

NATIONAL WHISTLEBLOWER CENTER

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January 15, 1994

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

**Re: Petition Under 10 C.F.R. Part 2.206  
Licensee, The Atlantic Group**

Dear Sir:

COMES NOW, Thomas J. Saporito, Jr. and the National Whistleblower Center (hereinafter "Petitioners"), by and through the undersigned and hereby files this petition under 10 C.F.R. Part 2.206 seeking action by the Nuclear Regulatory Commission ("NRC") against The Atlantic Group ("Licensee") as fully described below:

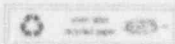
Specific Request:

Within a reasonable time, Petitioner requests that the NRC take the following actions:

1. Initiate escalated enforcement actions against the Licensee for violation of NRC regulations under 10 C.F.R. Part 50.7 in retaliatory conduct asserted against Thomas J. Saporito, Jr. by the Licensee as a direct or indirect result of his having engaged in "protected activities" during Mr. Saporito's period of employment with the Licensee from September 29, 1991 to and including December 31, 1991 at the Arizona Public Service Company, Palo Verde nuclear station located near Phoenix, Arizona.

2. Initiate actions as necessary, (i.e. confirmatory order), to cause the Licensee to provide a make-whole remedy to Mr. Saporito for causing Petitioner's employment termination from the Palo Verde nuclear station and for failing to rehire Petitioner at any of the Licensee's of client facilities be it nuclear or non-nuclear in violation of NRC Requirements under 10 C.F.R. Part 50.7 as a direct or indirect result of Petitioner having engaged "protected activities" as defined under 10 C.F.R. Part 50.7.

3. Initiate actions as necessary to cause the Licensee to abate and obviate the existing pervasive chilling effect instilled within the Licensee's company as a direct or indirect result of the NRC's failure to provide the Petitioner with employee protections afforded under 10 C.F.R. Part 50.7 of which said failure on the



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part of the NRC significantly contributed to the Petitioner's employment termination from the Licensee's company in violation of NRC requirements.

Basis and Justification:

1. Petitioner was an employee of the Licensee from September 29, 1991 to and including December 31, 1991 during which time Petitioner worked for the Licensee at the Palo Verde nuclear station.

2. During Petitioner's period of employment with the Licensee, Petitioner engaged in "protected activities" as defined by NRC requirements under 10 C.F.R. Part 50.7. Petitioner contacted the NRC in 1992 and a NRC investigation into Petitioner's safety allegations regarding the Palo Verde facility remains ongoing.

3. The Licensee retaliated against Mr. Saporito for engaging in "protected activities" by terminating his employment on December 31, 1991 and by refusing to rehire him.

4. Petitioner filed a complaint with the U.S. Department of Labor ("DOL") under 29 C.F.R. Part 24, on January 27, 1992 and filed an amended complaint shortly thereafter. Petitioner's complaint alleged discrimination as a result of the initiation of and the participation in NRC investigation of Palo Verde.

5. Following an investigation, the Administrator of the Wage and Hour Division, Employment Standards Administration, DOL, concluded that Petitioner had not been discriminated against as defined and prohibited by the Act and 29 C.F.R. part 24. A formal hearing was held in Phoenix, Arizona lasting about nine days at which time the parties were afforded full opportunity to present evidence and argument.

6. On May 10, 1993, Administrative Law Judge ("ALJ") Hon. Michael P. Lesniak issued a Recommended Decision and Order ("RDO") fully describing findings and conclusions based upon the ALJ's observation of the witnesses who testified at the hearing, upon an analysis of the entire record, arguments of the parties (both oral and written), applicable regulations, statutes, and case law precedent. Based on the foregoing, the ALJ held, in part relevant hereto, that "...In the case of Thomas J. Saporito, Jr. v. TAG, I find for the Respondent, TAG, and against the Complainant.

7. Following the issuance of the Recommended Decision and Order in Case No. 92-ERA-30, APS notified the DOL and the NRC that at least one of the witnesses for APS lied under oath at the DOL hearing. Significantly, the substance of the alleged falsehoods made under oath at the DOL hearing related to evidence of the employer's knowledge of Mr. Saporito's protected activities as well as evidence of the employer's intent to discriminate against Mr.

Saporito in violation of 10 C.F.R. Part 50.7 and Section 210 of the ERA.


8. On information and belief, the NRC Office of Investigations has been investigating the alleged misconduct stemming from the revelations of perjured testimony by APS employees. On information and belief, there exists evidence to support the conclusion that TAG and its employees were involved in the misconduct and discrimination against Mr. Saporito.

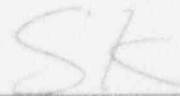
9. We respectfully request the NRC to fully investigate the role of TAG and its employees in the discrimination committed against Mr. Saporito and whether TAG employees also lied under oath at the DOL hearing.

10. The discriminatory and retaliatory conduct of the Licensee taken against the Petitioner and the failure of the NRC to protect the Petitioner under 10 C.F.R. Pat 50.7 has further instilled a pervasive "chilling effect" at the Licensee's facilities which discourages other workers from freely contacting the NRC about safety concerns.

11. Based on the issues raised in this petition, operation of the Licensee's facilities has created an undue risk to the public health and safety, including the employees of the Licensee, and the issues raise substantive health and safety concerns warranting regulatory action. Accordingly, Petitioner requests action by the NRC pursuant to 10 C.F.R. Part 2.206 to insure that the actions by the Licensee are not deemed to be acceptable conduct by the Licensee and other NRC licensees.

Respectfully submitted,

  
Thomas J. Saporito, Jr.  
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Steven M. Kohn, Esq.  
Chairperson, Board of Governors  
National Whistleblower Center

cc: Oscar DeMiranda, NRC SAC RII  
Note: Please forward written responses to both Center addresses.