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May 28, 1993

Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: AMENDED PETITION; ARIZONA PUBLIC SERVICE COMPANY/ARIZONA
NUCLEAR POWER PROJECT, PALO VERDE NUCLEAR GENERATING
STATION

Dear Sir:

COMES NOW, Thomas J. Saporito, Jr. ("Petitioner"), pursuant to 10 C.F.R. §2.206 and hereby amends his May 12, 1993 petition filed under 10 C.F.R. §2.206 with the U.S. Nuclear Regulatory Commission ("NRC") requesting certain and specific actions by the NRC concerning a Commission ("licensee") the Arizona Public Service Company/Arizona Nuclear Power Project operator of the Palo Verde Nuclear Generating Station ("PVNGS") near Phoenix, Arizona.

Petitioner hereby amends his May 12, 1993 petition to incorporate by reference herein a New Times publication dated May 26-June 1, 1993, Volume 24, number 22, a copy of which is enclosed herewith. Petitioner hereby incorporates into his May 12, 1993 petition by reference the various accounts of whistleblower retaliation by the licensee described in the New Times publication.

Petitioner calls the Commission' attention to p.26 which states, in part, that NRC's Greg Cook acknowledges that a NRC study of the chilling effect at the Palo Verde nuclear station was "somewhat informal," rather than a scientific polling of workers, and that the NRC study leaves unanswered the question of why so many employees are actually complaining of harassment by filing grievances with the Labor Department.

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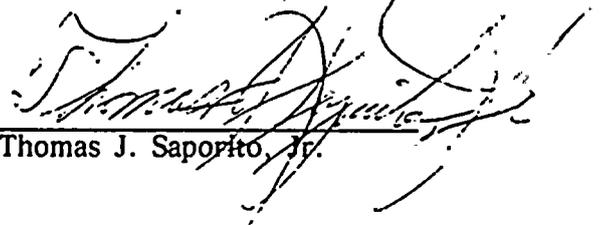
Most notably, the last three paragraphs of the last page, state that:

...One plant employee who requested anonymity says she would "love to come forward and talk about safety problems at the plant," but is afraid to do so..."Look," she says, "if you worked at Palo Verde, and had seen what some of those whistle-blowers went through, you would just keep your mouth shut, too. They were completely destroyed. "I know it sounds terrible, but everybody who lives around that plant is just going to have to take their chances. I think workers at Palo Verde are done talking."

Petitioner cites the above commentary as material evidence of a severe "chilling effect" instilled at the licensee's Palo Verde nuclear station. Thus, petitioner's May 12, 1993 petition should be acted upon expeditiously by the NRC to insure public safety. At this time, neither the NRC nor the licensee can ascertain the breathe and scope of the chilling effect at the Palo Verde nuclear station or what safety concerns may exist as a result.

WHEREFORE, the above states reasons, the licensee cannot demonstrate, nor can the NRC have any confidence that the licensee can demonstrate, any measure of reasonable assurance for the continued safe operation of the (3) reactor cores at the Palo Verde Nuclear Generating Station. Thus, it is appropriate for the NRC to consider this petition pursuant to 10 C.F.R. §2.206 wherein the petitioner has set forth the facts that constitute the basis for the request. See Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), DD 85-11, 22 NRC 149, 154 (1985).

For the environment,



Thomas J. Saporito, Jr.

cc: The Honorable Joseph Lieberman
The Honorable John Dingell
David Williams, NRC Inspector General
Oscar DeMiranda, NRC SAC-RII
National Whistleblower Center

PHOENIX

NewTimes

May 26 - June 1, 1993 FREE



Volume 24, Number 22



Falling Out at Palo Verde

Linda Mitchell made the nation's largest nuclear plant safer. Her bosses made her miserable.

By Darrin Hostetler

Critical

At Palo Verde, it's open season on whistle-blowers



By Darrin Hostetler



PHOTO BY TIMOTHY ARNOLD

Maybe it was the glint of sunlight off the gun barrels, or the sudden movement of men silhouetted against the desert sky. Whatever it was that caught Linda Mitchell's eye and caused her to pause by the picture window of her secluded home near Buckeye that day in 1981, the scene outside was terrifying.

There on a ridge, a few hundred yards from Mitchell's house, stood two men with rifles. As Mitchell looked at them with binoculars, they stared back at her through their rifle scopes.

She darted away from the window and locked herself in a bathroom until her husband came home several hours later. By then the gunmen had gone. No shots were fired. Police found only tire tracks where the men had stood.

It was, Mitchell says, just another day in the life of a whistle-blower.

During five years as an engineer at the Palo Verde Nuclear Generating Station, Mitchell had served as the plant's self-styled Karen Silkwood—regularly "blowing the whistle" on serious safety violations. Just as regu-

larly, she had been harassed by plant management for her trouble.

"The gunmen were there to send a final message to me," Mitchell says. "If [Palo Verde officials] were capable of carelessness with a nuclear power plant, I knew they were capable of anything, including murder, if that's what it took to shut me up."

There is no evidence linking anyone from Palo Verde or Arizona Public Service Company, which operates the plant, to the gunmen outside Mitchell's home. But it is undeniable that by the day she fell within those rifle cross hairs, Mitchell had been repeatedly targeted by Palo Verde and APS in similarly unnerving ways.

