

October 31, 1990

Docket Nos. 50-528, 50-529  
and 50-530

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Dear Mr. Colapinto:

I am responding in part to the Petition of May 22, 1990, filed pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR) by you on behalf of Mrs. Linda E. Mitchell (Petitioner). In particular, I am addressing the technical aspects of the Petitioner's concerns regarding emergency lighting and fire protection at Palo Verde Nuclear Generating Station (PVNGS). Based on the Petitioner's concerns, the Petition requested a variety of relief including the institution of a proceeding pursuant to 10 CFR Section 2.202 to modify, suspend, or revoke the licenses issued by the U.S. Nuclear Regulatory Commission (NRC) to the Arizona Public Service Company (APS).

For the reasons set forth in the Partial Director's Decision (Enclosure 1), your request for action pursuant to Section 2.206 has been denied. A copy of the Partial Decision will be referred to the Secretary of the Commission for the Commission's review in accordance with 10 CFR Section 2.206(c). As provided by this regulation, the Partial Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

The Petition also alleges that individuals employed by APS and the NRC were involved in wrongdoing and requests that appropriate actions be taken. The allegations of APS wrongdoing in the area of emergency lighting and fire protection are currently under investigation by the Office of Investigations and will be the subject of a Final Director's Decision. As stated in the acknowledgement letter we sent you on June 21, 1990, allegations regarding improprieties by NRC personnel have been referred to the Office of the Inspector General. Any inquiries regarding those allegations should be directed to that office.

I have enclosed a copy of the notice regarding this Partial Decision that has been filed with the Office of the Federal Register for publication.

Sincerely,

Original signed by

Thomas E. Murley

Thomas E. Murley, Director

Office of Nuclear Reactor Regulation

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Enclosures:

1. Partial Director's Decision
2. Federal Register Notice

\*See previous concurrence

OFC	:DRSP/LA/PD5	:DRSP/PM/PD5	:DRSP/PM/PD5	:DRSP/D/PD5	:Tech Editor	:OGC
NAME	:DFoster*	:CTrammell:pm*	:SPeterson*	:JDyer*	:JMain*	:Hoefling*
DATE	: 8/31/90	: 8/31/90	:10/16/90	:10/16/90	: 9/4/90	:10/16/90
OFC	:ADR4/5	:DRSP/D	:NRR/ADP	:NRR/DD	:NRR/D	:
NAME	:MVirgilio*	:DCrutchfield*	:JPartlow*	:FMiraglia	:TMurley	:
DATE	:10/16/90	:10/16/90	:10/17/90	:10/18/90	:10/31/90	:

W/changes

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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)

}  
Docket Nos. 50-528,  
50-529 and 50-530

(10 CFR § 2.206)

PARTIAL DIRECTOR'S DECISION UNDER 10 CFR § 2.206

I. INTRODUCTION

On May 22, 1990, David K. Colapinto, Esq., submitted a Petition on behalf of Mrs. Linda E. Mitchell (Petitioner) requesting that the U.S. Nuclear Regulatory Commission (NRC) take actions pursuant to 10 CFR Section 2.206 with respect to the Palo Verde Nuclear Generating Station (PVNGS) of the Arizona Public Service Company, et al. (APS or Licensee). The Petitioner stated that she is employed by the Licensee as an associate electrical engineer at the PVNGS. She alleges that serious violations exist at PVNGS in the systems for emergency lighting and fire protection which were uncovered by the NRC during routine inspections, and that Licensee personnel acted improperly to "water down" the inspection findings, suppress other serious violations, and discredit an NRC inspector. In addition, the Petitioner alleges that NRC Region V management retaliated against the NRC inspector in question and agreed to "water down" inspection report findings as a result of the efforts made by the Licensee. Petitioner

claims that these actions will chill efforts by NRC inspectors and employees of NRC-licensed facilities to raise safety concerns.

Based on these allegations, Petitioner sought a variety of relief including institution of a proceeding pursuant to 10 CFR Section 2.202 to modify, suspend or revoke the licenses issued by the NRC for PVNGS, issuance of citations to the Licensee for violations improperly and illegally deleted from an NRC Inspection Report, issuance of fines to certain employees of the Licensee for allegedly tampering, obstructing and impeding an ongoing NRC inspector, disciplinary actions against any and all NRC employees allegedly involved in retaliation against an NRC inspector, and such other and further relief as the NRC may deem appropriate.

