarding a number of actions that created a "hostile work environment" for Ms. Mitchell after she identified safety concerns to the NRC.

Under 10 CFR 50.7, discrimination by a Commission licensee against an employee for engaging in certain protected activities is prohibited. The activities protected include raising safety concerns to higher levels of plant and corporate management, providing the Commission information about possible violations of requirements imposed under either the Atomic Energy Act or the Energy Reorganization Act, requesting the Commission to institute enforcement action against his or her employer for the administration or enforcement of these requirements, or testifying in any Commission proceeding.

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The violation concerning Ms. Thomas has been categorized as a Severity Level III violation. The violation concerning Ms. Mitchell has been categorized as a Severity Level II violation primarily because of the actions of the person who was at that time the Director of Quality Assurance (QA). Those actions are of particular concern because as Director of QA, this person was responsible for the employee concerns program and for protecting those persons who raised safety concerns from harassment and intimidation.

Both situations are significant because discrimination may create a chilling effect which could discourage individuals from raising safety issues. Such an environment cannot be tolerated if licensees are to fulfill their responsibility to protect the public health and safety. Thus, licensee management must avoid actions that discriminate against individuals for raising safety concerns, and must promptly and effectively remedy actions that constitute discrimination.

Therefore, to emphasize the importance of maintaining an environment in which employees are free to provide information or raise safety concerns without fear of retaliation or discrimination, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations & Research, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalties in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C.

The base value of a civil penalty for a Severity Level III violation is \$50,000. The base value for a Severity Level II violation is \$80,000. The escalation and mitigation factors in the Enforcement Policy were considered and no adjustment of the base civil penalty was deemed appropriate.

The NRC has proposed a combined total Civil Penalty of \$130,000 for the Thomas and Mitchell cases. However, payment of each civil penalty may be deferred until 30 days after a final decision by the Secretary of Labor on each of the respective appeals now pending. Therefore, you are not required to provide a formal response pursuant to 10 CFR 2.201 and 2.205 until 30 days after the Secretary has issued a final decision in each of these respective cases. However, notwithstanding your past corrective actions documented in your response of June 8, 1989, to our "chilling effect" letter dated May 12, 1989, regarding the actions against Ms. Thomas, please inform me in writing within thirty days of additional actions you may have taken to minimize any potential chilling effect arising from the circumstances related to Mmes. Thomas and Mitchell that might inhibit or prevent your employees or contractors from raising safety concerns to either your own organization or the NRC. Further, in this written response, please address the actions you have taken to assess the extent to which your employees harbor reservations about raising safety concerns, and the actions you have taken to eliminate or minimize those reservations.

Arizona Public
Service Company

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In accordance with 10 CFR 2.790 of the Commission's regulations, a copy of this letter, the enclosures, and your responses, will be placed in the NRC Public Document Room.

Sincerely,



John B. Martin
Regional Administrator

Enclosure: Notice of Violation and
Proposed Imposition of Civil Penalties