Mitchell and other Palo Verde workers who have dared to point out safety problems at the nation's largest nuclear-power facility—located 60 miles west of downtown Phoenix—have endured persecution ranging from the insidious to the violent. They have been assaulted and threatened with death. Their cars and homes have been shot at and vandalized. They have received menacing telephone calls. Their careers have been destroyed by demo-

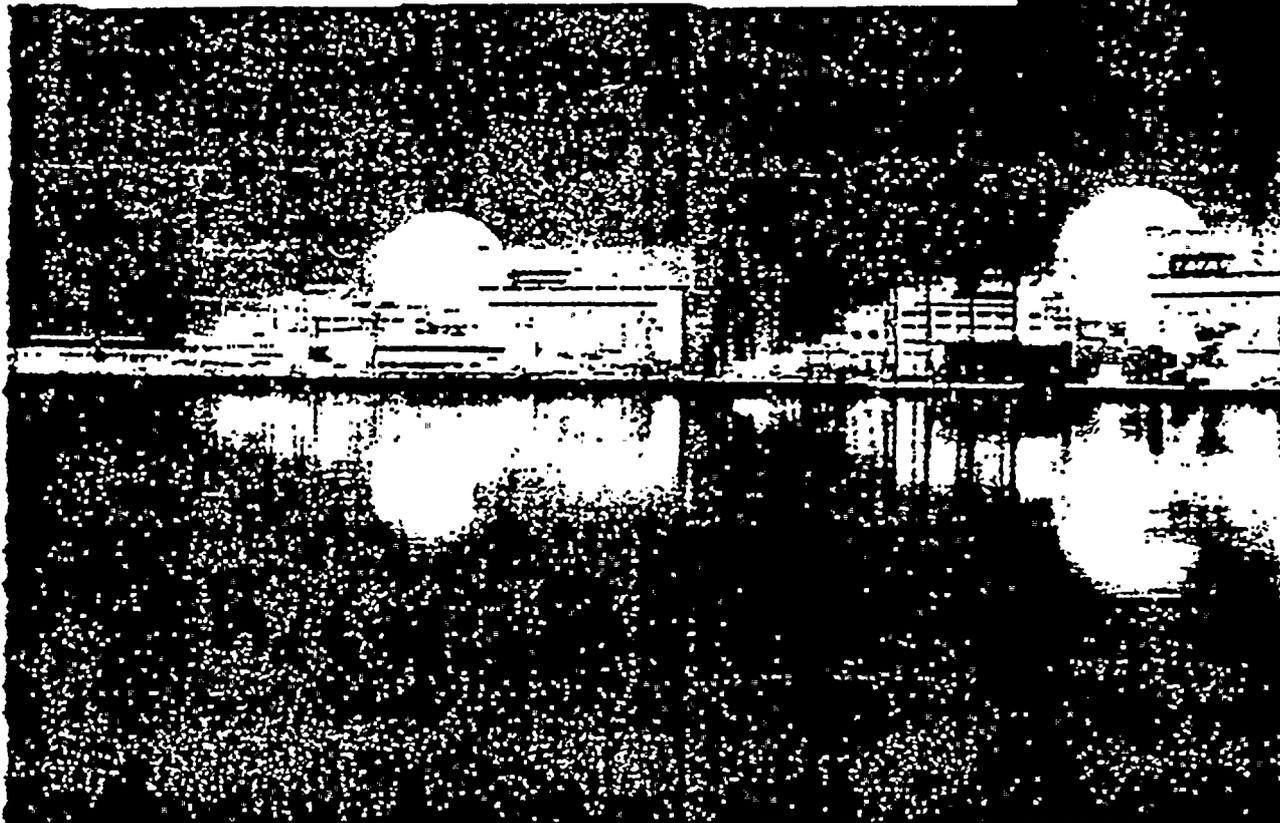
itions, transfers and dismissals.

One employee, after complaining that the pumps and valves necessary to shut down the plant's reactors in an emergency were inadequate, was transferred to a post that exposed her to a higher level of radiation, raising the stunning possibility that managers were using the threat of exposure and contamination to keep workers in line. Another worker was branded a "deviant" by an APS-hired psychologist in an effort to discredit her claims that Palo Verde wasn't safe.

Perhaps most disturbing, the record shows that these accounts of abuse are not isolated. In fact, documents compiled by the Nuclear Regulatory Commission (NRC) and the U.S. Department of Labor indicate that nowhere is the problem of whistle-blower harassment more pronounced than at Palo Verde. According to the NRC, Palo Verde has more harassment complaints pending against it than any other operating nuclear plant in the nation.

Palo Verde officials refuse to discuss whistle-blower cases. APS spokesman Mark Fallon says only that "our first priority when employees bring concerns to us is to

Mess



Linda Mitchell and her husband, Al (opposite page), say they have lost everything in their fight with APS officials. "They took away my life," she says. "Nothing can ever give it back."

thoroughly investigate each and every allegation. When an allegation is found to have merit, we feel an obligation to employees and the general public to correct those problems." Yet APS is hard-pressed to give a single example of when that has happened.

The record of harassment against whistle-blowers has been well-documented by federal investigators and judges, one of whom called the treatment of such workers "ugh" and warned that there was a "cancer growing" at Palo Verde "which, if allowed to continue, could become catastrophic."

How catastrophic? A review of whistle-blower complaints at Palo Verde over the past five years shows that most stem from legitimate complaints about safety issues that threaten the public welfare. These workers aren't merely griping about whether a form was properly initiated or whether paperwork was filed on time. If the things whistle-blowers are warning us about come to pass, thousands—or even millions—of Arizonans face exposure to radiation.

According to federal law, utilities like APS are supposed

to heed worker warnings. The federal system set up to monitor the nation's nuclear power plants was designed in 1946 to encourage reports by conscientious workers, who are in the best position to spot plant defects. The government simply doesn't have enough inspectors to monitor a plant's every move, so workers are often the only observers of safety violations.

But what pioneer nuclear regulators didn't count on was that instead of listening to their workers, some utility companies, burdened by the unexpectedly high costs of producing nuclear power, would subvert the system and silence whistle-blowers who point out the need for necessary but expensive repairs.

They didn't foresee that for a company like APS, it would often be cheaper to pay comparatively small legal fees to fight whistle-blowers in court than to ante up the millions of dollars necessary to actually fix problems (especially when those legal fees are paid directly to the law firm founded by the family of APS chairman).

Nor, critics say, did early regulators anticipate that the NRC, the federal agency charged with monitoring the

plants, would often prove to be less a watchdog than a lap dog—a complicitous partner in whistle-blower harassment—or that the federal government would create a cumbersome and expensive appeals system for harassed workers, leaving many whistle-blowers with few viable options other than to stifle their urge to point out shipshod plant performance.

