

UNITED STATES NUCLEAR REGULATORY COMMISSION
OFFICE OF INVESTIGATIONS

IN THE MATTER OF:)
)
INVESTIGATIVE INTERVIEW OF)
)
FRANK WARRINER)

INTERVIEW OF FRANK WARRINER

Phoenix, Arizona
March 22, 1995
2:30 o'clock p.m.

EXHIBIT 16
PAGE 1 OF 7 PAGES

WHITE & ASSOCIATES
CERTIFIED COURT REPORTERS
932 South Stapley
Mesa, Arizona 85204
464-1035

PREPARED FOR:

9604110080 960401
PDR FOIA
NEXSEN95-19 PDR

ROBERT BARTELS

BY: Peggy Rothenberger

2-94-003

2-94-003

COPY

Reference

A18
Red. 4/27/95 AM
802

9604110080

1 A Yes, sir.

2 Q And you are agreeable to everything that's
3 in there?

4 A Yes, sir.

5 Q Mr. Warriner, were you ever employed at the
6 Arizona Public Service Company?

7 A Yes, I was.

8 Q During what time period?

9 A January of 1980 until the fall of '94.

10 Q In the fall of 1991, let's say from August
11 through December, what was your position at APS?

12 A I was the I & C supervisor in Unit One.

13 Q And when you say I & C, it's I and C; is
14 that correct?

15 A Yes, sir.

16 Q In December of 1991 were you in charge of
17 selecting contract technicians to work on an outage at
18 Unit One at Palo Verde?

19 A Yes, I was.

20 Q And sometime in December of 1991 you
21 received some resumes from the Atlantic Group; is that
22 correct?

23 A Yes, sir.

EXHIBIT 16
PAGE 2 OF 7 PAGE(S)

24 Q And those were resumes of contract
25 technicians who might work at the Unit One outage?

1 A Yes, sir.

2 Q There were also resumes of contract
3 technicians who then were working at the Unit Two outage;
4 right?

5 A That is correct.

6 Q And one of the resumes that you received in
7 December of '91 was a resume of Thomas Saporito?

8 A That is correct.

9 Q You selected a number of the people whose
10 resumes you received from the Atlantic Group; correct?

11 A Yes, sir.

12 Q But you did not select Mr. Saporito?

13 A That is correct.

14 Q Prior to the time in December of '91 when
15 you actually made your decisions about who to select for
16 the Unit One outage, you had a conversation with Mr.
17 Grove; is that correct?

18 A That is correct.

19 Q And he was the I & C supervisor at Unit Two?

20 A Yes, sir.

21 MR. BARTELS: Let's go off the record.

22 (Whereupon Mr. Tom Hannis joined the
23 interview.)

24 (Whereupon Exhibit No. 1 was marked.)

25 Q BY MR. BARTELS: Mr. Warriner, let me bring

EXHIBIT 16
PAGE 3 OF 17 PAGE(S)

1 A No, sir.

2 Q Mr. Simko?

3 A No, sir.

4 Q How about Dan Phillips?

5 A Not during that period of time.

6 Q During the same time period, fall of '91,
7 did you say anything to anyone at APS besides Mr. Grove
8 about Mr. Saporito?

9 A No, sir.

10 Q Prior to the time at which you decided not
11 to select Mr. Saporito for the Unit One outage did you
12 learn anything about Mr. Saporito from any source besides
13 Mr. Grove?

14 A No, sir.

15 Q Did you read any magazines that were related
16 to the nuclear power industry at that time?

17 A I'm sure I did.

18 Q Did you ever read anything about Mr.
19 Saporito in any of those magazines?

20 A No, sir.

21 Q Did you ever read anything about the
22 problems of Florida Power and Light?

23 A No, sir.

24 Q Are you telling me that you don't remember
25 or that it didn't happen?

EXHIBIT 16
PAGE 4 OF 7 PAGE(S)

1 A I don't believe it happened.

2 Q Did you ever hear anything on the radio or
3 television about Mr. Saporito, again during this fall '91
4 time period?

5 A No, sir.

6 Q Now prior to the nonselection you did learn
7 something about Mr. Saporito from the Atlantic Group;
8 right? Let me ask you this: You received his resume
9 from the Atlantic Group; right?

10 A Yes, sir, I received his resume.

11 Q Did you get any information about Mr.
12 Saporito besides that resume from the Atlantic Group?

13 A No, sir.

14 Q Did you get any information on any of the
15 other contract technicians from the Atlantic Group
16 besides resumes?

17 A No.

18 Q Prior to the time at which you decided not
19 to select Mr. Saporito for the outage did anybody from
20 APS, again putting aside Mr. Grove, did anybody else from
21 APS encourage you in any way not to select Mr. Saporito
22 for employment at Palo Verde?

23 A No, sir.

24 Q You received no encouragement from Mr.
25 Phillips?

EXHIBIT 16
PAGE 5 OF 7 PAGE(S)

EXHIBIT 16

PAGE 6 OF 7 PAGE(S)

1 A No, sir.

2 Q Mr. Simko?

3 A No, sir.

4 Q Did you receive any encouragement not to
5 select Mr. Saporito from the Atlantic Group?

6 A No, sir.

7 Q Prior to the time that you decided not to
8 select Mr. Saporito but before January 1st, 1992, did you
9 ever have any conversation with anybody from APS besides
10 Mr. Grove about whistle-blowers, ever come up in
11 conversation?

12 A I can't remember a specific conversation,
13 but I'm sure it did come up in conversation.

14 Q What makes you sure that it did?

15 A Whistle-blower is a term that is used in the
16 industry as well as other industries, and because it's
17 there I'm sure I was involved in a conversation where it
18 was mentioned.

19 Q Do you remember anybody that you would have
20 had a conversation with about whistle-blowers?

21 A No, sir, not a specific person.

22 Q Who did you talk to most often at APS? Now
23 I want to go from January 1st, '92 back a little further
24 in time. Let's say for two or three years. Who are the
25 people that you had contact with that you would be most

1 feeling that you had about how the attorneys were dealing
2 with you, did you discuss that feeling with anybody else
3 at the time?

4 A No, sir. I might -- I'd like to throw
5 something in here. You've asked a lot of questions today
6 about me talking to other people about the Saporito
7 situation, and maybe I can help you here. I made a
8 decision. I made that decision myself.

9 Q Not to hire Mr. Saporito?

10 A Not to hire Mr. Saporito, and then after
11 things -- this first conversation I guess from me was the
12 beginning of where I am today. I made it an absolute
13 strict rule to myself that I wouldn't discuss Mr.
14 Saporito with anybody other than the lawyers which we've
15 talked about. I just wanted to get that on the table.

16 Q Just so the record is clear, you said you
17 made the decision that you would not discuss the Saporito
18 case?

19 A Uh-huh, uh-huh.

20 Q I'm going to shift topics a little bit and I
21 need to have that marked as Exhibit No. 3, I think.

22 (Whereupon Exhibit No. 3 was marked.)

23 Q BY MR. BARTELS: Mr. Warriner, would you take
24 a look at Exhibit No. 3?

25 MR. ROBINSON: Only for my reference, I've never

STATE OF ARIZONA)
County of Maricopa)

ss.

A F F I D A V I T

I, WILLIAM E. Engelking, being first duly sworn upon my oath, depose and state as follows:

1. I am the MR. WILLIAM Engelking referred to in the Affidavit of THOMAS J. SAPORITO, JR., dated May 7, 1992. It is true that Mr. Saporito worked as an Instrument Control (I&C) technician at the Arizona Public Service Company's (APS) Palo Verde Nuclear Generating Station (PVNGS), located near Phoenix, Arizona. He was an employee of The Atlantic Group (TAG). He was hired as a temporary employee as all of our I&C technicians were hired for the first outage at PVNGS (Unit 2).

2. I had no knowledge that Mr. Saporito was engaging in "protected activities" and he brought none of these concerns to my attention. I do recall that early in the outage, Mr. Saporito and another employee of TAG, Bill McCullough, had a disagreement in the parking lot because Mr. Saporito did not think Mr. McCullough was doing the job correctly. It is my understanding that APS reassigned them and this was something of a personality problem. Mr. Saporito never brought a safety concern to me. I had approximately 180 employees working for me on a 4,000-acre site at the Unit 2 outage.

3. It is true that Mr. Saporito met with me on January 2, 1992 to receive his paycheck and turn in his exit paperwork. I had been on vacation from December 20, 1991 through December 29,

92-94-003

92-94-003

FEC-000613

EXHIBIT 19

PAGE 1 OF 7 PAGE(S) 9

Release

A/19
9

1991 and had not learned which I&C techs had been requested for the Unit 1 outage. I had on my desk a list of 11 names from APS to fill 13 slots for that outage. Prior to leaving on vacation, we had provided APS with a number of resumes of I&C technicians for the Unit 1 outage, including Mr. Saporito's. While I was on vacation, we received a list of 11 names that APS preferred. This was not to say that they had rejected the rest, but that these 11 were preferred and they wished to look at additional resumes before deciding on the additional candidates. Mr. Saporito may have asked why his name was not on the list. I do not know how PVNGS Unit 1 made the decision to list the 11 preferred names and I would have told him so.

4. During the Unit 2 outage, 2 electricians had walked through a marked high rad area without being under proper REP causing a violation of procedure. Because of this, my boss asked me to explain to each employee when exiting why it was such a high risk problem and why these 2 gentlemen were disciplined. I explained to Mr. Saporito that it was important not to cross a stepoff pad or enter a high rad area without proper REP. The Atlantic Group and everyone participating in the nuclear industry places safety first. I believe in that concept and have always counselled my employees that safety concerns should be brought to me or the attention of the utility, or both. I did not tell Mr. Saporito that the matter would probably result in a fine against APS by the NRC. I had no reason to know what would happen and

did not speculate to Mr. Saporito. The fact that Mr. Saporito says that a violation resulted when 2 TAG electricians became radioactively contaminated while performing work tells me that he did not even understand what I was trying to explain to him in the exit interview.

