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SUBJECT: Responds to petition filed against Atlantic Group, dtd 940115 D
 by TJ Saporito & Natl Whistleblower Ctr. S

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April 28, 1994

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Mary Louise Painter
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Mr. William T. Russell, Director
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U.S. NUCLEAR REGULATORY COMMISSION
Washington, DC 20555-0001

*Re: Docket Nos. 50-528, 50-529 and 50-530 (Receipt of
Petition for Director's Decision Under 10 CFR 2.206 on
Behalf of Thomas J. Saporito, Jr. Against The Atlantic
Group, dated January 15, 1994)
Our File No. 92-3361-III*

Dear Mr. Russell:

NOW COMES The Atlantic Group ("TAG"), by counsel, and files
this response to the Petition filed against it by Thomas J.
Saporito, Jr. and the National Whistleblower Center.

We are not advised what the National Whistleblower Center
is, but Mr. Kohn and Mr. Colapinto are Mr. Saporito's lawyers in
a number of complaints against The Atlantic Group. Kohn, Kohn &
Colapinto, P.C. has the same address as does National
Whistleblower Center (see Exhibit A), so we assume that they are
acting as Mr. Saporito's legal counsel.

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TAG is a small temporary services contractor which supplies personnel primarily to public utilities throughout the country. Due to the nature of our business, we consider our employees our most valuable asset. Therefore, we try to create a favorable working relationship with all our employees. All of our non-staff positions are temporary, varying in length according to contract duration.

Mr. Saporito's Petition dated January 15, 1994 relates to the events associated with a complaint that Mr. Saporito filed with the Department of Labor on January 27, 1992 (Case No. 92-ERA-30) against the Arizona Public Service Company ("APS"). As discussed in greater detail below, Mr. Saporito later amended his complaint against APS to include allegations that he had been discriminated against by TAG. Following a seven day hearing in September and October of 1992, Administrative Law Judge Michael P. Lesniak granted a motion for a directed verdict in favor of TAG. In a Recommended Decision dated May 10, 1993, Judge Lesniak reiterated his finding that TAG did not discriminate against Mr. Saporito.

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On December 15, 1993, Mr. Saporito settled all claims that he had with APS and TAG related to his employment at the Palo Verde Nuclear generating Station ("PVNGS") for the failure to hire Mr. Saporito at PVNGS. (This settlement included various pending and potential claims including DOL Case Nos. 92-ERA-30, 93-ERA-26 and 93-ERA-45.) Judge Lesniak approved the settlement agreement, and in his Recommended Order of Dismissal dated February 7, 1994, he once again noted that "[i]n the case of Thomas J. Saporito, Jr. v. TAG, I found for the respondent, TAG, and against the Complainant." On March 21, 1994, the Secretary of Labor approved the settlement agreement.

With regard to the matters set forth in Mr. Saporito's petition, the DOL factfinder, Judge Lesniak, has consistently concluded in his recommended decisions and orders that TAG did not discriminate against Mr. Saporito.¹ There is therefore no basis for investigating the unfounded allegations contained in

¹ On April 21, 1994, Mr. Saporito requested that the Secretary establish a briefing schedule in which he may be afforded the opportunity to argue claims against TAG in Case No. 92-ERA-30 that are unrelated to Mr. Saporito's employment or attempts to seek employment at PVNGS. In addition, other claims in Case Nos. 93-ERA-26 and 93-ERA-45 appear to remain pending before DOL Administrative Law Judge Clement J. Kichuk.

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Mr. Saporito's January 15, 1994 petition. Rather, the petition should be denied in its entirety. Below, TAG is providing specific responses to Mr. Saporito's factual allegations. These responses track Mr. Saporito's "Basis and Justification" by number for your convenience.

1. We agree that Mr. Saporito worked for us from September 29, 1991 to December 31, 1991 when the outage was concluded at PVNGS.

2. TAG does not admit to being a licensee. Whether TAG is a licensee is not critical because TAG took no part in any discrimination against Mr. Saporito.

3. We deny that TAG "retaliated" in any way. Mr. Saporito's employment ended as a reduction in force on December 31, 1991 at the conclusion of the outage at PVNGS Unit 2. All of the I&C Technicians on the same assignment as Mr. Saporito were laid off on or before December 31, 1991. Most were laid off before he was. TAG recommended Mr. Saporito for employment at the upcoming outage at Unit 1 to begin in February 1992 along with a number of fellow employees that had worked on Unit 2. The evidence was clear at the hearing that TAG recommended Mr.

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Saporito for employment at Unit 1 in February 1992. Mr. Warriner, an APS employee, testified he alone made the decision not to hire Mr. Saporito. (See Saporito v. APS and TAG Recommended Decision and Order dated May 10, 1993, paragraphs 185-238). Mr. Warriner admitted to APS legal counsel in August of 1993 that he had been aware of Mr. Saporito's past activities and those activities had played a part in his decision not to hire Mr. Saporito.