In a letter to Mr. Colapinto of June 21, 1990, I acknowledged receipt of the Petition and informed him that the Petition would be treated under 10 CFR Section 2.206 of the Commission's regulations. I also informed Mr. Colapinto that allegations in the Petition concerning improprieties by NRC personnel have been referred to the Office of the Inspector General and that any inquiries regarding those allegations should be directed to the Office of the Inspector General. These matters seek relief outside the scope of 10 CFR Section 2.206 and will not be addressed further by me.

The allegations in the Petition fall into three categories. First, Petitioner alleges improprieties by NRC personnel regarding NRC inspection activities. As noted above, this matter has been referred to the Office of the Inspector General. Second, the Petitioner alleges improprieties by APS personnel regarding NRC inspection activities. These allegations of



wrongdoing have been referred to the NRC's Office of Investigations (OI). At a later time, upon receipt of the OI Report, I will issue a Final Director's Decision dealing with these allegations. Finally, the Petitioner alleges that serious safety violations exist at PVNGS in the systems for emergency lighting and fire protection which were uncovered as a result of routine NRC inspection activities. At this time, I have decided to issue this Partial Director's Decision dealing with these safety allegations. Due to the nature and extent of the deficiencies found, the Office of Nuclear Reactor Regulation (NRR) has participated with Region V in the evaluation and resolution of this matter. In addition to participating in the referenced inspections, NRR has been reviewing the emergency lighting and fire protection programs at PVNGS.

## II. DISCUSSION

From January through August 1990, the NRC conducted several inspections regarding the fire protection program at PVNGS, particularly the area of emergency lighting. The inspections were documented in Inspection Report Nos. 50-528/90-02 of April 24, 1990, 50-528/90-25 of July 5, 1990, and 50-528/90-35 of September 21, 1990. In general, the findings of these Inspection Reports raised major concerns in the emergency lighting area. These concerns were also raised in the Petition of May 22, 1990 in a broader sense. The concerns documented in the Inspection Reports included deficiencies in the application of Quality Assurance (QA) to emergency lighting, failure to test emergency lights in their "as found" condition, rates of emergency light failure in conjunction with inadequate preventive maintenance associated with emergency lighting. The inspections also

determined that APS had repeatedly failed to conduct appropriate evaluations of deficiencies in the emergency lighting area to determine the cause and to prevent recurrence and that the Licensee had failed to apply appropriate engineering and quality oversight involvement to the emergency lighting system.

The results of these inspections were discussed during a transcribed Enforcement Conference held in Region V on July 10, 1990. Based on questions raised at the Enforcement Conference regarding the Licensee's application of its QA Program to fire protection equipment, the NRC could not determine the extent to which the Licensee had applied its QA Program to fire protection in the past and that a potential safety issue existed in this regard. As a result, on July 10, 1990, NRC Region V requested the Licensee to justify continued operation of the PVNGS facility in regard to the APS fire protection program. APS submitted to NRC Region V an evaluation and justification for continued operation on July 20, 1990. Although the Licensee's evaluation identified deficiencies in the application of its QA Program to fire protection equipment, the Licensee concluded that the deficiencies did not have a significant adverse effect on the safety of the public. Specifically, the deficiencies consisted of a failure to comply fully with the QA requirements for PVNGS fire protection systems, e.g., fire detection and alarm, fire barriers, lube oil collection, in-plant communications, ventilation, manual fire fighting equipment and emergency lighting systems, called for by the QA guidelines of Branch Technical Position Auxiliary Power Conversion System Branch (BTP APCSB)

9.5-1, Appendix A. BTP APCS 9.5-1 Appendix A is an NRC document entitled, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976." The Licensee's evaluation concluded that the deficiencies did not preclude the fire protection systems and equipment being adequate to support the continued safe operation of PVNGS. Although QA deficiencies were identified, the continued safe operation of PVNGS was based on: the adherence to existing administrative procedures governing the fire protection program, the completion of ongoing inspections and testing, assurances that the design basis is complied with based upon extensive walkdowns by the Licensee of its fire protection systems and the increased frequency of preventive maintenance. In addition, APS initiated efforts to ensure implementation of upgraded QA Program requirements to the fire protection program at PVNGS. Consequently, NRC Region V concluded that there was reasonable assurance that PVNGS could continue to operate safely.

With respect to the other deficiencies identified as a result of the NRC inspection activities at PVNGS, the Licensee has initiated acceptable corrective actions. Specifically, APS has indicated that the following corrective actions will be completed:

- o Emergency lighting has been designated as "QAG" (quality augmented) which is consistent with the PVNGS QA Criteria Manual. Plant procedures will be reviewed to ensure that the QAG program is being fully implemented in the fire protection area.
- o Holophane batteries are currently being replaced to ensure adequate capacity.