5. Mr. Saporito did not tell me that he had identified any violations of NRC requirements to APS management at PVNGS Unit 2. Mr. Saporito did not discuss any violations with me. I was not aware that Mr. Saporito had raised any safety concerns. Mr. Bob Wasak and I did go out on several occasions during the outage, but we never discussed Mr. Saporito and it was not common knowledge around the site that he was raising concerns, or at least I did not know that he was raising concerns around the site.

6. Mr. Saporito did not ask me if his raising safety concerns was the reason that he was not selected for the PVNGS Unit 1 outage. I did not say to Mr. Saporito "you're a contractor, you should have just done your job and not made any waves here." I did not say anything that could have been construed as this. I have been a supervisor for 7 years and have never said anything like that. Even if I was to think something as stupid as this, I would not say it to an employee. Mr. Saporito never mentioned the NRC to me. Mr. Saporito did make vague comments about people not doing their job as he felt they should do their job. Mr. Saporito did not give me any names or

any specific examples when I asked. Mr. Saporito just said that there were better ways to do the job than these other I&C techs were doing it. I never said to Mr. Saporito "look, as a contractor with TAG, it wouldn't be a good career move for you to cause any more trouble here." I did give Mr. Saporito my business card and told him to contact The Atlantic Group for another job assignment. I do this to all exiting employees because our business is temporary help and we are in the business of putting people to work. We never know when a new job is going to be assigned and we need people such as Mr. Saporito calling to let us know they are available.

7. It is true that on or about the week of January 6, 1992, I met Mr. Saporito in the parking lot of my apartment complex. I did not know that this was the parking lot of Mr. Saporito's apartment until I drove in and noticed him packing his car to leave. He did tell me he had spoken to Ellen Simmons at the Norfolk office of TAG about a job assignment. I did not say: "well, what did you expect. I told you that a contractor should just do his job and not make any waves." I did not say "you have quite a history of making waves don't you?" I did not say "it's no secret that you raised safety concerns at the Florida Power & Light Company, and your history of making waves is common knowledge at this site." We had a 2 minute conversation in which I told him to keep checking with the home office of TAG and to have a safe trip home. We exchanged pleasantries and had no

conversations such as reported in the Affidavit of Mr. Saporito. I only spoke to Mr. Saporito that one time in my office on January 2, 1992 and in the parking lot of my apartment.

8. Mr. Saporito did not tell me that he had talked with Mr. Dan Roberts at APS on January 3, 1992. I do not know a Dan Roberts at APS. I do know a Dan Robertson from Employee Concerns at APS. I assume Mr. Saporito means Mr. Dan Robertson. If he had told me this, I would have at least known that Mr. Dan Robertson was investigating Mr. Saporito's claim when I was contacted by him several months later. In January, I had no knowledge that Mr. Dan Roberts was involved with Mr. Saporito. I did not tell Mr. Saporito "forget it, you're finished here and if you expect continued employment with TAG as a contractor, don't pursue this matter any further." I have never said words like that to anyone. I believe in safety first and have urged my employees to bring safety concerns to me. We have a grievance procedure within The Atlantic Group and Mr. Saporito knew of this policy. He never brought any safety concerns to us. Also, safety is always number one at any nuclear site. I at no time ever sought to threaten or intimidate Mr. Saporito. In fact, when he exited the employment on January 2, 1992, I felt Saporito was eligible for rehire both at the site and in the company and that his attitude, attendance and work performance were satisfactory. If I had said the things Mr. Saporito says that I told him, I would never have allowed an evaluation for him to be

eligible for rehire at the site and within the company.

9. Mr. Saporito never told me that he intended to contact the NRC officials concerning his concerns at PVNGS Unit 2 and that he intended to file a complaint of discrimination with the U.S. Department of Labor regarding his not being selected to work at PVNGS Unit 1. I never said to him "don't do it, you're making a career decision if you do because TAG can not afford to jeopardize big employment contracts like the one with APS." He never said anything to me whatsoever about the NRC. Once again, I did not threaten Mr. Saporito and would not have threatened Mr. Saporito. These conversations never took place.

10. I have asked the TAG home office and I understand that Mr. Saporito did make several telephone calls to recruiters requesting I&C technician employment.

11. Mr. Saporito could never have been intimidated or threatened by the statements he claims because I never made them. So that it is clear, I never said to Mr. Saporito or to anyone "(a) as a contractor with TAG, it wouldn't be a good career move for you to cause any more trouble here; (b) forget it, you're finished here and if you expect continued employment with TAG as a contractor, don't pursue this matter any further; and (c) don't do it, you're making a career decision if you do because TAG can not afford to jeopardize big employment contracts like the one with APS." I have never intimidated or threatened anyone in the 7 years I have been supervising personnel. If I had wanted to

threaten and intimidate Mr. Saporito, I would not have filled out an evaluation in which I found him eligible for rehire at the site as well as the company. If I was trying to stop Mr. Saporito from being a "whistle blower," I would not have found him eligible for rehire at the site. Obviously, I knew nothing about these allegations on January 2, 1992 and only learned of them after Mr. Saporito filed his claim with the Department of Labor and the Department of Labor began its investigation.

This Affidavit is a summary of my recollections of these events and is based on my personal knowledge.

William Engelking
William Engelking

STATE OF ARIZONA

COUNTY OF Maricopa

Subscribed and Sworn to Before me this 22nd of

May, 1992

Paul L. Barrett
Notary

My commission expires: My Commission Expires Nov. 1, 1995

Hayes

U.S. DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
55 WEST QUEENS WAY, SUITE 201
HAMPTON, VIRGINIA 23669

RECEIVED
APR 20 1992

In the Matter of)
)
Thomas J. Saporito, Jr.)
Complainant,)
)
v.)
)
Arizona Public Service Co.)
Respondent;)
)
and,)
)
The Atlantic Group)
Respondent.)
_____)

CASE: 92-ERA-30

AMENDED COMPLAINT

Complainant, Thomas J. Saporito, Jr., hereby submits his amended complaint of violations of the Employee Protection Provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851 (The Act).

Complainant was employed by the Respondent (APS), Arizona Public Service Company, through the subcontractor services of Respondent (TAG), The Atlantic Group, to perform work as an Instrument Control Technician at the Respondent's (APS), Palo Verde Nuclear Generating Station (PVNGS), during the Unit 2 refueling outage and to continue such employment during the Unit 1 refueling outage.

During Complainant's employment at PVNGS, Complainant engaged in a "protected activity" at PVNGS. Shortly after

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions (b)(7)(C)
FOIA-96-19

EXHIBIT 2

PAGE 1 OF 2 PAGE(S)

2-94-003

7C portions

B/1

Complainant's engagement in a protected activity, Complainant was denied continued employment as an Instrument Control Technician for the PVNGS Unit 1 refueling outage. See DCI complaint dated 03-19-92.

Complainant hereby amends the original complaint dated 03-19-92 to include and embrace the Respondent (TAG), in this proceeding now before the Honorable MICHAEL P. LEONIAK, Administrative Law Judge.

Complainant, would state in support of Complainant's filing an amended complaint that, pursuant to 29 C.F.R. 18.5 (e), additional amendments are allowed if amendment is reasonably within the scope of the original complaint.

Respectfully submitted,



Thomas J. Saporito, Jr.
Complainant, Pro Se



Dated this 8th day of April, 1992
at Lake Worth, Florida.

cc: See Service Sheet

2-94-003

portions, 7(c)

EXHIBIT 2
PAGE 2 OF 2 PAGE(S)

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR

THOMAS J. SAPORITO, JR.,
Claimant,

Case No. 92-ERA-30

v.

ARIZONA PUBLIC SERVICE COMPANY,
THE ATLANTIC GROUP,
Respondents.

AMENDED COMPLAINT

COMES NOW, Thomas J. Saporito, Jr., Claimant pro se, pursuant to 29 C.F.R. 18.5(e) and the court's June 19, 1992, Order on Claimant's Motion to File an Amended Complaint and hereby submits his Amended Complaint against Respondent, The Atlantic Group, of violations of the Employee Protection Provision of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851 (The Act).

During the time period of about September 29, 1991 through and including December 31, 1991, Claimant was employed as a nuclear contract Instrument Control Technician with The Atlantic Group (TAG) at the Arizona Public Service Company (APS), Palo Verde Nuclear Generating Station (PVNGS). Claimant was assigned to work on the PVNGS Unit 2 refueling outage with the understanding and promise that Claimant's employment as a contract Instrument Control Technician would be continued at the PVNGS Unit 1 refueling outage.

While Claimant was working at PVNGS Unit 2, he identified to PVNGS management numerous concerns which appeared to

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C

EXHIBIT 3

PAGE 1 OF 9 PAGE(S)

SA020770FIL

96-19
K2-94-003

7c portion

B/2

①

be violations of Nuclear Regulatory Commission (NRC), requirements. Claimant made clear to PVNGS management that he would contact NRC representatives if warranted to ensure that his concerns were resolved.

Claimant was denied a position as a contract Instrument Control Technician at PVNGS Unit 1. Thus, Claimant filed a timely complaint on January 27, 1992, against APS. The matter is to be heard in Phoenix, Arizona, as case number 92-ERA-30.