The whistle-blowers interviewed by *New Times* are not wild-eyed zealots bent on forcing the nuclear genie back into the bottle. On the contrary, they are ardent nuclear-power proponents, sober industry careerists who insist that nuclear plants are safe—if they are operated correctly.

They are simply ordinary people with an urgent message: Palo Verde is not as safe as it should be.

"There are two million people who stand to be affected if something goes wrong at Palo Verde," Mitchell says. "We owe it to the people in this state to stand up and scream when a problem could be dangerous to them."

"Palo Verde treats safety concerns raised by whistle-blowers like some kind **Continued on page 22**

Whistle-blowers

Continued from page 19
of joke. But I don't think the lives of two million people is something to joke about."

The alarm went off at Palo Verde early on March 3, 1989. Problems with the Unit 3 reactor sent engineers scrambling to shut it down before it could overheat. In the control room, frantic technicians hovered over switches that were designed to release a cautious build-up of steam in the plant's generators. But the switches didn't work. A backup system also failed to open the necessary release valves.

Two workers were dispatched to open the valves manually. But as they neared the valves they were stopped cold, frozen by partial darkness. The plant's emergency lighting system had also failed, and the workers were forced to grope around blindly, wasting precious minutes as pressure continued to mount.

Finally one technician, reaching out in the darkened-out room, found the valve and was able to release the steam. But not before the plant had come perilously close to having a major accident. If the pressure had been much higher, NRC documents say, radioactive steam and water could have burst through generator pipes and into the atmosphere.

After investigating the incident, the NRC slapped Palo Verde with a \$250,000 fine for

neglecting to train workers to deal with such a crisis and for failing to maintain the emergency lighting system.

The NRC said Palo Verde had breached some of the most fundamental rules of nuclear-power generation. The agency wrote that the stiff fine was warranted because Palo Verde had been repeatedly warned that the lighting system didn't work. Plant managers failed to fix the system, the NRC chided, even though they knew of its problems. They knew because Linda Mitchell had told them. And told them—again and again, for more than four years.

The story of Mitchell's battle with plant officials was thoroughly documented by the U.S. Labor Department judge who presided over her 1991 lawsuit against APS. It begins with Mitchell's arrival at Palo Verde in 1985.

A diminutive but fiery woman, Mitchell



One of Linda Mitchell's co-workers pointed to this mannequin, used in fire training, and warned: "This is what will happen to Linda."

was brimming with anticipation. A 20-year veteran of the nuclear industry in Maryland, she was eager to begin her duties at the "Cadillac of nuclear power plants" in the desert, where Palo Verde's white-domed containment buildings were then rising. But her buoyant demeanor was soon deflated. "It took me about a week to see the plant

wasn't moving in the right direction," Mitchell says. "I soon found out that plant management didn't care about anything except expense."

"I guess I was naive. Every place I had been, you brought up a problem and it was fixed right away. Here, if you brought up a problem, even if you did it through the proper chain of command and in the best interests of the company, you became the problem."

Mitchell's job was to ensure that the plant's emergency lights, which are supposed to illuminate vital areas during a crisis, were properly positioned and equipped with battery packs that would allow them to burn for eight hours.

"To have a license from the NRC," she says, "you have to have good emergency lights, but I knew the ones we had wouldn't make it for eight hours. So I tried to get management to put in new ones." Copies of internal Palo Verde memos show she was repeatedly rebuffed, despite written and oral pleas to her supervisors.

Frustrated, Mitchell approached Palo Verde's resident NRC inspector, who is available to field complaints if management fails to fix a safety problem. The inspector ordered a test of the lights. As Mitchell had predicted, they failed miserably. Some lights burned for less than an hour before flickering out.

As a result, Palo Verde was forced in late 1985 to write a report to the NRC on the

Nuke Plants Lobby to Let Down Their Guards

The bomb that ripped through New York's World Trade Center on February 26 sent a bone-rattling message to everyone whose job consists of keeping airports, military bases and other high-profile targets safe from harm: tighten security.

But even as the smoke was clearing from the shattered skyscraper, the nation's big utilities—including Arizona Public Service Company—were working overtime to reduce security requirements at nuclear power plants.

It's a move that could save the nuclear industry billions of dollars. Critics say it could also make nuclear plants more vulnerable to terrorists.

The security-reduction plan is the brain child of the Nuclear Management and Resources Council (NUMARC), an industry lobbying group made up of the biggest power-plant operators. In a March proposal to Congress and the Nuclear Regulatory Commission (NRC), NUMARC suggested that utilities be allowed to eliminate such safety features as door locks and alarms in vital plant areas, guards at the entrances to reactor-containment buildings and security escorts for vehicles on the plants' grounds.

Scott Peters, spokesman for the U.S. Council of Energy Awareness, NUMARC's public relations arm, says the plan would cut costs without hampering security. That claim is based on the fact that all the security measures NUMARC wants to eliminate are located well within the interior of a nuclear plant. Peters says that since nuclear plants have first-rate "outsider" security—fences, guards and gates on perimeters—"inside" security features can be dramatically reduced.

However, one recent attack demonstrated how quickly an outside threat can become an inside one. In February, a mentally disturbed man crashed his mother's station wagon through a security checkpoint and gate at the Three Mile Island plant near Harrisburg,

Pennsylvania. The man then hid in the plant's turbine building, eluding guards for four hours.

Garland Shreves—who sits on the international board of the United Plant Guard Workers union and is union chapter president at Palo Verde Nuclear Generating Station—notes that "if NUMARC's security measures had been in place at TMI, the most sensitive areas of the plant would have been open to the intruder."

"Thank God he was a nut," adds Shreves, whose union opposes NUMARC. "If he had been a sane, trained terrorist, who knows what could have happened? The TMI situation shows that external barriers aren't always good enough to do the job alone."

