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 TAYLOR, J. M. Office of Inspection & Enforcement, Director (Post 820201)

SUBJECT: Responds to allegations discussed in Coalition for
 Responsible Energy Education petition filed under 10CFR2.206
 on 861020. Petition based upon fundamental misunderstanding
 of polygraph exams & control questions.

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January 20, 1987

Mr. James M. Taylor
Director, Office of Inspection and Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Arizona Public Service Company, et al.
(Palo Verde Nuclear Generating Station, Units
1, 2 and 3), Docket Nos. 50-528, 50-529,
50-532

Dear Mr. Taylor:

By letter dated December 17, 1986, you requested that Arizona Public Service Company ("APS" or the "Licensee"), as the operating agent for the Palo Verde Nuclear Generating Station ("Palo Verde"), respond to the allegations set forth in a petition of the Coalition for Responsible Energy Education ("CREE") dated October 20, 1986. That petition, filed with the Office of Inspection and Enforcement of the U.S. Nuclear Regulatory Commission (the "NRC") pursuant to 10 C.F.R. § 2.206, requests that certain actions be taken with respect to the licenses for all three Palo Verde units because of the responses of several APS employees to control questions asked in polygraph examinations conducted as part of a security investigation

ADD: JAMES TAYLOR, I+E

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MEMORANDUM

TO : [illegible]

FROM : [illegible]

SUBJECT : [illegible]

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Mr. James M. Taylor
January 20, 1987
Page 2

at Palo Verde. This letter constitutes the Licensee's response to the Director's request.

As explained more fully below, the CREE petition is based upon a fundamental misunderstanding of the nature of both polygraph examinations in general and control questions in particular. As a result of the fatal flaw, CREE's vague and speculative allegations of document falsification are groundless and its attacks upon the Licensee's integrity are utterly baseless. Because CREE has not set forth any facts or presented any evidence sufficient to raise a substantial issue concerning the public health or safety, the petition should be denied in its entirety. Consolidated Edison Co. of New York (Indian Point, Units 1, 2 and 3), CLI-75-8, 2 NRC 173, 176 (1975).

The polygraph examinations of APS employees referenced in the CREE petition were conducted in early 1986 as part of the Licensee's investigation of a possible unauthorized disclosure of safeguards information. That security investigation was undertaken by APS after consultation with Region V of the NRC. See Attachment A, Portions of the Deposition of Roy Zimmerman. All APS personnel who had access to the safeguards information involved were asked to voluntarily submit to a polygraph examination. All such personnel except one did so. Those persons examined included Mr. E. E. Van Brunt, Jr., Executive



Mr. James M. Taylor
January 20, 1987
Page 3

Vice-President of APS, and other management level employees of the Licensee. The independent polygraph examiner who conducted the examinations concluded that none of those persons examined had been responsible for an unauthorized disclosure of safeguards information.

The APS employee who did not take the polygraph examination later raised the issue of the alleged discriminatory use of polygraph tests at Palo Verde in a complaint filed with the Department of Labor under section 210 of the Energy Reorganization Act of 1974. (DOL Case No. 86-ERA-27.) The deposition of the polygraph examiner was subsequently taken by the complainant's attorney in the course of the Department of Labor proceeding. During that deposition, Ms. Cannon, the polygraph examiner, testified concerning the questions she had asked Mr. Van Brunt and the other APS employees in their polygraph examinations. It is the "control" questions asked by Ms. Cannon, and her evaluation of the responses given by the examinees to those questions, that apparently caused CREE to file the instant petition. An understanding of the purpose and use of "control" questions in polygraph examinations is thus important to an analysis of the CREE petition.

In determining what questions are to be asked in a polygraph examination, it is first necessary to decide exactly what the purpose of the test is -- i.e., what information the test is intended to ascertain. In this case, the polygraph exam-

Mr. James M. Taylor
January 20, 1987
Page 4

inations were intended to determine if the examinee had disclosed safeguards information to an unauthorized person. A short list containing three different types of questions is then prepared. The first type, the "relevant" questions, are those which pertain to the reason for the test, i.e., to the possible unauthorized disclosure of safeguards information. A second type of question, termed "irrelevant," is merely designed to give the examinee a short breathing space between the other questions. Such a question might ask the examinee to confirm what day of the week it is.

The third type of question, called the "control" question, is used as the basis for judging the examinee's responses to the relevant questions. The control question is thus an "assumed lie." In other words, the examiner asks the examinee a question that is unrelated to the actual subject matter of the test for the purpose of eliciting a deceptive response. The responses to "control" questions are then compared to the examinee's responses to the "relevant" questions. If a relevant response is stronger than the control response, a deceptive answer to the relevant question is indicated; if a control response is stronger than the relevant response, a truthful answer to the relevant question is indicated. Thus, in conducting a polygraph examination, it is imperative that the examinee provide a deceptive answer to a control question. If there were no deceptive response from the examinee, the examiner would have no basis for comparing the

Mr. James M. Taylor
January 20, 1987
Page 5

examinee's responses to the relevant questions and it would be impossible to conduct a valid polygraph examination.