On or about April 8, 1992, Claimant filed an Amended Complaint naming The Atlantic Group (TAG), as a party defendant. The court found Claimant's Amended Complaint insufficient on its face to hold in TAG; however, Claimant filed a "Second Motion to Amend Complaint" on or about May 7, 1992, which sets out allegations that may be sufficient to toll the statute of limitations and hold in TAG as a party defendant. Claimant's second motion to amend the complaint was granted by the court by Order dated June 19, 1992.

COMPLAINT AGAINST TAG

Claimant states in a May 7, 1992, affidavit attached hereto that he was employed by TAG on or about September 29, 1991, to work as a contractor Instrument Control Technician at the APS, PVNGS located near Phoenix, Arizona. Claimant states in the affidavit that he engaged in protected activities at PVNGS by identifying numerous apparent violations of NRC requirements at the station to APS management and by putting APS on notice that Claimant would contact NRC officials if his concerns were not resolved by APS.

SA020771FIL

2

On or about January 2, 1992, Claimant was told by a TAG representative, Mr. Bill Engleking, that Claimant's name did not appear on a list of contractors selected by APS for the PVNGS Unit 1 outage. Mr. Engleking then discussed with Claimant a violation of NRC requirements which occurred at PVNGS Unit 2 when (2) TAG contract electricians became radioactively contaminated while performing work related to the station emergency lighting system.

Claimant informed Mr. Engleking that Claimant had identified numerous apparent violations of NRC requirements to APS management at PVNGS Unit 2. Claimant discussed a few of these apparent violations with Mr. Engleking. Mr. Engleking told Claimant that Claimant's raising safety concerns at PVNGS was pretty much common knowledge around the site.

Claimant asked Mr. Engleking if the reason Claimant was not selected for the Unit 1 outage was because of Claimant's raising safety concerns? Mr. Engleking remarked that Claimant should have just done his job and not made any waves. When Claimant threatened to contact NRC officials, Mr. Engleking became very apprehensive and warned Claimant that it wouldn't be a good career move for Claimant to cause any more trouble.

On or about January 6, 1992, Claimant informed Mr. Engleking that although Claimant contacted TAG regarding a new assignment, no offer had been made. Mr. Engleking remarked well, what did you expect, I told you that a contractor should just do his job and not make waves. Claimant was then asked...You have quite a history of making waves don't you? Mr. Engleking went on to say that its no secret that you raised safety concerns at the

Florida Power & Light Company (FPL), and your history of making waves is common knowledge at this site.

Claimant told Mr. Engleking that APS manager, Mr. Dan Robertson, contacted Claimant by telephone on January 3, 1992, informing Claimant of the good news that APS had not made a decision regarding the selection of contract I&C technicians for PVNGS Unit 1. Mr. Engleking told Claimant to forget it, you're finished here and if you expect continued employment with TAG as a contractor, don't pursue this matter any further.

Claimant again threatened contact with NRC representatives and that Claimant intended to file a DOL complaint because he was not selected to work at the PVNGS Unit 1 outage. Mr. Engleking threatened Claimant not to file a DOL complaint and warned Claimant that Claimant was making a career decision insofar as TAG could not afford to jeopardize big employment contracts like the one with APS.

Although Claimant contacted TAG in February, March, and April of 1992, Claimant was not offered a single position from TAG. Claimant felt intimidated and threatened by Mr. Engleking's statements that: (a) look, as a contractor with TAG, it wouldn't be a good career move for you to cause any more trouble here; (b) forget it, you're finished here and if you expect continued employment with TAG as a contractor, don't pursue this matter any further; and (c) don't do it, you're making a career decision if you do because TAG can not afford to jeopardize big employment contracts like the one with APS.

Respondent's comments and actions described above make

clear that Respondent was aware and/or was made aware of Claimant's protected activities and that Respondent played a role in denying Claimant a contract I&C technician position at PVNGS Unit 1 or an equal position at another nuclear station. Respondent's actions and comments regarding Claimant were based, at least in part, on Claimant's engagement in activities protected by the Act.

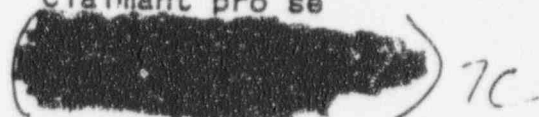
Claimant requests that the DOL investigate the Amended Complaint pursuant to its authority as described in 29 C.F.R. 24. Claimant seeks a decision and order awarding him full back pay with interest and other damages to which he is entitled, as well as equitable relief to insure that the actions of Respondent (TAG), are not deemed acceptable conduct by employers governed by the Act.

DATED this 29th day of June, 1992.

Respectfully submitted,



Thomas J. Saparito, Jr.
Claimant pro se



cc: Billie P. Garde, Esquire
Hardy, Milutin & Johns
500 Two Houston Center
909 Fannin at McKinney
Houston, Texas 77010

William A. Nexsen, Esquire
Stackhouse, Rowe & Smith
Post Office Box 3640
Norfolk, Virginia 23514

Steve Thornton, Esquire
Snell & Wilmer
One Arizona Center
Phoenix, AZ 85004-0001

Richard V. Habura
Assistant District Director
U.S. Department of Labor
Wage and Hour Division
3221 North 16th Street, #101
Phoenix, Arizona 85016

STATE OF FLORIDA)
)
County of Palm Beach) ss.

A F F I D A V I I

I, THOMAS J. SAPORITO, JR., being first duly sworn upon my oath, depose and state as follows:

1. I was employed by The Atlantic Group (TAG), on or about September 29, 1991, to work as a contractor Instrument Control (I&C), technician at the Arizona Public Service Company's (APS), Palo Verde Nuclear Generating Station (PVNGS), located near Phoenix, Arizona and licensed to operate by the U.S. Nuclear Regulatory Commission (NRC).

2. During my employment at PVNGS Unit 2, I engaged in "protected activities" by identifying numerous apparent violations of NRC requirements at the station to APS management and co-workers and informing APS managers of my intentions to contact NRC officials in the event that my concerns were not resolved by APS management.

3. On or about January 2, 1992, I met with TAG manager, Mr. William Engleking, to receive my paycheck. During this meeting, I asked Mr. Engleking if a list of I&C technicians selected by APS for the Unit 1 outage had been given to The Atlantic Group. Mr. Engleking stated that such a list did exist and recovered the list from the top of his desk. I asked Mr. Engleking if my name appeared on the list. Mr. Engleking said that my name did not appear on the list. I asked Mr. Engleking why my name did not appear on the list and specifically what criteria was utilized by APS in selecting I&C contract technicians for the Unit 1 outage?

EXHIBIT 3

PAGE 6 OF 9 PAGE(S)

SA020775FIL

2-94-003

2-94-00

6

Mr. Engleking stated that he did not know the criteria utilized by APS.

4. Mr. Engleking got up from behind his desk and pointed to a hand made drawing on a display board hanging on his office wall. Mr. Engleking discussed a violation of NRC requirements which occurred at PVNGS Unit 2. The violation resulted when two (2) TAG electricians became radioactively contaminated while performing work related to the station emergency lighting system. Mr. Engleking stated that the matter was quite serious and would probably result in a fine against APS by the NRC. Mr. Engleking stated that APS management was very upset about the violation and possible NRC action and that the two (2) electricians were released because of this violation.

5. I told Mr. Engleking that I identified numerous apparent violations of NRC requirements to APS management at PVNGS Unit 2 and I discussed a few of them with Mr. Engleking. Mr. Engleking stated that he was aware that I had raised safety concerns at PVNGS because he and Mr. Bob Wasak had been out drinking together and it was pretty much common knowledge around the site anyway.

6. I asked Mr. Engleking if my raising safety concerns was the reason that I was not selected for the PVNGS Unit 1 outage. Mr. Engleking stated ... you're a contractor, you should have just done your job and not made any waves here. I told Mr. Engleking that I was concerned about public safety and that I would contact NRC officials if APS did not resolve my safety concerns. Mr. Engleking became very apprehensive and said ... look, as a contractor with TAG, it wouldn't be a good career move for you to

(2)

EXHIBIT 3
PAGE 7 OF 9 SA020776FIL
PAGE(S)

7

2-94-003

2-94-00

cause any more trouble here. Mr. Engleking then gave me his business card and told me to contact TAG for another job assignment.

7. On or about the week of January 6, 1992, I met Mr. Engleking in the parking lot at my apartment complex, (Sun Eagle Apartments), in Glendale, Arizona. I told Mr. Engleking that had contacted Ms. Ellen Simmons at TAG regarding a new job assignment but that I had not been offered a new assignment yet. Mr. Engleking said ... well, what did you expect, I told you that a contractor should just do his job and not make any waves. Mr. Engleking said ... you have quite a history of making waves don't you? I asked Mr. Engleking exactly what he meant by that statement? Mr. Engleking said ... its no secret that you raised safety concerns at the Florida Power & Light Company (FPL), and your history of making waves is common knowledge at this site.

8. I told Mr. Engleking that Mr. Dan Roberts at APS telephoned me on January 3, 1992, and told me that APS had not made a decision regarding the selection of contractor I&C technicians for PV Unit 1. Mr. Engleking said ... forget it, you're finished here and if you expect continued employment with TAG as a contractor, don't pursue this matter any further.

9. I told Mr. Engleking that I intended to contact NRC officials regarding my concerns at PVNGS Unit 2 and that I intended to file a complaint of discrimination with the U.S. Department of Labor regarding my not being selected to work at PVNGS Unit 1. Mr. Engleking said ... don't do it, you're making a career decision if you do because TAG can not afford to jeopardize

EXHIBIT 3

(3)

PAGE 8 OF 9 PAGE(S)
SA020777FIL

2-94-003

8

big employment contracts like the one with APS.