- o Emergi-lites are being replaced with more reliable Holophane units and fluorescent fixtures.
- o The low-voltage disconnect relay setpoint will be lowered on all Exide uninterrupter power supplies to prevent early disconnect of the batteries.
- o The preventive maintenance (PM) program will be upgraded. One of the enhancements will ensure that lights are properly aimed. The PM interval will also be changed from quarterly to monthly on selected lighting units.
- o Test procedures will be revised to ensure that emergency lights are tested in their as-found condition and that the battery capacity is measured. Surveillance frequencies have also been increased.

On August 1, 1990, APS submitted the details and schedules for the corrective actions summarized above. Corrective actions addressing immediate concerns have been completed. The remaining corrective actions will provide assurance that the Licensee's fire protection program, including emergency lighting, remain acceptable in the future. The NRC inspection staff is monitoring these corrective actions to assure timely completion. Until these remaining actions are completed, there is reasonable assurance that the facility can be operated with adequate protection of the public health and safety based on the adherence to existing administrative procedures governing the fire protection program, the completion of ongoing inspections and testing, assurances that the design basis is complied with based upon extensive walkdowns by the Licensee of its fire

protection systems and the increased frequency of preventive maintenance.

As a separate matter during the aforementioned NRC inspection activities, APS contracted with an independent consultant to review the emergency lighting issues at PVNGS. At the request of NRC Region V, on August 3, 1990, APS submitted the independent review of emergency lighting that was completed by APS's consultant, ABB Impell Corporation. Although Impell confirmed the existence of previously identified deficiencies, these deficiencies did not negate the earlier conclusion as to the continued safe operation of PVNGS. Impell identified the following four areas of concern in its independent review: deficiencies in QA classifications, problems in design adequacy including battery sizing, misdirected lighting, and inadequate maintenance. Impell noted that APS's past corrective actions regarding emergency lighting have addressed the immediate concerns without focusing on the underlying programmatic issues. The corrective actions undertaken by the Licensee and listed above adequately address the programmatic issues identified by Impell. In response to continuing NRC concern, APS appears to be addressing the broader programmatic issues with regard to emergency lighting and fire protection at PVNGS.

As to the deficiencies identified in the NRC inspections, on October 16, 1990, the NRC Staff issued a Notice of Violation and Proposed Imposition of Civil Penalty (EA 90-121) to the Licensee in the amount of \$125,000, for violations of NRC requirements in the fire protection area. The civil penalty was proposed in part to emphasize the need for lasting remedial action in this area.



### III. CONCLUSION

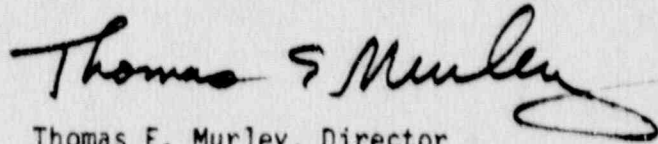
NRC's review of the history of fire protection deficiencies at PVNGS, particularly in the area of emergency lighting, indicates that APS should have applied more effort to identify and resolve the technical problems. APS's failure to apply the required QA Program to its fire protection program appears to have been a major root cause of previously identified deficiencies.

As discussed herein, APS has implemented extensive corrective actions to ensure compliance with applicable fire protection program requirements, especially regarding the reliability of its emergency lights. Although many of the deficiencies noted above were identified as a result of rigorous NRC oversight and were not initially acknowledged and resolved by APS, it appears that APS recognizes the importance of NRC fire protection requirements and is now approaching full compliance.

The institution of proceedings pursuant to 10 CFR Section 2.202, as requested by Petitioner, is appropriate only where substantial health and safety issues have been raised. See Consolidated Edison Company of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 175 (1975), and Washington Public Power System (WPPS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984). As discussed above, there is reasonable assurance that PVNGS can be operated with adequate protection of the public health and safety pending completion of ongoing corrective actions. Based on the foregoing, I find that the institution of a proceeding pursuant to 10 CFR Section 2.202 to modify, suspend, or revoke the NRC licenses held by APS

is not warranted. This decision is based on the corrective actions initiated by APS to deal with the concerns which were identified by NRC inspection activities conducted at PVNGS in the areas of emergency lighting and fire protection. Therefore, I have decided to deny this aspect of Petitioner's request for action pursuant to 10 CFR Section 2.206. Consideration of Petitioner's remaining requests will be based upon the completion and outcome of OI activities at which time a Final Director's Decision will be issued. As provided in 10 CFR Section 2.206 (c), a copy of this Decision will be filed with the Secretary of the Commission for its review.