There is evidence that Palo Verde might be vulnerable to the same kind of attack. Palo Verde security guard Robert Singley recently discovered that the plant's much-raunted security fence—which APS officials trumpet as an insurmountable barrier—could easily be lifted out of the ground.

APS spokesman Mark Fallon, whose boss, Palo Verde chief William Conway, is a member of the NUMARC board of directors, admits APS favors the plan because "it would reduce operating costs." Fallon wouldn't discuss the plant's fence, citing an APS policy that prohibits discussion of specific security issues.

But he does say that Conway—who, as head of the nation's largest nuclear power plant, is a prime architect of industry policy—believes the NUMARC plan "doesn't decrease security at Palo Verde or compromise the safety of the general public."

Peters calls the TMI incident an anomaly, and downplays the possibility that nuclear plants should fear attacks similar to the World Trade Center bombing. "Our intelligence community tells us that nuclear facilities are not particularly good targets for terrorists," he says. "They are difficult to sabotage. I don't think terrorism is a pronounced threat to plants."

There are plenty of experts who disagree with that assessment. Michael Mariotte, executive director of the Nuclear Information Research Service, says nuclear plants can be very good targets, indeed.

"If you're trying to instill terror, nuclear facilities would be a good mark, don't you think? I mean, what could be more terrifying than rendering a whole area, or state, uninhabitable?" Mariotte asks.

The belief that nuclear plants may be on the "to do"

lists of terrorist organizations isn't confined to anti-nuclear activists like Mariotte. Bruce Hoffman, a terrorism expert at California's Rand Corporation think tank, recently testified before Congress that the TMI incident and the World Trade Center bombing should sound a "cautionary note" for nuclear plants.

Hoffman urged a reevaluation of plant security and warned that we should "shudder to think what professional terrorists, well-armed and trained in combat skills, driving something more formidable than a Plymouth station wagon, could accomplish . . . at this country's commercial nuclear power plants."

Peters dismisses such warning sirens, insisting that the only threat to nuclear plants is the loose-cannon "insider," a disturbed or angry worker with access to vital plant areas. Even that danger is reduced, he says, by the NRC's employee-testing program, which monitors workers for any sign of alcohol or drug abuse or mental instability. Testing is sufficient, NUMARC believes, to ensure that no worker will run amok.

But interestingly, that testing program is also on NUMARC's budget-busting hit list. A 50 percent reduction in the frequency of drug testing is part of the overall cost-cutting, security-reduction proposal.

The NRC has been largely mum on the NUMARC plan, which is under review by the agency. But NRC critics sense that approval is already a done deal.

During an April conference, NRC chairman Ivan Selin commended NUMARC for pushing for the removal of inefficient safety regulations.

Shreves says the security reductions are part of a larger issue—the danger posed by an industry that is allowed to regulate itself. "Throughout history, it has been shown that industry cannot be left to police itself, to determine its own safety standards," Shreves says. "Look at miners, oil companies, chemical companies. They all screwed up the environment when left alone. Profit always overrides common sense."

Shreves admits his union has its own agenda. If the security reductions are approved, APS will reduce the 150-member guard staff at Palo Verde. But he insists that there is much more at stake than jobs.

"This is a frightening thing," he says. "If the nuclear industry gets its way, one of the deadliest forces known to man will be sitting virtually unguarded in your community. If that happens, God help us." —Bretter

light problems and what steps would be taken to fix them.

"My life became a living hell after that," Mitchell says. "Management took the position that you just don't take things to the NRC. It was almost like I started a war."

For committing the heretical act of notifying federal officials about a serious safety violation, Mitchell was called a liar by a Palo Verde supervisor, who, according to court documents, screamed at her in the plant hallways. APS made minor improvements to the lights, but not enough to satisfy Mitchell.

"They still didn't work right, and I knew it," she says. "But the plant didn't believe it for four years, until the lights failed when they were most needed."

After the March 1989 reactor incident, Mitchell felt confident that a strong rebuke from the NRC—confirming her accusations about the unresponsiveness of Palo Verde supervisors—and the \$25,000 fine would finally prompt APS to act. Surely, plant managers couldn't ignore a tongue-lashing like this.

"The engineering organization knew of the potential problem with the lights, but due to internal administrative problems, the issue was not addressed," NRC inspectors wrote to Palo Verde chief William Conway. "The violation . . . is symptomatic of your failure to establish a working atmosphere which demands that identified plant problems are expeditiously resolved and corrected."

"Your past actions on these components appear to have been dictated, in large measure, by expediency rather than by thoughtful consideration of standards that are expected to assure reliability and safety."

To Mitchell's dismay, the criticism fell on deaf ears.

"Instead of recognizing there was a real safety risk here," Mitchell says, "the plant just decided to put Band-Aids on the lighting problem."

Plant managers ordered the installation of lights Mitchell says were poorly made, held together with a thin coating of glue. The lights, she wrote at the time, could not tolerate the high temperatures in the plant and were even worse than the old, faulty lights.

Mitchell kept dogging her managers, to no avail. In desperation, she appealed again to the NRC. In response, investigator Charles Ramsey from the NRC's regional office in Walnut Creek, California, visited Palo Verde in January 1990 for an inspection.

What happened next, Mitchell says, indi-

cates how desperate APS was to silence her.

Ramsey testified during Mitchell's lawsuit against APS that he was shocked to see that Palo Verde had installed such shoddy lighting. He also noted that he believed the March 1989 incident should have taught plant officials that defective lighting could lead to loss of control over the reactor. It was clear to Ramsey, who told his NRC superiors about the persistent lighting problems, that Palo Verde hadn't learned this vital lesson.

Court papers show that as Ramsey prepared to return to California, Mitchell gave him a file documenting problems with the lights, and he in turn gave it to Palo Verde officials as a courtesy, with the understanding they would make a copy and return it to him immediately.



A 1989 near-accident at Palo Verde Nuclear Generating Station could have been avoided, Nuclear Regulatory Commission officials say, if plant managers had listened to Linda Mitchell's warnings.