The polygraph examiner discusses the questions with the examinee in a pre-test interview that is conducted before the examinee is attached to the polygraph equipment. During that interview, the examiner discusses the relevant questions with the examinee in detail to ensure that the examinee is fully apprised of what the relevant questions ask. It is necessary to the proper conduct of the test that the relevant questions be specific and narrowly drawn. The opposite is true of control questions, however, for they are intended to be quite broad and all-encompassing. This breadth is designed to ensure that the examinee will give the deceptive response that is needed to provide a benchmark for comparing the answers to relevant questions.

The CREE petition errs in ignoring these basic principles of polygraph examination procedure and assuming that it is possible to draw meaningful conclusions from an examinee's responses to control questions. That is simply not the case. The polygraph examinations at issue here were specifically designed to determine whether there had been unauthorized disclosures of safeguards information. The examiner determined that none of the persons tested had been responsible for such an unauthorized disclosure. That is the only valid conclusion that can be drawn from the tests.

Mr. James M. Taylor
January 20, 1987
Page 6

To assume, as CREE does, that any valid conclusions about the subject matter of the control questions, as opposed to relevant questions, can be drawn from the examinee's responses is to make a quantum leap in logic. If the purpose of the test had been to ascertain information about the subject matter of the control questions, an entirely different set of relevant and control questions would have been designed. The answers to the control questions do not have any independent significance.

Polygraph examinations, by design, have a very limited application and usefulness. They are not designed to reveal the truthfulness or any other character trait of the individual being tested. Indeed, they cannot be used to establish any factual matters other than whether or not an answer given to a precise, narrowly-defined question is truthful. The purpose of polygraph examinations is to provide a tool to aid in focusing further investigation upon relevant matters. This purpose, however, can be achieved only with respect to the precise, narrowly-defined relevant questions. Answers given to intentionally broad and general control questions can only be interpreted as equally broad and general answers that are essentially meaningless. The only function of control questions is to provide a benchmark for interpreting the examinee's responses to precise, narrowly-defined relevant questions.

Because CREE's petition is premised solely upon the answers given by APS employees to certain control questions asked

Mr. James M. Taylor
January 20, 1987
Page 7

in the course of polygraph examinations, the petition has no valid foundation whatsoever. In the absence of the factual basis required to be demonstrated by a petition under 10 C.F.R. § 2.206(a), the Director need take no action on the CREE petition. See Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), DD-86-4, 23 NRC 211, 222 (1986); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), DD-85-11, 22 NRC 149, 154 (1985); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), DD-82-13, 16 NRC 2115, 2121 (1982). If the Director, notwithstanding the lack of factual support for the petition, does choose to look at CREE's "issues," it is readily apparent that those "issues" are devoid of any substance.

At page 4 of its petition, CREE sets forth three "issues" that are supposedly raised by the deposition of the polygraph examiner. The first of those "issues" charges that there has been "apparent falsification of company documents for personal gain" by APS management officials. CREE, however, has submitted no information showing that any company documents were falsified for personal gain. Apart from references to the answers to certain control questions, which are completely meaningless when taken out of the context and used for the purposes attempted here, CREE has not come forward with any facts demonstrating that such "falsification" took place. Moreover, in order to state a request that would be cognizable under § 2.206, CREE would have to show that the alleged falsification of documents for personal gain

Mr. James M. Taylor
January 20, 1987
Page 8

raised substantial health or safety issues. See CLI-75-8, supra; DD-85-11, supra. Nothing in the petition, however, even suggests any nexus between the alleged falsification and health or safety issues. Because CREE has not met its burden of coming forward with facts sufficient to show any falsification of documents for personal gain, much less a falsification that would raise substantial health or safety issues, the petition is deficient and the action requested should be denied.

CREE's second "issue," that "serious questions" have been raised concerning "the honesty of the above-named APS management officials during their polygraph exams," is even more ill-founded than the first. (CREE Petition at 4.) As explained above, a polygraph examination is not some type of psychological test from which one may draw conclusions about an examinee's character. Moreover, all of the APS employees who took the polygraph examinations were found to have been truthful in answering the relevant questions -- i.e., they had not released safeguards information to unauthorized persons. The second allegation is thus nonsensical and further demonstrates CREE's ignorance of both polygraph examination procedures and the interpretation of the results of those examinations.