On August 23, 1993, APS filed a Stipulation in 92-ERA-30 that:

- A. Mr. Frank Warriner, the APS supervisor who made the decision not to select Mr. Saporito for the Unit 1 outage, knew at the time he made that decision that Mr. Saporito had previously engaged in protected activity.

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B. A motivating factor in Mr.
Warriner's decision not to select
Mr. Saporito for the Unit 1 outage
was that Mr. Saporito had
previously engaged in protected
activity.

4. Saporito filed a complaint with the U.S. Department of Labor on January 27, 1992 (92-ERA-30) only against APS. In May of 1992, Mr. Saporito attempted to amend his January complaint to add TAG. TAG opposed this amendment but Judge Lesniak finally granted the motion because Mr. Saporito for the first time made allegations that Bill Engelking, a supervisory employee of TAG, threatened and intimidated him which dissuaded Saporito from filing a timely complaint against TAG timely. A hearing was held before Judge Michael P. Lesniak on September 28, 1992. At the close of complainant's case, Judge Lesniak granted a motion for a directed verdict in favor of TAG. In Judge Lesniak's Recommended Decision and Order filed on May 10, 1993, page 49 at note 14, the Judge stated "I held that TAG did not discriminate against complainant since they were not involved in the selection process

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for the Unit 1 outage. Secondly I held that complainant filed his complaint against TAG outside the 30-day statute of limitations and failed to make a prima facia case entitling him to equitable relief." On page 70 of the Recommended Decision and Order, paragraph 350, Judge Lesniak affirmed his ruling in Court granting TAG a directed verdict. He found no evidence that TAG played a role and/or conspired with APS in the decision not to hire Saporito for the Unit 1 refueling outage. He went on to say "complainant should be mindful that TAG was instrumental in his being hired by APS in the first place."

5. We do not disagree with paragraph 5, but do point out that the investigation of the Wage and Hour Division of DOL involved only APS and Saporito. Saporito did not make known to anyone a complaint against TAG until May of 1992.

6. We do not disagree with paragraph 6.

7. We do not disagree with paragraph 7 if Mr. Saporito means by "employer" APS and Frank Warriner. We do disagree with this paragraph if Mr. Saporito is claiming that TAG knew anything about Mr. Warriner's knowledge and discrimination. It is clear from the record of 92-ERA-30 that TAG knew nothing of these events.

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8. Paragraph 8 is the reason for this response. Once again, Mr. Saporito accuses TAG and its employees of wrongdoing. There is no evidence that TAG and its employees were involved in the misconduct of Frank Warriner. TAG suspects that Mr. Saporito and his lawyers Kohn and Colapinto know there is no evidence that TAG and its employees "were involved in the misconduct and discrimination against Mr. Saporito." It is our understanding from APS legal counsel that Mr. Warriner confessed to wrongdoing, but that he stated emphatically that no one else was involved. No one at TAG was involved with the decision not to hire Saporito. In fact, TAG recommended Mr. Saporito for the job. If Mr. Saporito and Mr. Kohn knew of any evidence that TAG was involved with the misconduct and discrimination against Saporito, they would have come forward long ago, or at least would have been more clear in their allegations of January 15, 1994. Once again Mr. Saporito attacks TAG without evidence.

9. There is no evidence that TAG "lied under oath." Mr. Saporito and his lawyers are quick to accuse TAG of misconduct without any proof. Judge Lesniak weighed the testimony of TAG



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employees William Engelking, Jan Gillard and Ellen Taylor and found them credible. While Mr. Warriner admitted after trial that he had lied under oath, he in no way implicated TAG or said anything that would color the testimony of the TAG employees. There is no evidence that TAG "lied under oath" for the simple reason that TAG did no such thing.

10. This just is not true. Even after a full hearing before Judge Lesniak in which he found no retaliatory conduct on the part of TAG, these claims are put forth.

11. We do not agree that TAG is a licensee and the remainder of the allegations have no basis in fact.

TAG did nothing to discriminate against Mr. Saporito. Mr. Saporito required us to go to trial in Phoenix, Arizona and after 7 days of his evidence it was so clear to the Judge that TAG did nothing wrong that he granted TAG a directed verdict. This is not enough for Mr. Saporito. He now claims that TAG lied under oath and was "involved in the misconduct and discrimination against Mr. Saporito."

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TAG requests that the NRC take no further action on this
Petition because to do so invites Mr. Saporito and his lawyers to
file further unsubstantiated Petitions. This has got to stop.

Respectfully submitted,

THE ATLANTIC GROUP

By:



William W. Nexsen

WWN/fbb
Enclosure
cc: Ms. Ellen Taylor
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December 30, 1993

+ ADMITTED IN DC
* ADMITTED IN PA
* ADMITTED IN NJ
X ADMITTED IN MA

Via Facsimile and U.S. Mail

Hon. Clement J. Kichuk
Administrative Law Judge
U.S.D.O.L. -- O.A.L.J.
101 Northeast Third Avenue, Suite 500
Ft. Lauderdale, FL 33301

Re: Saporito v. APS and TAG
Case No. 93-ERA-45