When the file arrived back in Ramsey's Walnut Creek office, however, several key documents from Mitchell, detailing the unreliability of the lights and reflecting poorly on Palo Verde management, were missing. The full file was returned to the NRC only after prodding from Ramsey.

APS says the papers were taken from the file by mistake. But an NRC investigation of the incident found that plant personnel had been "at least negligent" in withholding documents.

"At this point," Mitchell says, "I knew things were going to get bad. APS had tampered with documents I gave to a federal investigator. They wanted this issue to go away. I guessed that harassment was going to begin in full force."

Mitchell guessed right. Disturbing events, later chronicled by the Labor Department judge, began to swirl around her. Palo Verde's director of quality

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WHISTLE-BLOWERS

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 assurance, Blaine Ballard, whose responsibility it was to field workers' safety complaints, called Mitchell a "bitch" in front of several employees and suggested to others that she be fired. Palo Verde management issued a memo urging supervisors to "initiate peer pressure on constant complainers." And at meetings with plant management, supervisors were told that if Palo Verde had to shut down Unit 3 again because of lighting problems, APS could go bankrupt, putting everyone out of a job. Word of this filtered down to workers, who Mitchell says began making threatening telephone calls to her home.

The harassment intensified throughout 1990. NRC documents show that one co-worker, Tim Hull, pointing to a mangled and scorched mannequin—a so-called "burn dummy" used in fire training—warned that "this is what will happen to Linda." Two of Mitchell's pet pit bulls were poisoned. And one night, a car sped past her house, firing gunshots into the walls. Shortly thereafter, the riflemen appeared on the ridge.

"I don't think it was paranoid of me, after all this, to wonder if I was going to die," Mitchell says.

If the situation wasn't quite that dire, it was at least clear that APS was intent on silencing Mitchell. Her supervisor in the engineering department, Dan Smyers, ordered Mitchell and other workers with safety concerns to destroy a report they had written warning of the deficiencies in the lighting. Smyers testified that he was told to "keep a lid" on the report by APS officials.

Smyers, concerned about both the effectiveness of his department and Mitchell's safety, also warned Mitchell to keep a "low profile." Although Mitchell had begun to show wear and tear from the harassment, and was under a doctor's care for stress-related disorders, she declined Smyers' advice and sent a copy of the safety report to the NRC.

Mitchell recalls, "I was sick. I couldn't sleep. But I didn't want to be responsible for a plant that wasn't safe, either. So I kept going."

Mitchell says Palo Verde employees, increasingly worried that her complaints would prompt the NRC to shut down the plant, began haranguing her on a daily basis. Walks from her office to the reactor units became verbal gauntlets for Mitchell, as employees brushed by, muttering insults.

She begged plant supervisors to investigate the threats being made against her, but APS failed to even interview any of the

In August 1990, the final blow came. After years of receiving "superior" employee evaluations, Mitchell was informed in writing that she had an attitude problem. Her performance rating was downgraded only three months after she had complained again to the NRC.

For Mitchell, "enough was enough." She filed a complaint with the U.S. Department of Labor, alleging that APS discriminated against her by allowing and encouraging a hostile work environment.

APS fought the allegations vigorously during the Labor Department hearings on the complaint. The utility even hired a psychologist, William F. Amberg, who testified that Mitchell was a "deviant" whose abrasive behavior naturally leads to ostracism and

harassment. Mitchell said she failed to take prompt, effective or remedial action to stop it.

"Something is amiss [at Palo Verde]. There is a cancer growing which, if allowed to continue, could become catastrophic."

Mitchell was awarded \$50,000 in compensatory damages—far less than the \$1 million she had sought, but still one of the largest nuclear-whistle-blower awards ever—and APS was ordered to cease all harassment. The Labor Department also told the utility to upgrade Mitchell's evaluation. But the vindication did not come cheap.

Mitchell and her husband, Al, say they have been forced to sell real estate, their show homes and a gun collection to pay legal bills. Their savings, along with stocks

depleted, were shaved. Now Linda Mitchell, whistle-blower. And it isn't a change for the better.

Perhaps that realization is what Mitchell means when she says her ordeal has "cost me everything."

"I'm not looking for pity," she says, wiping away tears that spring forth after hours of telling her story. "But for just trying to do my job, they took away my life. No Labor Department ruling, no NRC sanctions really help. Nothing can ever give it back."

Linda Mitchell isn't the first to be ignored, or to bear the scars of harassment. Far from it. From the beginning, controversy has raged around Palo Verde, and safety concerns have been at the center of the storm.

As early as 1983, a plant subcontractor was quickly providing information to the NRC and to the press about a broken water main that could have "disturbed" the foundation of a vital building. Since then, whistle-blowers have contributed significantly to information leading to more than \$1.5 billion in fines assessed against the plant—one of the highest totals in the country.

Currently, 14 complaints are pending against Palo Verde at the U.S. Department of Labor (the most in the nation), filed by whistle-blowers who claim to have been harassed for leaking such information. Although regulators don't have a total figure of whistle-blower

complaints that have been filed during the plant's history, NRC spokesman Greg Cook admits the current total is illustrative of Palo Verde's history of worker conflict.

In addition to the prolonged battle with Mitchell, Palo Verde is now hunkering down for a protracted war with Thomas Saporito, who was hired as a contract worker at the plant in 1991. Saporito, a veteran of ten years in the nuclear industry, filed a complaint with the Labor Department

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Arizona Public Service Company spokesman Mark Fallon won't comment on whistle-blower cases. He says the company "thoroughly investigates" every safety allegation.

harassment. Yet Amberg, according to testimony presented at the trial, failed to interview her or any other Palo Verde employees before forming his conclusions.

In a July 1992 ruling, Labor Department Judge Rudolf Jansen rejected Palo Verde's claim that it had protected Mitchell, and had not harassed her. Jansen discounted Amberg's testimony and wrote that the operation of Palo Verde "could charitably be characterized as being a mess." He added that the "record is clear that APS knew of

and bonds, are gone. Despite Jansen's ruling, Mitchell felt the atmosphere at Palo Verde had been forever tainted for her, and she quit her job earlier this year.