CREE's final "issue" is a confused statement that appears to accuse the Licensee's management of "bad faith" concerning the use of polygraph examinations and of being "incompetent to judge Safeguards Information issues." (CREE Petition at

Mr. James M. Taylor
January 20, 1987
Page 9

at 4.) To the extent that the "bad faith" aspect of the "issue" raises the question of the allegedly discriminatory use of polygraph examinations at Palo Verde, that "issue" is already the subject of a separate CREE § 2.206 petition that was filed on July 16, 1986. The Director has decided to await the outcome of the pending Department of Labor proceeding referenced above before ruling on that petition. See Letter of James M. Taylor to Barbara S. Bush dated November 24, 1986. Because the "bad faith issue" is already pending before the Director, CREE should not be allowed to raise that matter here. Cf. DD-85-11, supra, 22 NRC at 159 n.5, 171 n.14. The charge of "bad faith," moreover, appears to be nothing more than another example of CREE's misunderstanding of the nature of both polygraph examinations and control questions. Finally, the fact that the APS management officials agreed to take the polygraph examinations refutes any notion of "bad faith."

The remaining part of the third "issue," which concerns the alleged lack of competence to judge safeguards information matters, also appears to be based upon a misunderstanding of certain of the questions asked during the polygraph examinations. Because the purpose of the test was to determine if the examinee had released safeguards information to an unauthorized person, it was necessary to ask a predicate question in order to ascertain that the examinee did, in fact, understand what was meant by the term "safeguards information" and understand that such information

Mr. James M. Taylor
January 20, 1987
Page 10

was only to be released on a "need to know" basis. If an examinee did not profess to have such an understanding, the relevant questions in the test would have been rendered meaningless. Nothing in the answers to those questions provided by the examinees indicated any lack of "competence to judge Safeguards Information issues." Moreover, it was Region V of the NRC that initially determined that there may have been an unauthorized release of safeguards information and concluded that an investigation was necessary. See Attachment A.

For the reasons set forth above, the CREE petition does not state facts raising any issues, much less substantial issues, pertaining to public health or safety. In addition, that part of the petition that alleges discriminatory use of polygraph examinations at Palo Verde is covered in a previous petition of CREE now pending before the Director. In the absence of any substantial health or safety issue, the petition and all of the relief requested therein should be denied.

Very truly yours,

A handwritten signature in cursive script, reading "Martha E. Gibbs".

Martha E. Gibbs
Attorney for Arizona Public Service Company

MEG:dkm

1. The first part of the document is a list of names and addresses of the members of the committee. The names are listed in alphabetical order, and the addresses are listed below each name. The list is as follows:

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Mr. J. K. L.	101 Pine St., Philadelphia, Pa.
Mr. M. N. O.	202 Cedar St., St. Louis, Mo.
Mr. P. Q. R.	303 Birch St., San Francisco, Cal.
Mr. S. T. U.	404 Maple St., Washington, D.C.
Mr. V. W. X.	505 Spruce St., Portland, Me.
Mr. Y. Z. A.	606 Fir St., Seattle, Wash.
Mr. B. C. D.	707 Ash St., Denver, Colo.
Mr. E. F. G.	808 Hickory St., Minneapolis, Minn.
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UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATION LAW JUDGE

In the matter of

BLAINE P. THOMPSON,

Complainant,

vs.

No. 86-ERA-37

ARIZONA PUBLIC SERVICE
COMPANY/ARIZONA NUCLEAR POWER
PROJECT,

Respondent.

DEPOSITION OF ROY ZIMMERMAN

Phoenix, Arizona

October 14, 1986

1:30 p.m.

Prepared For:

William R. Hayden
Attorney at Law

(copy)



Voss & Associates, Inc.

Court Reporters

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Phoenix, Arizona 85012

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By: Carol Kelly Reill, RPR

DEPOSITION OF ROY ZIMMERMAN

commenced at 1:30 p.m. on October 14, 1986, at the offices of Snell & Wilmer, 2900 VBC, Phoenix, Arizona, before CAROL KELLY REILL, a Notary Public in and for the County of Maricopa, State of Arizona.

* * *

APPEARANCES:

For the Complainant:

Government Accountability Project

Mr. Stephen M. Kohn

Ms. Beth Payne

&

Coalition for Responsible Energy Education

Mr. Myron Scott

Ms. Lyn McKay

For the Respondent:

SNELL & WILMER

Mr. William Hayden

Ms. Becky Winterscheidt

For the Nuclear Regulatory Commission:

U. S. NUCLEAR REGULATORY COMMISSION

Mr. Chuck Mullins

Also Present:

Mr. Blaine Thompson

1 Q. Do you recall whether you were advised by
2 region 5 personnel in Walnut Creek that these events that
3 you have described gave rise to a concern within the
4 region as to whether Safeguards information may have been
5 disclosed to an unauthorized source?

6 A. I recall very well that the region had a
7 concern based on the specifics that were relayed to them
8 from Mr. Staggs. They were concerned what the disclosed
9 source was that allowed the information to be passed to
10 the media. And based on the specifics that were provided,
11 they were concerned whether Safeguards information may
12 have been released and the information given to the media.