10. I contacted TAG again in February, 1992, by telephone seeking employment as an I&C technician and was informed by Ms. Ellen Simmons that no positions were available at that time. I contacted TAG again in March, 1992, by telephone seeking employment as an I&C technician and was informed by Ms. Ellen Simmons that no positions were available at that time. On April 27, 1992, I again sought employment as an I&C technician with TAG by written letter to Ms. Ellen Simmons sent by certified mail, (P 056 092 897), but I have received no employment offer from TAG to this date.

11. I felt intimidated and threatened by the statements of Mr. Engleking were he stated: (a) look, as a contractor with TAG, it wouldn't be a good career move for you to cause any more trouble here; (b) forget it, you're finished here and if you expect continued employment with TAG as a contractor, don't pursue this matter any further; and (c) don't do it, you're making a career decision if you do because TAG can not afford to jeopardize big employment contracts like the one with APS.

I did not specifically name TAG in my DOL complaint filed on January 27, 1992, because I was afraid that TAG would not offer me another job assignment as a contractor I&C technician.

This affidavit is a summary of my knowledge and recollections of these events and is based on my personal knowledge.

Sworn to me this 7th day of May, 1992

Jean E. Cooney Notary Public
JEAN COONEY COMM.# 088116


Thomas J. Saporito, Jr.

(4)

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: March 3, 1995.
BONDED THRU NOTARY PUBLIC UNDERWRITERS

EXHIBIT ³ SA020778FIL

2-94-003

PAGE 9 OF 9 PAGE(S)

(9)

THOMAS J. SAPORITO, JR.



7C

5 110...

January 22, 1993

Office of the Administrator
Wage and Hour Division
Employment Standard Administration
U.S. Department of Labor, Room S-3502
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Complaint Against the Arizona Public Service Company/Arizona Nuclear Power Project; and The Atlantic Group Under Section 2902 of the Comprehensive National Energy Policy Act of 1992, Section 210 and 211 or the Energy Reorganization Act as amended [the Act].

Dear Sir:

This serves to officially notify your office of a complaint filed herewith by Thomas J. Saporito, Jr., Complainant pro se, against the Arizona Public Service Company/Arizona Nuclear Power Project (APS/ANPP); and The Atlantic Group (TAG) for the discriminatory conduct of conspiring to blacklist me from employment as an Instrument Control (I&C) technician at the Palo Verde Nuclear Generating Station (PV) Unit 3 and Unit 2 located within (50) fifty miles west of Phoenix, Arizona.

I. FACTUAL BACKGROUND

Complainant began work in the nuclear industry as an I&C technician with the Florida Power & Light Company (FPL) on March 22, 1982 and continued his employment until December 22, 1988 when Complainant was fired by FPL officials for engaging in protected activity and for refusing to disclose information to FPL managers which Complainant had given to NRC officials and which was the subject of a NRC investigation of the Turkey Point nuclear station near Miami, Florida.

The issue of the validity of the termination from FPL in 1988 was heard before the Honorable Anthony J. Iacobo, who issued a Recommended Decision and Order (RDO) on June 1988. Information in this record was deleted in accordance with the Freedom of Information Act, exemptions (b)(7)(C).

EXHIBIT 5

D/S
3
E-9

FEC-000575

PAGE 1 OF 10

PAGE

2-94-003

7C Reactions

30, 1989. The ALJ's RDO is pending before the Secretary of Labor on my appeal.

At issue in that case is, essentially, whether Complainant was discharged in violation of the Act for cooperating with a NRC inspection/investigation or for impermissible insubordination in refusing to disclose certain information to FPL managers.

Complainant again worked in the nuclear industry when Complainant became employed by TAG as an I&C technician at PV Unit 2 from September 29, 1991 to December 31, 1991. The PV site consists of (3) independent reactor cores each operated by a permissive license issued to APS/ANPP by the U.S. Nuclear Regulatory Commission (NRC). During his employment at PV Unit 2, Complainant engaged in open and notorious acts of "protected activity" by identifying several nuclear safety concerns to APS/ANPP and TAG management and subsequently to NRC officials. As a direct result of Complainant raising nuclear safety concerns at PV and because Complainant had previously engaged in protected activity during his employment at FPL in 1988, Complainant was terminated from PV and denied employment at PV Unit 1 in January of 1992 while the employment of his coworkers continued. The fact that Complainant was a whistleblower at FPL was well known to both APS/ANPP and TAG management as well as craft employees.

Complainant filed a timely complaint against APS and subsequently amended the complaint to include TAG. A hearing was held in Phoenix, Arizona from September 28 to October 7, 1992 and the issue of the validity of the termination from PV was heard before the Honorable Michael P. Lesniak. A decision in that matter is pending. See Saporito v. Arizona Public Service Company; and The Atlantic Group, Case No. 92-ERA-30.

After Complainant's departure from PV, Complainant was employed from January 1, 1992 to February 20, 1992 by SUN Technical Services as an I&C technician at the Houston Lighting & Power Company's (HLP) South Texas Project (STP) nuclear station located near Wadsworth, Texas. During his employment at STP, Complainant engaged in protected activity and his employment at STP was terminated by HLP officials by revoking his unescorted access to the STP site.

Complainant was next employed for ½ a day on March 2, 1992 for Nuclear Support Services, Inc. (NSS) as a senior I&C technician at the Georgia Power Company (GPC) Vogtle nuclear station near Waynesboro, Georgia. Complainant's employment at the Vogtle station was terminated as a conspiracy to blacklist him was undertaken by GPC, HLP and NSS officials when they learned of his previous whistleblowing activities. Complainant filed a time complaint against GPC, HLP and NSS for blacklisting him from the nuclear industry because Complainant is a whistleblower.

The Department of Labor Wage & Hour department investigated the merits of Complainant's complaint and issued a decision and findings in his favor. The issue of the validity of the termination from Vogtle is currently set for hearing on March 15, 1993 in Houston, Texas before the Honorable Quentin P. McColgin on appeal by the respondents. See Case Nos. 92-ERA-38 and 45 (Consolidated). During the course of Case No. 92-ERA-38 before, during and after trial, APS/ANPP and TAG managers and craft workers became aware of Complainant's engagement in protected activities at the STP site. Moreover, Complainant continued to engage in protected activity relevant to the PV station via the news media. See Exhibit No. 1.

II. STATEMENTS OF THE FACTS

Since Complainant's termination on December 31, 1991 from the PV station by APS/ANPP and TAG, Complainant has consistently pursued employment opportunities with TAG by telephone inquiry. See Exhibit No. 2.

Additionally, Complainant has pursued employment opportunities with TAG by submitting a written request for employment along with my resume. Complainant's resume was also sent to APS/ANPP management at PV for consideration for a position at PV Unit 2 as an I&C technician. See Exhibit Nos. 3, 4, 5, 6, 7, 8, 9, and 10.

Although Complainant has made a "good faith" attempt to secure employment with TAG during the course of a year, TAG has failed to contact Complainant even once with an employment opportunity. Moreover, TAG failed to submit Complainant's resume to any of

their client's for an employment opportunity even though TAG has readily advertised for employment for I&C technicians. See Exhibit Nos. 11, 12, and 13.

On October 23, 1992, Complainant held a news conference in Phoenix, Arizona providing the public via the news media with evidence of a safety concern at the PV station regarding certain safety valves in use at the nuclear station. See Exhibit No. 14 (Tape).

On October 23, 1992 and January 4, 1993, Complainant filed a petition pursuant to 10 C.F.R. § 2.206 requesting certain action by the NRC concerning the PV station regarding certain safety valves in use at the nuclear station. See Exhibit Nos. 15 and 16. This petition is a public document and is made available to APS/ANPP by the NRC.

On or about December 11, 1992, Complainant spoke with TAG manager Mr. James at the TAG Phoenix, Arizona office 1-800-446-9002 concerning employment at the station. Complainant asked Mr. James if TAG had submitted his resume for an I&C technician position for the upcoming PV Unit 2 outage? Mr. James stated "no". Complainant asked James why didn't TAG submit his resume to PV? Mr. James replied stating that "our attorney advised us not to discuss employment with you". When Complainant tried to inquire further, Mr. James hung up.

On or about January 5, 1993, Complainant contacted Mr. Keith Logan of the Region V Headquarters and notified him that Complainant was being blacklisted by APS/ANPP and TAG. Complainant requested the NRC to investigate this apparent violation of 10 C.F.R. § 50.7.

III. STATEMENT OF THE LAW

A. The Employee Protection Provision of the Energy Reorganization Act.

This matter is brought under the Employee Protection Provision of the Act. The Statute provides that:

...no employer subject to the provisions of [the Act]...may discharge any employee or otherwise discriminate against any employee with respect to the employee's employment, compensation, terms, conditions, or privileges of employment because the employee...engaged in any of the activities specified in subsection (b) below:

(b) Any person is deemed to have violated the particular federal law and these regulations if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against an employee who has

- (1) commenced or caused to be commenced a proceeding under [the Act] or a proceeding for the administration or enforcement of an requirement imposed under such federal statute;
- (2) testified or is about to testify in any such proceeding; or
- (3) assisted or participated, or is about to assist or participate in any other action to carry out the purpose of [the Act].

B. The Congressional Intent of the Statute.

The Employee Protection Provision amendment to the Act is remedial in nature and should be broadly construed by the Secretary of Labor (SOL), and the courts. See Deford v Secretary of Labor, 700 F.2d 281, 286 (6th Cir. 1983). The amendment was passed to help enforce the Act and protect public health and safety.