FOR THE NUCLEAR REGULATORY COMMISSION



Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland  
the 31<sup>st</sup> day of October 1990.

UNITED STATES NUCLEAR REGULATORY COMMISSIONARIZONA PUBLIC SERVICE COMPANY, ET AL.PALO VERDE NUCLEAR GENERATING STATIONDOCKET NOS. 50-528, 50-529 AND 50-530ISSUANCE OF PARTIAL DIRECTOR'S DECISION (DD-90-7 ) UNDER 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Partial Director's Decision concerning a Petition dated May 22, 1990, filed by Mr. David K. Colapinto, Esq. on behalf of Mrs. Linda E. Mitchell. The Petition alleged safety violations in the area of fire protection at the Palo Verde Nuclear Generating Station (PVNGS) of the Arizona Public Service Company (APS). The Petition also presented numerous allegations that APS and Nuclear Regulatory Commission (NRC) personnel were involved in wrongdoing with regard to possible violations of fire protection, and particularly emergency lighting, requirements at PVNGS.

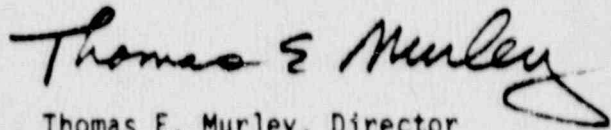
On June 21, 1990, the Director, Office of Nuclear Reactor Regulation, acknowledged receipt of the Petition. The Director informed Mr. Colapinto that the Petition would be treated under 10 CFR 2.206 of the Commission's regulations and that appropriate action would be taken in a reasonable time.

The Director of the Office of Nuclear Reactor Regulation has now determined that the portion of the Petitioner's request dealing with safety violations should be denied for the reasons set forth in the "Partial Director's Decision Under 10 CFR 2.206" (DD-90-7 ), which is available for inspection and copying in the Commission's Public Document Room, Gelman Building, 2121 L Street, N. W., Washington, D. C. 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.



A copy of the Partial Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Partial Decision will become the final action of the Commission 25 days after issuance unless the Commission on its own motion institutes review of the Partial Decision within that time.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in black ink that reads "Thomas E. Murley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland,  
this 31st day of October 1990.

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UNITED STATES OF AMERICA  
BEFORE THE NUCLEAR REGULATORY COMMISSIONOFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of,

ARIZONA PUBLIC SERVICE CO.,

Docket Nos. 50-528; 50-529  
and 50-530REQUEST FOR INSTITUTION OF PROCEEDINGS TO MODIFY,  
SUSPEND OR REVOKE LICENSE PURSUANT TO 10 CFR 2.206To: Kenneth Carr, Chairman  
U.S. Nuclear Regulatory Commission

1. Petitioner, Linda E. Mitchell, is a resident of the City of Buckeye, County of Maricopa, State of Arizona. Mrs. Mitchell is employed by Arizona Public Service Co. ("APS") as an associate electrical engineer at the Palo Verde Nuclear Generating Station ("PVNGS" or "Palo Verde"), located approximately 50 miles west of downtown Phoenix, Arizona. Mrs. Mitchell is a well-known whistleblower at Palo Verde.

2. APS is an operating public utility engaged principally in the business of furnishing electric service throughout the State of Arizona. APS is a wholly owned subsidiary of Pinnacle West Corporation.

3. Pursuant to operating licenses issued by the U.S. Nuclear Regulatory Commission ("NRC"), NRC License Nos. NPF-41, NPF-51 and NPF-74, APS was authorized to act as an agent for the licensees and had exclusive responsibility and control over the physical construction, operation and maintenance of PVNGS, which includes three identical, separate, pressurized-water-reactor plants.

4. Petitioner hereby requests, under the provisions of 10 CFR 2.206, the institution by the NRC of a proceeding pursuant to 10 CFR 2.202 to modify, suspend or revoke the license of the licensees.

5. The facts that constitute the basis of this request are as follows:

(a) On March 21, 1990 Mr. William F. Conway, APS Executive Vice President, Nuclear, was informed by NRC Region V of a Notice of Violation regarding Palo Verde's emergency lighting system. This Notice of Violation involved a previous

"failure to properly maintain and perform required surveillance tests of the emergency lighting system," which resulted in a 1988 civil penalty of approximately \$100,000. Although APS failed to comply with NRC requirements in a area for which it was assessed a fine, the NRC did not propose to fine APS for its repeated willful violations in March 1990.