For Mitchell, the sacrifice goes beyond material things. She admits to being obsessed by her battle with APS, a fight that seems to have consumed the other facets of her personality. As is the case with others like her, whistle-blowing on Palo Verde has become her job, her hobby, her purpose in life. She is no longer Linda Mitchell, engi-

Whistle-blowers

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 after being denied a new contract by APS.
 Saporito reported several safety problems at the plant, including an incident in which Palo Verde workers had hammered on JCOs that monitor reactor-coolant pumps, which prevent overheating.

"These guys didn't know what they were doing. Those are sensitive instruments that must be delicately calibrated, not beaten on," he says. "What happens if the coolant pumps aren't treated right and they malfunction? We're talking about meltdown."

Saporito also says he has seen workers falsify documents, and claims plant officials make excessive requests to the NRC for "JCOs" or "justifications for continued operations." If granted, a JCO allows "plant to keep operating with equipment" that is not up to federal standards.

"Instead of shutting down the plant for proper maintenance and fixing the problem, which, as we all know, can cost \$1 million per day, they just put Band-Aids on equipment. That is incredibly dangerous," Saporito says.

After raising the safety concerns, Saporito—who has also criticized safety procedures at other nuclear plants—says he was rebuffed by supervisors and pushed into a trench by a coworker when Saporito had accused it of being in full safety violation.

Saporito's aggressive manner and whistle-blowing record branded him as a troublemaker at Palo Verde. He has been accused of being a gadfly who bothers nuclear plants more for the limelight it brings him than for any concern for the public welfare.

Although Saporito is prone to self-aggrandizement: "I am here to save the public from the Palo Verde time bomb," he solemnly intones, many of his claims have been verified by a Labor Department judge, who ruled in his favor on May 19. Perhaps a healthy ego is a necessary prerequisite for taking on a corporate giant like APS.

David Colapinto, a Washington, D.C., lawyer who has sued utilities on behalf of dozens of whistle-blowers, including Mitchell, says stories like Saporito's and Mitchell's show how the "system is broken."

Colapinto calls Saporito's victory, in which the judge ruled that APS discriminated against him, "remarkable." Representing himself, Saporito battled Palo Verde's stable of high-priced lawyers and won.

"It is a testament to the strength of his case that as an unemployed, journeyman technician, he was able to defeat a well-financed opponent represented by the largest law firm in Arizona."

While APS plans to appeal the Saporito case, new charges against the company continue to flow. APS recently settled a harassment complaint by Robert Singley, a security guard whose problems began after he discovered something odd about Palo Verde's security fence, which officials say can't be climbed. When it is true the fence can't be climbed, Singley discovered that it would be lifted out of the ground with ease, leaving a 14-inch gap at the bottom.

Instead of being rewarded for his observation, Singley was allegedly told to forget the incident. When he refused, Palo Verde management tried to fire him. He is now working in the mailroom at an APS building in Phoenix.

The terms of the settlement prohibit Singley from talking about his case, but a member of the plant's security-guard union

says Singley was "given an unfair deal" by APS, and shouldn't have accepted the settlement.

"[APS] humiliated the guy when they should have been commending him. But what he pointed out would have cost a few bucks to fix," the union member says. "They intimidated him into settling for next to nothing instead of fighting it."

It is difficult to fault Singley for ending the matter as quickly as possible. His complaint is the most recent on a list that includes unresolved cases dating to 1987.

That was the year that Sarah Thomas, a plant technician, complained to her supervisors that the system set up to monitor the pumps and valves necessary to shut down Palo Verde's reactors wasn't adequate. "We couldn't tell if the pumps and valves—obviously, vital parts of the plant—were performing properly," Thomas says. "And Palo Verde wouldn't do anything about it."

Thomas called the NRC, and immediately

through Labor for a relatively affordable price.

But whistle-blowers' lawyer David Colapinto says the cure is sometimes worse than the sickness. "It is comical how long it takes to get through an appeal with the Labor Department," he says. "Even though the nuclear regulatory system in this country is set up to depend on workers reporting problems, the time it takes for a worker to get satisfaction if they are harassed is very foreboding."

"Utilities know what an ordeal it is, and they know that the system is a major deterrent to whistle-blowers."

Unless whistle-blowers have the time and ability to represent themselves, they must hire lawyers. Then they must take their cases to the local office of the Labor Department, where they are almost always given a cursory examination and referred to a federal administrative-law judge.

Then, if the whistle-blower wins in a hear-

Linda Mitchell began in earnest. None of the plant's three reactors was running. Unit 3 was down because of the March accident; the other two were idled by the NRC because of similar safety problems.

APS was fighting for its life.

From the beginning, Palo Verde had been a cost-overrun nightmare. Estimated to cost \$3 billion in 1973, the price tag ballooned to \$9 billion by the time Unit 1 was completed in 1985. Combined with slower-than-expected growth in the Valley, the overruns forced APS to hit customers with several rate hikes during the 1970s and '80s that sparked lasting public bitterness and earned Palo Verde the nickname "white elephant of the desert." Even APS president and CEO Mark De Michele confessed in 1985 that building the plant was probably a mistake.

In such an atmosphere, a whistle-blower complaint like Mitchell's can have an explosive effect. Every time a nuclear plant must write a self-critical report, as APS did when Mitchell first pointed out lighting concerns, it affects the plant's NRC "report card." Bad marks frighten stockholders, make the utility a less attractive investment and deter financiers. The stakes are so high that institutionalized harassment to deter whistle-blower complaints can become sound fiscal policy.

"You have to understand that it is oftentimes cheaper for a utility to threaten a whistle-blower, and then pay to fight her if she takes her case to court, than it is to actually fix the safety problem," Colapinto says. "Plus, if one

whistle-blower is made an example of, it has a chilling effect and others are less likely to come forward. Utilities save money in the short and long run."