In passing the ERA Employee Protection Provision, Congress was once again looking to the employees of the industry to help enforce regulations and protect public health and safety. Indeed, in his concurring opinion in Rose v. Secretary of Labor, 800 F.2d 563, 565 (6th Cir. 1986), Justice George C. Edwards, Jr. wrote that Congress' intent in passing the nuclear whistleblower protection provision was to "encourage employees" to report "unsafe practices in one of the most dangerous technologies mankind has invented."

IV. THE COMPLAINANT ESTABLISHED HIS PRIMA FACIE CASE.

In order for Complainant to establish a prima facie case of discrimination under the employee protection statutes, the complainant must prove, by a preponderance of the evidence, that:

1. the party charged with discrimination is an employer subject to the act(s);
2. the complainant was an employee under the act(s);
3. the complaining employee was discharged or otherwise discriminated against with respect to his compensation, terms, conditions, or privileges of employment;
4. the employee engaged in "protected activity";

5. the employer knew or had knowledge that the employee engaged in protected activity; and
6. the retaliation against the employee was motivated, at least in part, by the employee's engaging in protected activity.

See Mackowiak v. University Nuclear Systems, Inc., 735 F.2d 1159, 1162 (9th Cir. 1984); DeFord v. Secretary of Labor, 700 F.2d 281, 286, (6th Cir. 1983); Ledford v. Baltimore Gas and Electric Co., 83-ERA-9, slip op. of ALJ at 9 (Nov. 29, 1983), adopted by SOL.

A. ISSUES OF CONTENTION IN COMPLAINANT'S PRIMA FACIE CASE.

1. whether APS/ANPP is an employer subject to the act(s);

APS/ANPP is a Commission licensee and therein fits squarely within the Act's definition of a covered employer.

2. whether TAG is an employer subject to the act(s);

TAG falls within the ERA's definition of an employer because the Congressional intent behind the Act was for it to be "liberally construed" to effectuate its remedial purpose. Moreover, TAG maintains a special relationship as a contractor with APS/ANPP a Commission licensee. The language of the Act appears definite on its face. TAG's activities as a contractor to a Commission licensee place TAG within the realm of the definitional terms set forth in 42 U.S.C. §5851.

Additionally, the legislative history relating to the employee protection provision of the ERA indicates that the word "employer" refers to entities related to nuclear power plants either by contract or license from the NRC. Most notably, the Congressional record addressing this legislation describe the whistleblower provision as "provid(ing) protection to employees of Commission licensees, applicants, contractors, or subcontractors..." See, H. F. Conf. Rep. No. 95-1796, 95th Cong., 2nd Sess. 16 (1978), reprinted in (1978) U.S. Code Cong. & Admin. News 7303. Accordingly, TAG is an employer within the meaning of the Act.

3. whether Complainant was an employee under the act(s);

Complainant is an employee under the act(s) especially in light of the fact that both APS/ANPP and TAG are employers under the act(s). Moreover, Complainant was an employee

of TAG and physically worked at the APS/ANPP PV nuclear station. The term "employee" has been construed broadly to effectuate the purpose of the whistleblower statutes. In *Landers v. Commonwealth-Lord Joint Venture*, the administrative law judge wrote:

I find that the term "employee" as used in this Act must be given a most liberal interpretation, particularly in view of the evils the Act was designed to prevent. It is obvious the Act is intended to prevent employers from engaging in acts of discrimination, whether it takes the form of termination of employment or simple intimidation. In light of these statutory objectives, the overriding policy consideration involved would compel that the term employee be as inclusive as is rationally possible. 83-ERA-5, slip op. of ALJ at 5, adopted by SOL (Sept. 9, 1983).

The Secretary of Labor (SOL), has interpreted the definition of "employee", under the National Labor Relations Act, as not limited to "employees of a particular employer." Additionally, the purpose of the whistleblower laws is to "encourage" employees to report violations. The SOL has consistently applied a broad interpretation of employees covered within the laws:

a broad interpretation of "employee" is necessary in order to carry out the statutory purpose...Protecting the reporting employee against retaliation only while that employee is in the employ of the violator has a "chilling effect" and discourages, rather than encourages, the reporting of safety violations. Chase v. Buncombe County, N.C., etc., 85-SWD-4, D&O of remand by SOL, at 4 (Nov. 3, 1986).

The term "employee" has been defined to include former employees, contract workers, independent contractors, temporary employees, contract job shoppers and temporary workers. Proud v. Cecos Int'l., 83-TSC-1, slip op. of ALJ at 2 (Sept. 30, 1983), adopted by SOL; Royce v. Bechtel Power Co., 83-ERA-3; Cowan v. Bechtel Constr., Inc., 87-ERA-24; D&O of remand by SOL, at 3 (Aug. 8, 1989); Hill, et al. v. T.V.A., 87-ERA-23/24, D&O of remand by SOL (May 24, 1989). Clearly, Complainant is an employee within the meaning of the ERA.

4. whether Complainant was discharged or otherwise discriminated against with respect to his compensation, terms, conditions, or privileges of employment;

Complainant asserts here that since his termination from the PV nuclear station on

December 31, 1991, APS/ANPP and TAG have conspired and discriminated against complainant by blacklisting him from continued employment as a contract I&C technician at PV nuclear station during the Unit 3 outage in Sept/Oct of 1992 and the Unit 2 outage February 1993. Most notably, TAG has consistently failed to rehire or attempt to employment on behalf of Complainant at any nuclear or non-nuclear station since termination from the PV nuclear station on December 31, 1991.

The Department of Labor regulations broadly define discriminatory conduct as which "intimidates, threatens, coerces, blacklists, discharges, or in any other manner discriminates against any employee (who engages in protected activity). 29 C.F.R. §24.2. Various employer practices have been held to be illegal discrimination including termination, elimination of a position, causing embarrassment and humiliation, layoffs and refusal to rehire or denial of employment. DeFord v. Secretary of Labor, 700 F.2d 281, 283 (6th Cir. 1982); Ellis Fischel State Cancer Hosp. v. Marshall, 629 F.2d 563, 566 (9th Cir. 1980); Simmons et al. v. Fluor Constructors, Inc., 88-ERA-28/30, recommended D&O of ALJ, at 18 (Feb 1989).

The Act provides that no employer subject to the Act may discriminate against an employee with respect to the employee's terms or conditions of employment because the employee engaged in protected activity. "it has long been recognized that...(an) employer may not violate the Act with respect to employees other than his own." Young v. Philadelphia Electric Co., 87-ERA-11/35 and No. 88-ERA-1, order of the ALJ, at 4 (Feb. 4, 1988). Clearly, the Act was intended to protect former employees, or there would be no cause of action delineated for "blacklisting." 29 C.F.R. §24.2(b).

5. whether Complainant engaged in "protected activity";

Complainant unquestionably engaged in "protected activity" while employed at PV Unit 2 from September 29 to December 31, 1991 and prior to his employment at PV Unit 2 where he worked at the FPL, Turkey Point nuclear station in Florida. Complainant engaged in protected activity while employed at the Houston Lighting & Power, South Texas Pro

nuclear station in Jan/Feb of 1992. Complainant engaged in protected activity while employ at the Florida Power Corporation, Crystal River nuclear station in Florida in May/June 1992. Complainant continues engagement in protected activity as evidenced by the exhibit enclosed herewith concerning the PV nuclear station.

The Energy Reorganization Act follows the language of the Clean Air Act which defines protected activity as employee conduct which

...commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or a proceeding for the administration or enforcement of any requirement imposed under this chapter under any applicable implementation plan. The CAA/ERA protects employees who have testified or (are) about to testify in any such proceeding; or assist or participated or (are) about to assist or participate in or any manner in such proceeding or in any other action to carry out the purposes of this chapter. U.S.C. §7622(a)...

The SOL has continuously given a broad interpretation to the scope of protected activity under the nuclear acts. The SOL has protected a broad range of employee conduct including internal complaints to management, contact with citizen intervenor groups, performance of quality control or quality assurance functions, safety-related complaints made by employees who perform supervisory or managerial functions, refusal to perform unsafe work and refusal to perform work in violation of federal safety standards. Lopez v. We Texas Utilities, 86-ERA-25, D&O of SOL, at 5-6 (July 26, 1988); Kenneway v. Matlock, Inc 88-STA-20, D&O of SOL, at 13 (June 15, 1989). The SOL has held that purely internal complaints are protected. Wilson v. Bechtel Constr., Inc., 86-ERA-34, D&O of SOL, at 2- (Feb. 9, 1988); Smith v. Norco Technical Servs., et al., 85-ERA-17, D&O of SOL, at 3 (Oct. 2, 1987).

6. whether the employer knew or had knowledge that the employee engaged in protected activity; and

Complainant asserts here that APS/ANPP and TAG gained knowledge and/or became aware of Complainant's engagement in protected activity through direct, constructive, or circumstantial evidence. Crider v. Pullman Power Prods. Corp., 82-ERA-7, slip op. of ALJ 2 (Oct. 5, 1982).

7. whether the retaliation against the employee was motivated, at least in part, by employee's engaging in protected activity.

Complainant asserts here that he is not required by law to produce any direct testimony or evidence of discriminatory motive. "The presence or absence of retaliatory motive is a legal conclusion and is provable by circumstantial evidence even if there is testimony to the contrary by witnesses who perceived lack of such improper motive." Ellis Fischel State Cancer Hosp v. Marshall, 629 F.2d 563, 566 (8th Cir. 1980). cert. den'd., 405 U.S. 1040 (1980); Mackowiak v. University Nuclear Systems, Inc., 735 F.2d 1159, 1162 (9th Cir. 1984); Zoll v. Eastern Allamkee Community School Dist., 588 F.2d 236, 250 (8th Cir. 1978).