(b) On April 24, 1990 NRC Region V informed Mr. Conway of "several concerns regarding the status of [Palo Verde's] 10 CFR 50, Appendix R, emergency lighting" as well as its fire protection/prevention program. These concerns arose as a result of a "routine inspection." See, Inspection Report Nos. 50-528/90-02, 50-529/90-02, 50-530/90-02. However, due to the improper influence from APS officials Inspection Report 90-02 was watered down to cover up additional concerns raised by Petitioner and verified by an NRC Inspector, "John Doe".

(c) Prior to the issuance of Inspection Report 90-02 APS was informed by the NRC Region V inspection team of approximately 14 potential violations which could result in substantial civil penalties and/or fines.

(d) Upon learning of these serious potential violations APS management, including E.C. Simpson, APS Vice President, Nuclear Engineering and Construction, began a concerted effort to harass and discredit the John Doe NRC inspector through his superiors at NRC Region V. APS' intent was to cover up and suppress additional serious violations, many of which Petitioner's supervision at APS recognized were legitimate concerns.

(e) Petitioner personally witnessed her superiors at APS state that APS was about to contact NRC management to "back off" the John Doe Inspector. APS employees, including Kristin McCausless Clark, made disparaging and false comments about John Doe, openly criticized John Doe for aggressively monitoring the Palo Verde emergency lighting system and, over a two-week period, boasted that APS management was going to "get rid of" John Doe. In addition, Petitioner's immediate supervisor often referred to John Doe as "your buddy" in conversations with Petitioner and bragged that APS was about to get John Doe in trouble for being too aggressive.

(f) On or about May 10, 1990, an APS employee told Petitioner that APS would get John Doe transferred to Region IV because he was causing too much trouble for Palo Verde and the San Onofre Nuclear Generating Station ("SONGS") regarding 10 CFR 50, Appendix R, emergency lighting requirements.



(g) Upon information and belief, APS learned that John Doe had confirmed that APS parts used in the PVNGS emergency lighting system did not meet Appendix F requirements by failing to burn for sufficient hours and could not withstand heat levels at PVNGS.

(h) Upon information and belief, James M. Levine, APS Vice President, Nuclear Production, contacted F.P. Zimmerman, Director, NRC Region V, Division of Reactor Safety and Projects, and accused John Doe of misconduct.

(i) Upon information and belief, Mr. Conway contacted John Martin, NRC Region V Administrator, and also accused John Doe of misconduct.

(j) Upon information and belief, the contacts by Mr. Conway and Mr. Levine of APS to John Doe's superiors at NRC Region V contained misrepresentations and false accusations and were intended to impede and interfere with an ongoing NRC inspection.

(k) Upon information and belief, John Doe was retaliated against by NRC Region V management as a direct result of the communications made by Mr. Conway and Mr. Levine.

(l) Upon information and belief, NRC Inspection Report 90-02 was watered down by the NRC Region V management in order to whitewash significant safety problems at Palo Verde as a direct result of the communications made by Mr. Conway and Mr. Levine.

6. The violations, if permitted to continue, will produce the following potential hazardous environmental conditions:

(a) Serious violations in the Palo Verde emergency lighting and fire protection systems, which have gone uncorrected for at least five (5) years, will continue unabated.

(b) The duties and rights of NRC inspectors to investigate and inspect potential violations at NRC licensed facilities will be severely chilled due to the fear of retaliation by NRC management and NRC licensees.

(c) The rights of employees at NRC licensed facilities, including Petitioner, to speak freely and raise concerns with NRC inspectors as well as employee rights to raise safety concerns without fear of

retaliation in general will be severely chilled.

WHEREFORE, Petitioner prays for the following relief:

(1) That the NRC institute a proceeding against APS pursuant to 10 CFR 2.202 to modify, revoke or suspend the above-referenced license.


(2) That APS be cited for violations improperly and illegally deleted from NRC Inspection Report 90-02. *cited out not addressing IG matter.*

(3) That APS, William Conway, and James Levine be fined \$1,000,000.00, jointly and severally, for tampering, obstructing and impeding an ongoing NRC inspection. *OI*

(4) That any and all NRC employees involved in retaliation against John Doe be disciplined. *IG*

(5) Such other and further relief as the NRC may deem appropriate.


Respectfully submitted,

  
David K. Colapinto

Kohn, Kohn & Colapinto, P.C.  
517 Florida Ave., N.W.  
Washington, D.C. 20001  
(202) 234-4683

Attorneys for Linda E. Mitchell

May 22, 1990

  
NRC Exec. Dir. for Operations