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WILLIAM F. CONWAY
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161-03239-WFC
May 22, 1990

J.M. LEVINE

Docket Nos. 50-528/529/530

Mr. James M. Taylor
Executive Director for Operations
U. S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Taylor:

Subject: State Regulatory Use of NRC Reports
File: 90-056-026

As you know, the NRC Staff has recently had several meetings with the Commission, in which the Commission has expressed concern about the potential impact of state economic regulation on the safe operation of nuclear power plants and, in particular, the misuse of Commission evaluations of licensee performance by state Public Utility Commissions. The purpose of this letter is to bring to your attention two such recent instances where Commission evaluation findings have been taken out of context and misused, and to request your assistance in obtaining a clarifying letter from the NRC. (Both matters, incidentally, have received extensive media coverage.)

The Palo Verde facility is the subject of a recent Diagnostic Evaluation by the NRC Staff and its consultants. The Diagnostic Evaluation Report (DER) contains constructive criticism and notes opportunities for improvement which Arizona Public Service (APS) is addressing. The DER, however, also includes retrospective observations regarding APS' preparation for and readiness to undertake commercial operation, as well as observations about the effects of the decline in the stock of APS' parent, Pinnacle West Capital Corporation (Pinnacle West), on the stability of Palo Verde's work force and organization.

As to the former, the DER's language concerning APS' preparation for and readiness to undertake commercial operation has already been seized upon by the Arizona Corporation Commission (ACC), which will be considering the prudence of Palo Verde construction later this year (see enclosed article from Arizona Republic; March 21, 1990), and has been referred to in proceedings before the Texas FUC involving one of Palo Verde's co-owners, El Paso Electric Company. In addition, the ACC has used observations in the DER about the effects of the declining Pinnacle West stock on Palo Verde in a complaint filed with the Securities and Exchange Commission (see enclosed excerpts from The Arizona Corporation Commission's Complaint, Petition for Revocation or Modification of Pinnacle West Capital Corporation's Exemption, Request for Hearing and Petition to Intervene, May 1, 1990).

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The DER's observations regarding the preoperational period are reflected throughout, but the essential observations are captured in the DER cover letter, which purports to connect the root causes and alleged problems in the preoperational era to:

- (1) insufficient technical and management depth to support startup and operation of a three-unit facility, [and]
- (2) during startup, management and technical resources were focused on the next unit to go on line at the expense of the operational units resulting in a backlog of technical and programmatic issues.

I was not with APS during this early period but, being aware of the excellent reputation enjoyed by the project throughout this era and the Commission's deliberative process in considering the issuance of operating licenses, I was surprised at these observations and somewhat skeptical, particularly because the DER does not cite supporting facts.

Because of our concern regarding these retrospective observations and their potentially damaging effect in pending state proceedings, APS undertook a comprehensive review of contemporaneous analyses and conclusions by the Commission, the NRC Staff and the ACRS regarding the readiness of APS to operate the Palo Verde units. The record shows that Palo Verde was subject to intensive scrutiny by the Commission, the Staff and the ACRS as clearly reflected in the transcripts of numerous Commission and ACRS meetings, operational readiness inspections, safety evaluation reports and related documents. On the basis of these reviews, the Commission, the Staff and the ACRS reached judgments concerning the very issues which are the subject of the DER's observations regarding the preoperational era.

The underlying record of the NRC findings, taken as a whole, fairly reflects:

- (1) APS senior management was deeply involved in virtually every phase of preparations for commercial operation.
- (2) APS demonstrated substantial organizational depth and experience in support of operations.
- (3) Testing, fuel loading and startup of each unit were done in a deliberate, cautious and conservative manner.
- (4) Management applied the "lessons learned" from preoperational testing and startup. This operated prospectively and retrospectively; i.e. corrective measures to address problems identified during the testing and startup were applied to subsequent unit(s); subsequently identified problems were "fixed" on previously licensed units.

- (5) APS staffing of the Palo Verde units with operating personnel exceeded NRC requirements in both numbers and qualifications.
- (6) Operating personnel generally performed well and were complimented from time to time for their demeanor, professional attitude and adherence to procedures.
- (7) Outage management was well organized and several scheduled and unscheduled outages were effectively and efficiently managed.
- (8) Operational procedures were upgraded as experience was gained from the initial operation of each unit.
- (9) Quality assurance activities were emphasized throughout the entire organization in connection with the testing and initial operation of the Palo Verde units.

Moreover, SALP reports and SERs in the 1983-87 period reflect confidence on the part of the NRC, its Staff and the ACRS in the operational readiness of the Palo Verde units and the APS staff.

Excerpts from NRC inspection reports, SERs, SALP reports, transcripts of ACRS subcommittee and full committee meetings and reports of NRC "full power" meetings indexed to the foregoing areas are enclosed for your consideration.

It was not surprising in the review of this record to find favorable determinations in each of these areas, because positive findings on such matters must be made by the Commission before authorizing operations. What is impressive, however, is that the record reflects that the APS organization and its preparations for operation were not merely minimally adequate but generally regarded by the Commission, its Staff and the ACRS as especially effective. It does not appear that the DER weighs Palo Verde's past record; indeed, it is not referred to. Although it is not clear why the preoperational period is germane to the DER, if it is included, it should fairly reflect the available record as do other areas of the DER.

The ACC also used the DER's observations regarding the effects of the decline in Pinnacle West stock on the stability of Palo Verde in a request to the SEC for revocation of Pinnacle West's status as an exempt holding company. Although APS recognizes that the NRC cannot control the use to which its observations may be put, the use of these observations in the ACC's Complaint is particularly disturbing.

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APS acknowledges that the decline in the value of Pinnacle West stock may be, or have been, of concern to some employees, but no evidence exists to show that the decline contributed to instability or insecurity in the Palo Verde work force. Clearly, significant "instability" or "insecurity" would have been manifest in abnormal attrition and/or hiring problems. A review of data during the period of Pinnacle West's financial difficulties (1988-1990) reveals no abnormal attrition nor evidence that Palo Verde personnel left the employ of APS for this reason. Moreover, during this same period, APS has, as noted in the DER, hired an extremely well-qualified group of officers and senior managers.

The ACC Complaint also quotes the DER to the effect that APS' new management team was on board and improvement initiatives were being implemented, but notes that the rate of improvement is inhibited by, among other things, "organizational instability, uncertainty and insecurity." However, the DER made clear that:

the team found no evidence to suggest that financial difficulties at Pinnacle West or APS appropriation levels had jeopardized safety systems or the safe operation of the units... The resources (money, people, equipment, materials and facilities) provided to Palo Verde by APS were generally adequate to meet needs.

Again, while some individuals may have conveyed insecurity and uncertainty about the organization in the course of their interviews with NRC team members, that is to be expected in a period of significant management change. The comments in the DER appear to have been derived from interviews and not otherwise supported in the DER. Additionally, they have been presented in a way which allows them to be elevated to general conclusions and to be otherwise misused.

APS believes that clarification of the DER, by issuance of a supplemental letter from the NRC Staff, is both necessary and appropriate in the circumstances. APS is greatly concerned that unless the DER is clarified to reflect the facts outlined in this letter, it will be misunderstood and misused to penalize APS and its co-owners. I believe the NRC shares this concern, never intended its DER to be used in this manner, and, therefore, I urgently request your assistance in this matter. Should you desire further information in preparing a clarifying letter along the lines discussed above, please advise me. In any event, I would appreciate an opportunity to meet with you on this matter at your earliest convenience.

Sincerely,

Enclosures

cc: J. B. Martin, Region V