V. REMEDIAL RELIEF

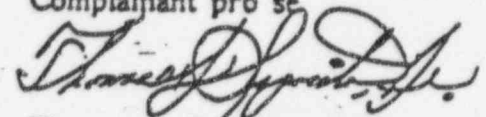
In accordance with 42 U.S.C. §5851(b)(2)(B), if the SOL finds that an employee has been discriminated against, the Secretary shall order an abatement of the violation and fashion a remedy to make the employee whole. The Secretary also has the discretion to order "affirmative action to abate" the violation of the Act, if such a remedy will help effectuate the remedial purposes of the Act. 29 C.F.R. §24.6(b)(2).

In this instant action, Complainant is entitled to payment of backwages and front pay in the total amount of \$80,000.00.

WHEREFORE, premises considered, Complainant respectfully requests that the U.S. Department of Labor issue an Order finding that APS/ANPP and TAG have discriminated against Complainant and granting the relief sought as a matter of law to make Complainant whole and to dissuade APS/ANPP from future blacklisting conduct in violation of the law.

Respectfully submitted,

Complainant pro se



Thomas J. Saporito, Jr.

cc: David K. Colapinto, Esq.
National Whistleblower Center
517 Florida Ave., N.W.
Washington, D.C. 20001

Certified Mail: P 383 392 351

THOMAS J. SAPORITO, JR.



February 4, 1993

Office of the Administrator
Wage and Hour Division
Employment Standard Administration
U.S. Department of Labor, Room S-3502
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Certified Mail: P 383 392 352

Re: Amended Complaint Against the Arizona Public Service Company/Arizona Nuclear Power Project; and The Atlantic Group Under Section 2902 of the Comprehensive National Energy Policy Act of 1992, Section 210 and 211 of the Energy Reorganization Act as amended 42 U.S.C. §5851 [the Act].

Dear Sir:

This serves to notify your office of a an amended complaint filed herewith by Thomas J. Saporito, Jr., Complainant pro se, against the Arizona Public Service Company/Arizona Nuclear Power Project (APS/ANPP); and The Atlantic Group (TAG) for the discriminatory conduct of conspiring to blacklist Complainant from employment as an Instrument Control (I&C) technician at the Palo Verde Nuclear Generating Station (PV) Unit 3 and Unit 2 located within (50) fifty miles west of Phoenix, Arizona.

FACTUAL BACKGROUND

On or about January 22, 1993, Complainant filed a timely complaint in accordance with the statues identified above against APS/ANPP and TAG for discriminatory conduct in violation of the Act as fully described in Complainant's 01/22/93 complaint.

AMENDED COMPLAINT

COMES NOW, Complainant pro se, pursuant to 29 C.F.R. §18.5(e) and hereby submits his Amended Complaint against APS/ANPP and TAG for violations of the Act as amended 42 U.S.C. §5851 and as recently amended and described above.

Complainant alleges that APS/ANPP further discriminated against him by engaging in a

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions JC
FOIA- 96-19

FEC-000571

EXHIBIT 6

PAGE 1 OF 4 EPAGE(S)

2-94-003

JC Saporito

company-wide and on-going pattern and practice of intimidation and harassment designed to discourage and dissuade Complainant and other, contract and direct employees at the Palo Verde PV nuclear station from engaging in protected activities insofar as raising safety concerns to PV management and/or Nuclear Regulatory Commission representatives.

APS/ANPP has a history of discriminatory conduct against whistleblowers at the PV nuclear station which has resulted in the creation and formation of a hostile work environment at the PV nuclear station designed to suppress whistleblowers and enhance the existing "chilling effect" at the station. Most notably are two (2) recent adjudications by U.S. Department of Labor judges adverse to APS/ANPP.

See Linda E. Mitchell v. Arizona Public Service Company/Arizona Nuclear Power Project, 91-ERA-9 and Sarah C. Thomas v. Arizona Public Service Company/Arizona Nuclear Power Project, 89-ERA-19.

In Mitchell's case, the Administrative Law Judge (ALJ) found that Ms. Mitchell was discriminated against as a result of the presence of a "hostile work environment". Specifically, the ALJ found that Ms. Mitchell was subjected to a series of actions which comprised a hostile work environment in retaliation for engaging in certain protected activities. The protected activities included raising safety concerns to APS management and to the NRC, including concerns regarding problems with the emergency lighting at PV. The ALJ found that APS management failed to take prompt effective action to halt this harassment.

In Thomas's case, the ALJ found that APS had reassigned Ms. Thomas to a more demanding and less desirable job because she raised safety concerns to higher APS management. The ALJ also found that APS subsequently denied Ms. Thomas a promotion, treated her differently from another employee when both were being considered for another promotion, required her to complete unnecessary training, and suspended her certifications to conduct various tests.

As a direct result of the aforementioned ALJ decisions, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties on September 30, 1992 in the amount of \$130,000 against APS/ANPP based solely on U.S. DOL ALJ decisions in Case Nos. 89-ERA-19

and 91-ERA-9. See Exhibit No. 1 attached hereto.

Most significantly, the NRC stated at §52/2 of Exhibit No. 1 that:

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

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

In this instant action, Complainant asserts here that there is a pervasive ongoing pattern and practice, "motisoperenda" by APS/ANPP at the PV nuclear station to intimidate, coerce, and dissuade employees from raising safety concerns to management and/or the NRC and that this conduct has been ongoing over a period of time encompassing several years.

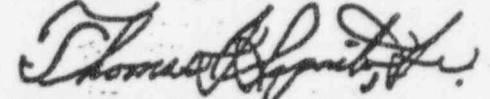
Thus, Complainant's employment opportunities at the PV nuclear station for the Unit 1 outage in 1992 and the Unit 2 outage in 1993 were jeopardized based, at least in part, due to Complainant's engagement in protected activities and APS/ANPP's continuing conduct in violation of the ERA statutes and NRC regulations under 10 C.F.R. §50.7. Moreover, APS/ANPP's conduct in violation of the law, has created a hostile work environment at the PV nuclear station which has created and spread a "chilling effect" at the nuclear station dissuading other employees from raising safety concerns to anyone.

It is the spirit of the Energy Reorganization Act, 42 U.S.C. §5851 as was the intent of Congress in passing the Act, that there be a free flow of information from nuclear workers with safety concerns to company managers and/or NRC officials to insure public health and safety.

WHEREFORE, premises considered, Complainant respectfully requests that the U.S. Department of Labor issue an Order finding that APS/ANPP and TAG have discriminated against Complainant and granting the relief sought in his original complaint as a matter of law to make Complainant whole and to dissuade APS/ANPP and TAG from future blacklisting conduct in violation of the law.

Respectfully submitted,

Complainant pro se



Thomas J. Saporito, Jr.

cc: David K. Colapinto, Esq.
National Whistleblower Center
517 Florida Ave., N.W.
Washington, D.C. 20001

Harold Fossett, Inspector
U.S. Nuclear Regulatory Commission
Office of the Inspector General
Washington, D.C. 20555

1993 MAY 21 AM 9:15 THOMAS J. SAPORITO, JRL

[REDACTED]

Information in this record was deleted in accordance with the Freedom of Information Act, exemptions 7C
FOIA-96-19

May 13, 1993

Office of the Administrator
Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor, Room S-3502
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Certified Mail: P 383 392 356

Re: Complaint Against the Arizona Public Service Company/Arizona Nuclear Power Project and The Atlantic Group

Dear Sir:

This serves to notify your office of a complaint of discrimination under the employee protection provisions of the Energy Reorganization Act codified as 42 U.S.C. §5851 as amended under section 211 of (the Act) against Respondents Arizona Public Service Company/Arizona Nuclear Power Project (APS/ANPP) and The Atlantic Group (TAG) for the discriminatory act of conspiring to blacklist Complainant and, in fact, not hire Complainant as an instrument control technician for the Palo Verde Nuclear Generating station Unit-2 outage of 1993. Moreover, TAG has failed to seek employment for Complainant with any of its clients since January of 1992.

Complainant hereby incorporates herein by reference all legal arguments, exhibits, and evidence provided to the U.S. Department of Labor (DOL) in Complainant's previous claims against the very same Respondents in DOL Case No. 93-ERA-26 now before the Honorable Donald. B. Jarvis, Administrative Law Judge.

Complainant respectfully requests that the DOL investigate the merits of this complaint in accordance with the law. Complainant notes here that he filed this complaint of discrimination in connection with Case No. 93-ERA-26 but the DOL Wage and Hour Division in Phoenix, AZ did not investigate this portion of the complaint on the grounds that the

2-94-003

7C further

EXHIBIT 7 B/S
PAGE 1 OF 2 PAGE(S)

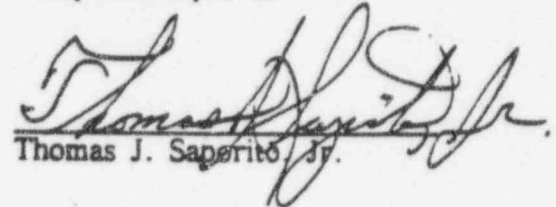
decision to hire instrument control technicians at Palo Verde Unit-2 occurred after the date of Complainant's first complaint.

Subsequently, Complainant filed another complaint of discrimination regarding the failure of Respondents to hire him at Unit-2 but the DOL Wage and Hour Division did not conduct an investigation in accordance with the law. See attachments: April 18, 1993 letter to Susan P. Nern, Assistant District Director DOL Wage and Hour Division; April 12, 1993 Complaint and Motion to Consolidate Proceedings; March 12, 1993 DOL Wage and Hour Division findings and determination letter to Complainant.