13 They requested that I return a call to Mr.
14 Van Brunt and advise him of that concern, and make Mr. Van
15 Brunt aware that we are interested in determining what the
16 source of the information was, and for them to conduct an
17 investigation to assure themselves that Safeguards
18 information was not provided, and if it had been provided,
19 to take the necessary compensatory measures so that the
20 security program at Palo Verde was not compromised.

21 I advised Mr. Van Brunt of those concerns.

22 Q. Then it's appropriate to move to that
23 subsequent conversation.

24 Let me ask you one more question with respect
25 to your communications with the Walnut Creek regional

1 office. In those discussions were you advised as to
2 whether Mr. Staggs in communicating with the region had
3 given any indication whatsoever as to where his source of
4 information had come from?

5 A. No.

6 Q. Now, I think you have already testified that
7 you were directed by the regional office staff to contact
8 Mr. Van Brunt. I believe you have already testified that
9 you did so.

10 A. That's correct.

11 Q. Did you do so on the same day that he
12 initiated the call to you?

13 A. Within several hours.

14 Q. So do you have any recollection today of
15 approximately what time of the day the second conversation
16 with Mr. Van Brunt may have occurred?

17 A. Again, I can't be exact but I would say
18 somewhere in the neighborhood of 1:00 or 2:00 in the
19 afternoon.

20 Q. Do you recall whether -- am I correct that
21 you initiated this phone call?

22 A. The second phone call, that's correct.

23 Q. Do you recall whether this was to a car phone
24 or an office phone?

25 A. Again, I am not sure but I believe he was

1 back in his office. I don't believe it was to the car
2 phone.

3 Q. This may be, I apologize, somewhat
4 repetitious, I think you have already given us a feel for
5 what you were directed to advise Mr. Van Brunt. What did
6 you advise Mr. Van Brunt in this conversation?

7 A. I advised Mr. Van Brunt that based on my
8 discussion with region 5 we had a concern that information
9 had apparently been provided to Mr. Staggs based on our
10 association with our inspection findings, and due to the
11 level of detailed knowledge on his part, it raised a
12 concern with us on whether the security plan may have been
13 compromised by Safeguards information having been
14 improperly provided to Mr. Staggs.

15 I then informed Mr. Van Brunt that we felt it
16 necessary for APS to evaluate the source of the
17 information and provide an investigation that would allow
18 them to determine whether the security plan had in any way
19 been compromised. If the investigation determined that to
20 be the case, to take the appropriate compensatory
21 measures.

22 Q. Is that a fair characterization of the entire
23 content of that conversation?

24 A. Mr. Van Brunt acknowledged my statement and
25 said that he intended on doing that.

1 Q. Do you know if you read it on the day it came
2 out?

3 A. I don't recall. I don't know. I can't
4 answer it. I don't recall.

5 Q. At the time you had this conversation with
6 region, did anyone mention this article?

7 A. No, I don't believe so.

8 Q. During your conversation with region, who
9 told you what to say to Van Brunt?

10 A. Mr. Scorano.

11 Q. What were his instructions to you?

12 A. To inform Mr. Van Brunt that the information
13 that Mr. Staggs possessed was not provided to him by region
14 5 personnel to the best of his knowledge and that we had a
15 concern that the information was apparently provided by
16 another source. And based on the level of detail that Mr.
17 Staggs had, we were concerned whether the potential
18 existed that Safeguards information may have been
19 improperly provided to Mr. Staggs. And we wanted the
20 licensee to conduct an investigation to determine whether
21 we felt there was a prudent action for the licensee to
22 determine whether Safeguards information was in fact
23 provided to people without a need to know. And if in fact
24 their evaluation determined that to be the case, we would
25 expect they would evaluate the compensatory measures that

1 needed to be implemented and they would do so.

2 Q. Did anyone on that call say that they had
3 asked Staggs what information that he had received?

4 A. Could you repeat that again?

5 Q. Did anyone say that they had questioned
6 Staggs about what the exact information was that he had
7 received?

8 A. Not that I am aware of.

9 Q. Did you ever think about giving Staggs a call
10 and asking him what information he had received?

11 A. Did I?

12 Q. Yes.

13 A. No. I was just serving to pass the
14 information on from Mr. Van Brunt to the region and then
15 relay region 5's message to Mr. Van Brunt.

16 Q. Was that ever reduced to writing what you
17 orally transmitted to Mr. Van Brunt?

18 A. Not by myself, no.

19 Q. To the best of your recollection, was there
20 any written correspondence asking APS to look into this
21 matter?

22 A. No.

23 Q. Do you know if APS ever formerly notified the
24 NRC concerning the results of this matter?

25 A. No. As far as the investigation goes?