Colapinto points out that the personal damages awarded in the Mitchell and Thomas whistle-blowing cases amount to less than \$100,000. "That's not a lot of money for a large utility," he says.

APS points proudly to an NRC survey this year that found that only a few workers were concerned that they would be harassed if they complained to management. But the NRC's Greg Cook acknowledges that the study was "somewhat informal," rather than a scientific polling of workers, and that it leaves unanswered the question of why so many employees are actually complaining of harassment by filing grievances with the Labor Department.

If there is a systematic effort to discourage whistle-blowers, as Mitchell and others claim, workers should be able to turn to their congressionally appointed guardian, the NRC, for help. But according to federal records and the admissions of NRC officials themselves, the agency often does little to aid whistle-blowers or to investigate



Palo Verde whistle-blower Sarah Thomas says plant officials gave her a job with higher radiation exposures as punishment for complaining about safety problems.

began suffering the consequences. She received threatening telephone calls and her car was vandalized. But most chilling, she was reassigned to a new position—one that could mean higher radiation exposure than her old job. Although the exposure levels were still well within the allowable NRC levels, Thomas recoiled at her new assignment.

"Was the plant trying to send me a message with that extra radiation? I don't know," she says. "But I know it scared the heck out of me." A Labor Department judge, appointed to hear her claim of harassment, agreed in 1988 that she had been unfairly treated. He ordered that Thomas be given back pay and returned to her old job.

But because any ruling by a Labor judge is subject to review by the U.S. Secretary of Labor, Thomas hasn't yet gotten any satisfaction from APS. Her complaint has languished in Washington, D.C., for five years, awaiting a final ruling.

The Thomas case illustrates the inadequacies in the federal appeals system for whistle-blowers. The system was devised by Congress as a cost-effective way for whistle-blowers to seek satisfaction—the idea being that rather than filing a lawsuit and enduring years and millions of dollars worth of litigation, abused workers could appeal

before the judge, the case moves on to the Secretary of Labor for a final ruling. This final leg almost always takes four to five years, sometimes longer. Labor Department spokeswoman Marjorie Adamson says the delays are because of understaffing. "There are too many complaints and not enough people to study them," she says.

Expenses, while less than litigation, are also substantial. Thomas says she has spent \$40,000 on legal fees and other expenses. She warns that whistle-blowers with more complicated cases face higher bills. "I got off easy," she says, laughing.

It isn't difficult to figure out why a nuclear power plant would target whistle-blowers.

Cost-cutting is a matter of survival for an industry that wildly overestimated itself 20 years ago by promising that nuclear reactors would light up the nation with power too cheap to meter. Flaws must be repaired at great expense. Sometimes a reactor must be shut down to make those repairs, and the resulting losses may exceed \$1 million per day, a sum that can sometimes threaten the very future of the utility.

Such was the situation at APS in the summer of 1989, when harassment against

PHOTO BY AP/WIDEWORLD

Whistle-blowers Continued from page 26

According to a 1987 congressional investigation, the agency's unwillingness to get tough on utilities in such cases can be attributed to the incestuous relationship between regulators and plant officials. The report, titled "NRC Coziness With Industry," blasted the agency for "abdica[ting] its role as regulator in some critical areas."

"It is a young and still relatively small industry," Mitchell explains. "Everyone has a hand for everyone else, all the top managers and regulators are friends, and there is a lot of movement between government and business. The same names keep coming up again and again."

One of those names is that of Ken Carr, the NRC chairman, who is now a mem-

ber of the APS board of directors. Mitchell asks, "Do you honestly think that when APS has trouble out at Palo Verde, they don't get Ken Carr on the phone doing damage control with the NRC?"

Mark Fallon says Carr's "experience is certainly valuable to APS. But... he would never be able to coercively influence regulators. Nor would he, or anyone else at Palo Verde, try."

Critics say the NRC's conduct in the Mitchell case is typical of its tolerant attitude toward nuclear facilities. Blaine Ballard, who called Mitchell a "bitch," and Tim Hull, who threatened that she could meet the same violent end as the "burn dummy," were given written slaps on the wrist by the NRC. Neither was punished by APS.

In addition, federal regulators, as a matter

of policy, often allow a worker to remain in a harassment situation indefinitely. It is NRC policy to refrain from seeking civil penalties against a plant that harasses a worker until after the Labor Department issues its ruling. As in Sarah Thomas' case, that can mean years.

Last year, U.S. Senator Joseph Lieberman, the Connecticut Democrat who chairs the Subcommittee on Clean Air and Nuclear Regulation, demanded that the NRC inspector general look into how the agency handles whistle-blowing cases.

Leo Norton, an inspector general investigator, says the NRC has interviewed 25 whistle-blowers, including several at Palo Verde, and will release a report making recommendations on how the agency's handling of worker concerns can be improved. The report is due in June.

Mitchell says that regardless of any coming reforms, she and the "raped-payers" of Arizona have already paid too high a price. She points out that the money that pays APS' lawyers for their courtroom encounters with whistle-blowers comes from utility bills—in other words, APS customers are paying more so that the utility can fight to delay fixing safety problems.

"The 'raped-payer,' as we call them, gets it coming and going," Mitchell says. "They are being charged ever-higher rates to finance APS' legal battles against those of us who are trying to make the plant safer. I don't think citizens or APS stockholders ought to be too happy about that."

One reason stockholders and ratepayers alike have reason to wonder at the millions of dollars spent on legal fees is that the man who is presumably setting company policy with regard to whistle-blowers, APS chairman Richard Snell, stands to benefit every time a whistle-blower case goes to court. APS' law firm, Snell & Wilmer, is in the family.

Fallon insists there is no conflict, noting that Snell & Wilmer was handling legal work for APS long before Richard Snell assumed the utility's chairmanship. That's true, but only because Snell & Wilmer's founder—and Richard Snell's father—Phoenix patriarch Frank Snell, helped put APS together from a number of small utilities in 1952.