WHEREFORE, the above stated reasons and as a matter of law Complainant requests that the U.S. Department of Labor conduct an investigation into the merits of his complaint of discrimination under 42 U.S.C. §5851 as amended in section 211.

Respectfully submitted,

Complainant pro se


Thomas J. Saperito Jr.

TJS/tjs

cc: David K. Colapinto, Esq.
National Whistleblower Center
517 Florida Ave., N.W.
Washington, D.C. 20001

Susan P. Nern
Assistant District Director
U.S. Department of Labor
3221 N. 16th Street, #301
Phoenix, Arizona 85016

3. Respondents APS, ANPP, and TAG are complainant's employer under the Act. TAG is a nuclear contractor to APS and provides contract labor to APS. APS is one of several joint owners of the Palo Verde nuclear station. APS is a Nuclear Regulatory Commission ("NRC") licensee and manages the operation of Palo Verde on behalf of the joint owners who are also NRC licensees of Palo Verde.

4. Respondent ANPP is an unincorporated association of the joint owners of Palo Verde whose members are NRC licensees of Palo Verde. ANPP oversees control of Palo Verde via budget and operation aspects. Thus, ANPP is an employer under the Act.

FACTS

5. During complainant's employment period at Palo Verde from September 29, 1991 to December 31, 1991 and subsequent to this time period, complainant has identified numerous nuclear safety concerns regarding operations of the Palo Verde nuclear station to APS and TAG management, the Palo Verde Employee Concerns Program, the NRC, and the media.

6. On December 31, 1991, complainant's employment at Palo Verde was terminated while the employment of his coworkers continued at Unit-1.

7. Complainant filed a discrimination complaint with the DOL and a 10 C.F.R. §50.7 complainant with the NRC concerning his termination from Palo Verde.

8. A DOL finding favorable to APS and TAG was appealed by the complainant and a 9-day hearing was held in Phoenix, Arizona before the Honorable Michael P. Lesniak. The hearing commenced on September 28, 1992 and concluded on October 6, 1992 during which time the

parties presented witness testimony and submitted documentary evidence into the record.

9. On May 10, 1993, Judge Lesniak issued his Recommended Decision and Order ("RDO") holding that on the issue of liability only, I find for the Complainant, Thomas J. Saporito, Jr. and against the Respondent, APS. In the case of Thomas J. Saporito, Jr. v. TAG, I find for the Respondent, TAG, and against the Complainant. Subsequent to Judge Lesniak's May 10, 1993 RDO, the damages portion of the case was set for trial on January 24, 1994.

10. Subsequent to Judge Lesniak's May 10, 1993 RDO, complainant filed another complaint against APS/ANPP and TAG for a continuing violation of the Act in refusing to rehire complainant. The case has been codified as 93-ERA-26 before the Honorable Clement J. Kichuk and is awaiting a ruling on complainant's Motion for Appointment of Judge Lesniak by the Chief Administrative Law Judge.

11. The NRC Office of Investigations ("OI") and the NRC Inspector General ("IG") have ongoing investigations regarding complainant's safety concerns at Palo Verde which include two petitions filed under 10 C.F.R. §2.206. See Exhibit-1 attached hereto.

12. On August 10, 1993, APS Executive Vice President Nuclear, Mr. William F. Conway, constructed a letter to NRC Regional Administrator, Region V, Mr. Bobby H. Faulkenberry stating, in part, that:

"...On August 6, 1993, Mr. Warriner admitted to APS legal counsel that his testimony regarding his awareness of Mr. Saporito's past activities and the reasons for not selecting Mr. Saporito were untruthful. Mr. Warriner had

previously stated that at the time of the employment decision, he had no knowledge that Mr. Saporito had raised safety concerns at either Palo Verde or other nuclear facilities. He indicated that the basis for the employment decision related to certain job requirements which Mr. Saporito did not fulfill. Mr. Warriner now indicates that he learned of Mr. Saporito's protected activity from the Unit 2 I&C Supervisor, and that this was the motivating reason for Mr. Warriner's decision not to select Mr. Saporito...See Exhibit 2 attached hereto.

13. On August 24, 1993, Judge Lesniak sent a letter to United States Attorney, the Honorable Janet Napolitano, stating, in part, that:

"...I have reason to believe that two employees of Arizona Public Service Co. (APS), Steven Grove and Frank Warriner, may have committed perjury in my courtroom on September 30, 1992 and October 5, 1992 respectively. The proceeding was brought under the Energy Reorganization Act of 1974 by Thomas J. Saporito, Jr. and the liability portion of the trial was tried from September 28 - October 7, 1992 in Phoenix, Arizona..."See Exhibits 3 & 4 attached hereto.

14. On August 31, 1993, U.S. Attorney for the District of Arizona, the Honorable Janet Napolitano, responded to Judge Lesniak's August 31, 1993 letter. See Exhibits 5 & 6 attached hereto.

15. Complainant's raising of nuclear safety allegations with APS, ANPP, TAG, NRC and the news media inclusive of his filing Section 210 and Section 211 complaints with the DOL is protected activity.

16. At all times relevant hereto, respondents were fully aware of complainant's protected activities.

17. Complainant requested employment at the Palo Verde Unit-1 refueling outage in September of 1993 and was not hired by APS or TAG. Complainant believes that the APS Board of Directors, including the former NRC Chairman, Mr. Kenneth Carr along with APS President and Chief Operating Officer, O. Mark DeMichele, APS Executive Vice President, Jaron Norberg, APS Executive Vice President, William F.

Conway, APS Vice President of Nuclear Operations, James Levine, and other APS and TAG employees have previously and are now currently conspiring to discriminate against the complainant by refusing to rehire complainant at Palo Verde. Moreover, TAG has refused to rehire complainant at any of its client's facilities be it nuclear or non-nuclear since complainant's termination from Palo Verde on December 31, 1991 despite TAG's rehire comments on TAG's employee Change of Status form on complainant. See Exhibit 7.

18. Complainant asserts that the above-described conduct and actions by respondents is in violation of Section 211 and severely chills complainant's right, and the rights of other Palo Verde employees, to identify nuclear safety concerns, to freely contact the NRC without fear of retaliation, and to engage in other activities protected by Section 211 and NRC regulations including 10 C.F.R. §50.7.

19. Finally, complainant asserts that respondents' conduct is pervasive and an ongoing pattern and practice of a continuing retaliation by respondents against complainant in violation of Section 211 constituting a hostile work environment in violation of Section 211 at the Palo Verde nuclear station.

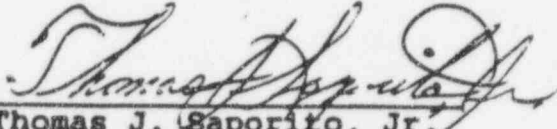
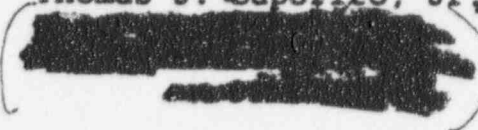
PRAYER FOR RELIEF

Complainant prays for the Secretary of Labor ("SOL") to provide him relief by ordering the following:

1. that complainant be granted appropriate affirmative relief, including the ordering of respondents to post orders in the work place where employees gather informing them of their freedom to contact the NRC and prohibiting retaliation against employees for reporting safety concerns;
2. that complainant be awarded attorneys fees and costs should he retain the services of an attorney in this matter; and
3. that complainant be granted such further relief as the Secretary of Labor deems appropriate to obviate the pervasive chilling effect instilled at the Palo Verde nuclear station.

Respectfully submitted,

Complainant pro se


Thomas J. Saporito, Jr.
 7C

Please take notice that complainant is currently unemployed, homeless and destitute. Therefore, complainant does not maintain a telephone machine or residential mailing address at this time.

cc: Executive Director for Operations
U.S. Nuclear Regulatory Commission
Washington, D.C. 20500

David K. Colapinto, Esq.
Kohn, Kohn and Colapinto
Attorneys at Law
517 Florida Ave., N.W.
Washington, D.C. 20001-1850

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR
WAGE AND HOUR ADMINISTRATOR

THOMAS J. SAPORITO, JR.,

Complainant,

DATE: January 2, 1994

v.

THE ATLANTIC GROUP,

Respondent.

COMPLAINT

COMES NOW, Thomas J. Saporito, Jr., Complainant pro se, pursuant to Section 211 of the Energy Reorganization Act, 42 U.S.C. §5851 ("Act"), and hereby files this complaint alleging violations of the Act in accordance with 29 C.F.R. Part 24.

JURISDICTION

1. Under 42 U.S.C. §5851 and 29 C.F.R. Part 24, the U.S. Department of Labor ("DOL") has jurisdiction to consider and investigate the allegations contained in this complaint.

2. Complainant is a former employee of Respondent, The Atlantic Group ("TAG") employed at the Arizona Public Service Company's Palo Verde nuclear station located near Phoenix, Arizona during the time period of September 29, 1991 to December 31, 1991 as an Instrument Control technician ("I&C") at Palo Verde Unit-2.

3. Respondent is Complainant's employer under the Act wherein TAG is a nuclear contractor and provides contract labor to nuclear utilities.

FACTS

Information in this record was deleted in accordance with the Freedom of Information Act, exemptions 1C

4. During Complainant's employment period at Palo Verde

EXHIBIT 10

PAGE 1 OF 5 PAGES

W2-94-003

FEC-000408

7c portions

B/17

from September 29, 1991 to December 31, 1991 and subsequently thereof, Complainant has fully engaged in activities protected under the Act. Complainant's engagement in protected activities was at the time of his employment with TAG and is now well known to TAG employees and managers.

5. On December 31, 1991, Complainant's employment with TAG was terminated while the employment of his coworkers continued with TAG at facilities of TAG's clients other than Palo Verde.

