



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400  
ARLINGTON, TEXAS 76011-8064

March 7, 1996

EA 93-159

Arizona Public Service Company  
ATTN: William L. Stewart  
Executive Vice President, Nuclear  
P.O. Box 53999  
Phoenix, Arizona 85072-3999

SUBJECT: NOTICE OF VIOLATION & PROPOSED IMPOSITION OF CIVIL PENALTY - \$100,000  
(NRC OFFICE OF INVESTIGATIONS REPORT 5-93-023R)

This is in reference to your January 11, 1996 letter which provided Arizona Public Service (APS) Company's reply to my November 27, 1995 letter requesting APS's response to an apparent violation of 10 CFR 50.7 at the Palo Verde Nuclear Generating Station (Palo Verde). This exchange of correspondence was in lieu of a predecisional enforcement conference, which neither APS nor NRC felt was necessary given the history and documentation surrounding this case. As discussed in more detail in my letter, an NRC investigation concluded that an APS supervisor caused APS to be in violation of 10 CFR 50.7 when he decided in December 1991 not to hire a contract instrumentation and control (I&C) technician for an upcoming Palo Verde, Unit 1 outage. This OI finding followed a conclusion by a Department of Labor Administrative Law Judge (ALJ) on May 10, 1993 that APS had discriminated against the I&C technician (DOL Case Number 92-ERA-030). In August 1993, the APS supervisor admitted to APS attorneys that he made the decision not to hire the technician because he had learned that the technician had raised concerns at other nuclear facilities and while employed at Palo Verde.

In your January 11, 1996 letter, you did not contest the NRC's position that a violation had occurred but requested that the NRC consider a number of points in making its enforcement decision, including, but not limited to: the discovery by APS in August 1993 that the supervisor had not been truthful about his reason for not hiring the technician; APS's promptly informing the NRC of this discovery and cooperating with NRC's investigation; the supervisor's statement, which has not been disproved, that he acted on his own without any suggestion by higher level management that he discriminate against the technician; APS's prompt action to suspend the supervisor and subsequent decision to terminate his employment; APS's settlement with the technician who was discriminated against; APS's comprehensive corrective actions directed at assuring an environment in which employees and contractors feel free to raise concerns without fear of retaliation; and the apparent success of those actions based on statistical evidence and surveys of employees. With regard to enforcement policy issues, APS stated that the NRC should exercise discretion and assess no civil penalty based on the factors discussed above.

The NRC has reviewed all of the information associated with this case, including your January 11, 1996 submittal and information obtained in a November 2, 1995 predecisional enforcement conference with the former

9603130278 960307  
PDR ADOCK 05000528  
P PDR

supervisor who committed the violation. On the basis of this information, we conclude that a violation of 10 CFR 50.7 occurred and that it should be classified at Severity Level III in accordance with the NRC's General Statement of Policy and Procedure for NRC Enforcement Actions (Enforcement Policy), NUREG-1600.<sup>1</sup> Furthermore, based on the significance of this violation, particularly with respect to the atmosphere at Palo Verde at the time this violation occurred, the NRC has determined that a substantial civil penalty is warranted.

In making this decision, the NRC is not disagreeing with the factual information APS provided nor with APS's statements about the effectiveness of the actions it has since taken to improve the environment at Palo Verde for employees to raise concerns. However, the violation is significant because it went undiscovered and uncorrected for more than 19 months, during which time the overall environment at Palo Verde for raising safety concerns was in need of substantial attention. In addition, while APS eventually reported this violation to the NRC, the report came only after Mr. Warriner had admitted to APS' attorneys that he provided false information concerning his actions to the ALJ. Had we not been delayed in our ability to consider civil enforcement action while this matter was pending before the NRC Office of Investigations and the U.S. Department of Justice, we would have taken such action long before this on the basis of the ALJ decision.