APS won't say how much it spends fighting whistle-blower cases, but Fallon says the legal fees are just "a cost of doing business." He defends the company's relationship to the law firm as a "very old, mutually beneficial one." Richard Snell, Fallon says, has only an "old, tangential relationship" with Snell & Wilmer, and is not currently an active partner in the firm.

But there are signs that some APS stockholders have raised eyebrows at this arrangement, and that they are peeved that their company has doled out millions of dollars on legal wranglings with whistle-blowers. According to company insiders, one group of shareholders raised the issue with company managers in 1992.

In response, APS developed a "corporate strategic activity" report that proposed to deal with the problem by discovering the "root causes" of why "we have people so concerned that they are taking their concerns to the point of litigation."

Fallon says the company wants to "identify where there may be areas at Palo Verde where employees feel they can't bring forward concerns, and take steps to rid ourselves of those attitudes." APS, he insists, is a whistle-blower-friendly company.

But Mitchell, who continues to keep watch over Palo Verde from her home—which is located two miles from the containment domes—says that what APS really wants to do is rid itself of workers who complain. It is possible that that may be exactly what the company is achieving.

One plant employee who requested anonymity says she would "love to come forward and talk about safety problems at the plant," but is afraid to do so.

"Look," she says, "if you worked at Palo Verde, and had seen what some of those whistle-blowers went through, you would just keep your mouth shut, too. They were completely destroyed."

"I know it sounds terrible, but everybody who lives around that plant is just going to have to take their chances. I think workers at Palo Verde are done talking." □

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

December 29, 1992

Thomas J. Saporito, Jr.
13517 West Glendale, No. 2031
Glendale, Arizona 85307

Dear Mr. Saporito:

This letter acknowledges receipt of your petition dated October 23, 1992, requesting that the Commission take action with regard to Arizona Public Service Company's (APS or licensee) Palo Verde Nuclear Generating Station Units 1, 2, and 3. Specifically, you request that the Commission institute a show cause proceeding to modify, suspend, or revoke the operating licenses of the three Palo Verde units and order their immediate shutdown until such time as a nuclear safety evaluation can be performed on approximately 72 safety valves currently installed at the nuclear station.

As a basis for your request, you state that APS and the NRC cannot be sure whether the 72 safety valves will operate within their design bases and setpoint tolerances to mitigate an overpressurization event in any of the Palo Verde units. Your reasons to support this assertion are:

- (1) An APS request of November 13, 1990, to revise the technical specifications of its operating licenses for Palo Verde Units 1, 2, and 3 to increase the allowable setpoint tolerances for the main steam safety valves was signed by a person who was not technically qualified to provide safety commitments for this or any license amendment request, and 56 persons in engineering positions at Palo Verde hold those positions without having a bachelor of science degree in engineering.
- (2) The licensee's interoffice memorandum of March 22, 1991, responds to an employee who stated a concern that the amendment request to increase the allowable setpoint tolerance for the safety valves indicates that the peak analyzed pressure for the loss of condenser vacuum transient is 2740.9 pounds per square inch absolute (psia), leaving only a 9.1 psia margin to the safety limit of 2750 psia.
- (3) The NRC staff's interoffice memorandum of December 4, 1991, stated it was not prudent to entertain the licensee's request to revise its technical specifications at this time.
- (4) APS's June 1992 Condition Report Disposition Request (CRDR No. 1-2-0139) documented the following inadequacies in safety valves: certain valves were found with blowdown rings out of their required position; there is an industrial history of these valves on set pressure drifting; actual experience with safety valves in nuclear applications is that frequently they neither lift at the required setpoint nor reseal tightly without leaking; the

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variation of the setpoint from the requirements often exceeds not only ± 1 percent but also ± 3 percent; this is the first time that Unit 1 valves have been tested at their required temperature profile; preventive maintenance has not been performed on Unit 1 valves since 1984; exercising the valves has no useful effect on preventing valve setpoint drift and could result in failure to reseat and in seat leakage, damage to the valve seating surface, and ultimately erratic set pressure causing premature lift and failure to lift.

- (5) One of the authors of CRDR No. 1-2-0139 testified to NRC officials that the licensee falsified documents related to its request to amend the technical specifications.
- (6) A person told you that two investigators from the NRC Office of Investigations told that person that they had documents demonstrating that licensee officials falsified documents related to the licensee's request to revise its technical specifications.
- (7) On October 8, 1991, one of the licensee's engineers willfully violated a safety-related procedure by intentionally adjusting PSV-574 contrary to the requirements of the procedure.

The NRC staff has had the matter of safety valve setpoint tolerance and setpoint drift under review specifically for Palo Verde since receiving the amendment request dated November 13, 1990. The licensee has experienced difficulty meeting the ± 1 percent tolerance on all of the safety valves but in each case has analyzed the design overpressure event with the as-found settings and demonstrated that the safety limits are still met with the as-found settings. In addition, the licensee's amendment request contains an overpressure analysis that shows that the safety limit for overpressure is still met assuming that all safety valves lift 3 percent higher than nominal. This overpressure analysis is more conservative than what has been experienced at Palo Verde, since the average setpoint drift has not been 3 percent. The peak calculated pressure was 2740.9 psia; the safety limit is 2750 psia. As a result of the problems the licensee has been having in meeting the 1 percent tolerance, the licensee has been testing all safety valves at each refueling outage. The technical specifications and the ASME Code require testing the valves once each 5 years. Based on the above information, the staff finds that there is not an immediate safety problem, and your request for an immediate shutdown of Palo Verde Units 1, 2 and 3, until all 72 safety valves are disassembled, inspected, and properly tested in a reliable maintenance program for compliance with NRC requirements and the Palo Verde updated final safety analysis reports and technical specifications is denied.

Your concerns regarding allegedly falsified documents are being evaluated and will be resolved prior to the issuance of any amendment to the technical specifications regarding the safety valve setpoint tolerances. NRC Region V is evaluating the allegedly intentional violation of a safety-related procedure. None of the other items discussed in the petition involves matters