6. Complainant filed a timely discrimination complaint with the DOL and a 10 C.F.R. §50.7 complaint with the U.S. Nuclear Regulatory Commission ("NRC") concerning his employment termination.

7. A DOL finding favorable to APS and TAG was appealed by Complainant and a 9-day hearing was held in Phoenix, Arizona before the Hon. Michael p. Lesniak. The hearing commenced on September 28, 1992 and concluded on October 6, 1992 during which time the parties presented witness testimony and submitted documentary evidence into the record.

8. On May 10, 1993, Judge Lesniak issued his Recommended Decision and Order ("RDO") holding, 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.

9. Subsequent to Judge Lesniak's May 10, 1993 RDO, Complainant filed another complaint with the DOL against APS and TAG for a continuing violation of the Act in refusing to rehire Complainant. This case has been codified as 93-ERA-26 before the Hon. Clement J. Kichuk.

10. On December 15, 1993, Complainant and APS entered into a Settlement Agreement amicably resolving their differences and all pending actions and legal proceedings between Complainant and APS are to be dismissed or otherwise resolved.

11. The NRC Office of Investigations ("OI") and the NRC Inspector General ("IG") have ongoing investigations regarding Complainant's safety concerns at Palo Verde which include two petitions filed under 10 C.F.R. §2.206.

12. Complainant's raising of nuclear safety allegations with APS, TAG, NRC and the news media inclusive of his filing Section 211 DOL complaints is protected activity under the Act.

13. At all times relevant hereto, Respondent, TAG, was fully aware of Complainant's protected activities.

14. Complainant requested employment with TAG in the fall of 1993, but TAG has refused to employ Complainant. Moreover, TAG has continually refused to rehire Complainant at any of its client's facilities be it nuclear or non-nuclear since Complainant's termination by TAG on December 31, 1991 despite TAG's employment practices, company rehire policy, and most notably despite TAG's rehire comments on TAG's employee Change of Status form on Complainant which clearly indicates that TAG considers Complainant eligible for rehire.

15. Complainant asserts here that the above described conduct and actions by TAG is in violation of Section 211 and NRC regulations at 10 C.F.R. §50.7 and significantly "chills" Complainant's right, and the rights of other TAG employees, to identify safety concerns, to freely contact the NRC without fear of

retaliation, and to engage in other activities protected by Section 211 and NRC regulations at 10 C.F.R. §50.7.

16. Finally, Complainant asserts that TAG's conduct is pervasive and an ongoing pattern and practice of a continuing retaliation and blacklisting by TAG against Complainant in violation of Section 211 constituting a hostile company employment practice in violation of Section 211 and 10 C.F.R. §50.7.

PRAYER FOR RELIEF

Complainant prays for the Secretary of Labor ("SOL") to provide him relief by ordering the following:

1. that Complainant be granted appropriate affirmative relief, including the ordering of TAG to post orders in the work place where employees gather informing them of their freedom to contact the NRC and prohibiting retaliation against employees for reporting safety concerns;

2. that Complainant be awarded attorneys fees and costs should he retain the legal services of an attorney in this matter; and

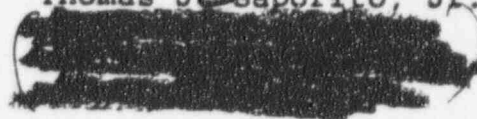
3. that Complainant be granted such further relief as the SOL deems appropriate to obviate the pervasive "chilling effect" instilled at the various employment offices and locations of TAG.

Respectfully submitted,

Complainant pro se



Thomas J. Saporito, Jr.



70

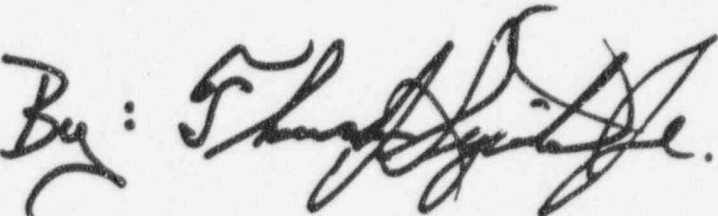
Please take notice that the corporate offices of The Atlantic Group are located at 5426 Robin Hood Road, Norfolk, Virginia 23502.

cc: Executive Director for Operations
U.S. Nuclear Regulatory Commission
White Flint Building
Washington, D.C. 20500

Oscar DeMiranda, SAC RII
U.S. Nuclear Regulatory Commission
101 Mariette St., N.W.
Suite #2900
Atlanta, GA 30323

David K. Colapinto
Attorney at Law
Kohn, Kohn & Colapinto
517 Florida Ave., N.W.
Washington, D.C. 20001

file

By: 

UNITED STATES OF AMERICA
BEFORE THE DEPARTMENT OF LABOR
WAGE AND HOUR ADMINISTRATION

THOMAS J. SAPORITO, JR.,

Complainant,

DATE: February 26, 1994

v.

THE ATLANTIC GROUP,

Respondent.

COMPLAINT

COMES NOW, Thomas J. Saporito, Jr., Complainant pro se, in accordance with Section 211 of the Energy Reorganization Act, 42 U.S.C. Part 5851 ("Act"), and hereby files his complaint alleging that The Atlantic Group, a company with a business address of 5426 Robin Hood Road, Norfolk, Virginia, 23502, has engaged in conduct and employment practices in violation of the Act under 29 C.F.R. Part 24.

JURISDICTION

1. The U.S. Department of Labor ("DOL") has jurisdiction under 42 U.S.C. Part 5851 to consider and investigate the allegations contained herein.

2. Complainant was an employee of Respondent during the time period of September 29, 1991 to December 31, 1991 employed as an instrument control technician at the Arizona Public Service Company ("APS"), Palo Verde Nuclear Generating Station ("Palo Verde") located near Phoenix, Arizona.

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 7C

2-94-003-9619

FEC-000400

EXHIBIT 12
PAGE 1 OF 5 PAGE(S)

7C portions

B/S

3. Respondent is an employer under the Act and provides contract labor to utilities operating nuclear power stations under license from the U.S. Nuclear Regulatory Commission ("NRC").

FACTS

4. During Complainant's employment with Respondent at Palo Verde, Complainant engaged in protected activity by identifying numerous safety concerns to APS management and to Respondent.

5. Subsequent to Complainant's engagement in protected activity he was terminated by Respondent on December 31, 1991 while the employment of his coworkers continued with Respondent at Palo Verde.

6. Complainant filed a discrimination complaint with the DOL which ultimately resulted in a hearing before an administrative law judge from September 28, 1992 to October 6, 1992. On May 10, 1993, the Honorable Michael P. Lesniak issued a Recommended Decision and Order ("RD&O") holding, 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. Subsequent to Judge Lesniak's May 10, 1993 RD&O, Complainant filed another complaint with the DOL against APS and TAG for a continuing violation of the Act in refusing to rehire Complainant. See, Case No. 93-ERA-26 assigned to the Hon. Clement J. Kichuk.

8. On December 15, 1993, Complainant and APS entered into a Settlement Agreement resolving their differences and all pending actions and legal proceedings between Complainant and APS are to be dismissed or otherwise resolved. The settlement agreement was approved by both administrative law judges, the Hon. Michael P. Lesniak and the Hon. Clement J. Kichuk, and is currently before the Secretary of Labor ("SOL") awaiting approval.

9. At all times relevant hereto, Respondent TAG was fully aware of Complainant's engagement in protected activities in raising safety concerns at Palo Verde and with the NRC.

10. Since Respondent terminated Complainant on December 31, 1991, Respondent has continually refused to rehire Complainant at any of Respondent's client's facilities be it nuclear or non-nuclear. Moreover, Respondent has failed to even contact Complainant in response to his employment requests. See, copy of January 2, 1994, Request for Employment by the Complainant to The Atlantic Group attached hereto.

11. The above described conduct and employment practices by Respondent is in violation of Section 211 of the Act and NRC regulations at 10 C.F.R. Part 50.7. Respondent's conduct and employment practices as described above "chill" Complainant's right, and the rights of other Respondent employees, to identify safety concerns, to freely contact the NRC without fear of

retaliation, and to engage in other activities protected by Section 211 and NRC regulations.

12. Respondent's conduct and employment practices as described above is pervasive and an ongoing pattern and practice of a continuing retaliation and blacklisting against Complainant in violation of Section 211 constituting a hostile work place in violation of Section 211 and NRC regulations at 10 C.F.R. Part 50.7.

PRAYER FOR RELIEF

Complainant prays for the Secretary of Labor to provide him relief by ordering the following:

1. That Complainant be granted appropriate affirmative relief, including the ordering of Respondent to post orders in the work place where employees gather informing them of their freedom to contact the NRC and prohibiting retaliation by Respondent against employees for reporting safety concerns;

2. That Complainant be made whole and be awarded attorneys fees and costs should he retain the legal services of an attorney in this matter; and

3. That Complainant be granted such further relief as the Secretary of Labor deems appropriate to insure that the retaliatory conduct described above by Respondent against Complainant is not condoned by other utility contractor companies.

Respectfully submitted,

Complainant, pro se



Thomas J. Sapofito, Jr.



7C

cc: Executive Director for Operations
U.S. Nuclear Regulatory Commission
White Flint Building
Washington, D.C. 20500

Jean Lee
Allegations Coordinator
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Oscar DeMiranda, SACRII
U.S. Nuclear Regulatory Commission
101 Mariette St., N.W., Suite 2900
Atlanta, GA 30323

David K. Colapinto
Kohn, Kohn & Colapinto
517 Florida Ave., N.W.
Washington, D.C. 20001