Therefore, despite your actions in ultimately determining that the supervisor discriminated in this case, in order to emphasize the significance of an APS supervisor willfully discriminating against an individual who was known to have engaged in protected activities, as well as the importance of maintaining an appropriate environment for raising concerns, I have been authorized, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Nuclear Reactor Regulation, Research and Regional Operations, to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$100,000. This penalty is assessed based on an exercise of discretion pursuant to Section VII.A.1 of the Enforcement Policy and is the maximum civil penalty allowed by law for a single violation.

The NRC has concluded that information regarding the reason for the violation, and the actions taken and planned to correct the violation and prevent recurrence is already adequately addressed on the docket in your January 11, 1996 letter and in previous correspondence that was referenced therein. Therefore, you are not required to respond to the Notice with respect to the provisions of 10 CFR 2.201 unless your January 11, 1996 letter and the referenced correspondence do not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. With regard to the proposed civil penalty, you are required to

---

<sup>1</sup> While this action references the current NRC Enforcement Policy, the same result would have occurred had this action been issued under the enforcement policy in effect at the time of the violation.

Arizona Public Service  
Company

-3-

respond and should follow the instructions specified in the enclosed Notice when preparing your response.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction.

Sincerely,

  
L. J. Callan  
Regional Administrator

Enclosure:  
Notice of Violation and  
Proposed Imposition of Civil Penalty

Dockets: 50-528; 50-529; 50-530  
Licenses: NPF-41; NPF-51; NPF-74

cc w/Enclosure:  
Arizona Corporation Commission  
ATTN: Mr. Steve Olea  
1200 W. Washington Street  
Phoenix, Arizona 85007

Southern California Edison Company  
ATTN: T. E. Oubre, Esq.  
P.O. Box 800  
Rosemead, California 91770

Arizona Radiation Regulatory Agency  
ATTN: Aubrey V. Godwin, Director  
4814 South 40 Street  
Phoenix, Arizona 85040

Maricopa County Board of Supervisors  
ATTN: Chairman  
111 South Third Avenue  
Phoenix, Arizona 85003

Palo Verde Services  
ATTN: Curtis Hoskins, Executive  
Vice President and  
Chief Operating Officer  
2025 N. 3rd Street, Suite 220  
Phoenix, Arizona 85004

Arizona Public Service  
Company

-4-

Akin, Gump, Strauss, Hauer and Feld  
El Paso Electric Company  
ATTN: Roy P. Lessey, Jr., Esq.  
1333 New Hampshire Avenue, Suite 400  
Washington, D.C. 20036

Arizona Public Service Company  
ATTN: Angela K. Krainik, Manager  
Nuclear Licensing  
P.O. Box 52034  
Phoenix, Arizona 85072-2034

Arizona Public Service  
Company

-5-

DISTRIBUTION/HQ:

PDR  
LPDR  
SECY  
CA  
JTaylor, EDO  
JMilhoan, DEDR  
JLieberman, OE  
LChandler, OGC  
JGoldberg, OGC  
WRussell, NRR  
RZimmerman, NRR/ADP  
BHolian, NRR  
Enforcement Coordinators  
RI, RII, RIII  
JGilliland, PA  
LNorton, OIG  
GCaputo, OI  
EJordan, AEOD  
OE:ES/RPR  
OE:EA (2)  
NUDOCS

DISTRIBUTION/RIV:

LJCallan  
SJCcollins  
GSanborn ▶ EAFile  
R Wise  
BHenderson  
MHammond  
CHackney  
DKunihiro  
WBrown  
LWilliamson  
JDyer ▶ AHowell  
Perkins  
TPGwynn ▶ KBrockman  
DKirsch, WCFO  
KJohnston, SRI/Palo Verde  
RIV Files

DOCUMENT: G:\EA\Final\EA93159.FNL

OE  
Rosano  
2/29/96

JD:OE  
JRGray  
36

NRR  
RZimmerman  
2/27/96

JD:OE  
JLieberman  
3/1/96

JD:OE  
JMilhoan  
3/4/96

110035

JEH.