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AUTH. NAME      AUTHOR AFFILIATION

SAPORITO, T.J.     

RECIP. NAME      RECIPIENT AFFILIATION

SELIN, I.      Commissioners (Post 750119)

SUBJECT: Petitions for NRC action & requests NRC atomic safety & licensing board hearing & request for leave to intervene re existence of pervasive hostile work environment at Palo Verde & public danger as result.

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# Florida Energy Consultants, Inc.

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*Toll Free Hot-Line for Safety Concerns and Assistance: (800) 328-3222*

November 14, 1994

The Honorable Ivan Selin  
Chairman of the Commission  
U.S. Nuclear Regulatory Commission  
White Flint Building  
Washington, D.C. 20500

Re: Petition for NRC Action Submitted Under 10 C.F.R.  
2.206 and Request for NRC Atomic Safety and  
Licensing Board Hearing and Request for Leave to  
Intervene

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

1. COMES NOW, Florida Energy Consultants, Inc. ("FEC") and Linda E. Mitchell, by and through the undersigned petitioner and hereby submits a petition under 10 C.F.R. 2.206 seeking certain and specific actions by the U.S. Nuclear Regulatory Commission ("NRC") more specifically detailed below and of which includes a request for an administrative public hearing before the NRC Atomic Safety and Licensing Board ("Board") and a request by petitioner for leave of the Board to intervene in said proceeding for grounds stated below:

2. Arizona Public Service Company/Arizona Nuclear Power Project ("Licensee") and operator of the Palo Verde Nuclear Generating Station ("Palo Verde") has been the subject licensee of numerous complaints filed under the Energy Reorganization Act of 1974 as amended 42 U.S.C. 5851 and adjudicated under the employee protection provisions found under 29 C.F.R. Part 24. See, Thomas v. APS; Docket: 89-ERA-19; Gibson v. APS/ANPP; Docket: 90-ERA-22; Floyd v. APS/ANPP; Docket: 90-ERA-39; Mitchell v. APS/ANPP; Docket: 91-ERA-9; Saporito v. APS, et al.; Docket: 92-ERA-30; Gaballa v. APS/ANPP; Docket: 94-ERA-9; Straub v. APS/ANPP; Docket: 94-ERA-37; Irick v. APS/ANPP; Docket: 95-ERA-2; and Straub v. APS/ANPP; Docket: 95-ERA-xx.

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Petition under 10 C.F.R. 2.206 APS/ANPP Palo Verde

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The Honorable Ivan Selin  
Chairman of the Commission  
U.S. Nuclear Regulatory Commission  
November 14, 1994  
Page No. 2

3. In the matter of Thomas v. APS; Docket: 89-ERA-19, the U.S. Department of Labor ("DOL") found that Thomas was discriminated against in violation of the ERA.

4. In the matter of Mitchell v. APS/ANPP; Docket: 91-ERA-9, the U.S. Department of Labor ("DOL") found that Mitchell was discriminated against in violation of the ERA.

5. In the matter of Saporito v. APS, et al.; Docket: 92-ERA-30, the U.S. Department of Labor ("DOL") found that Saporito was discriminated against in violation of the ERA. Moreover, the licensee publicly admitted to wrongdoing by its employees and by its counsel of record.

6. One or more of the matters identified in paragraph No. 2 above may have been resolved without DOL adjudication due to out-of-court settlements. However; the subject matter of these complaints is indicative of ERA violations at Palo Verde.

7. Recent Section 211 complainants by Straub and Irick are glaring indicators that ERA violations are the normal course of business at Palo Verde and that upper management above first line supervision condones such conduct at Palo Verde.

8. Petitioner Linda E. Mitchell is a resident within 2 air miles of Palo Verde and resides in Buckeye, Arizona. Thus, Ms. Mitchell has requisite standing to intervene before the Board.

9. FEC has requisite standing to intervene through Ms. Mitchell's standing before the Board.

10. Petitioner Thomas J. Saporito, Jr. has requisite standing to intervene before the Board through Ms. Mitchell and through FEC as he is the President and CEO of FEC.

11. Petitioners are subject to physical harm and the loss of personal property should Palo Verde incur a nuclear accident as a direct or indirect result of the hostile work environment fostered at that facility.



The Honorable Ivan Selin  
Chairman of the Commission  
U.S. Nuclear Regulatory Commission  
November 14, 1994  
Page No. 3

12. Petitioners assert that a "hostile work environment" exists at Palo Verde and is, in fact, condoned and fostered by licensee management to dissuade employees at Palo Verde from identifying safety concerns internally or directly to NRC representatives.

13. Petitioners assert that the hostile work environment is pervasive and, in fact, encompasses all 3-units at the Palo Verde station.

14. If granted leave to intervene, petitioners would demonstrate the existence of a pervasive hostile work environment at Palo Verde.

15. Petitioners specifically request that the NRC:

- (a) issue a confirmatory order requiring the licensee to immediately bring all 3-units at the Palo Verde station to 0% power until such time as the licensee can demonstrate corrective actions obviating any inference of a hostile work environment at Palo Verde;
- (b) issue a demand for information request to the licensee seeking an explanation as to why NRC can have confidence that the licensee will assure that an environment exists free of harassment, intimidation and discrimination, both in general throughout its organization and particularly with Mr. Jerry Sowers, Mr. Greg Overbeck, Mr. William Simko, Mr. Dave Wanslee, Ms. Martha Wagner, Mr. William Sneed, Mr. Michael Shea, Ms. Marlene Shelton, Mr. Jerry Ong, Mr. Dan Robertson, Mr. George Weiman, Mr. Scott McFarland, Ms. Jeanne Robertson, Mr. Terral Gober, Mr. William McMurray, Mr. Dave Heler, Mr. James Levine, Mr. John Gaffney, Mr. Steve Sawchenco, Mr. Don Baumhart, Ms. Tony Bland, Mr. William Steward, and Mr. O. Mark DeMichele.





The Honorable Ivan Selin  
Chairman of the Commission  
U.S. Nuclear Regulatory Commission  
November 14, 1994  
Page No. 4

- (c) a description of current employment duties and responsibilities of the above named licensee employees, including whether any of those employees is now involved in NRC licensed or regulated activities;
- (d) an explanation as to why NRC can have confidence that any of the above named licensee employees will comply with NRC requirements should they be involved in NRC licensed or regulated activities in the future at Palo Verde or at APS/ANPP.
- (e) information as to why the Commission should not take action to prohibit any or all of the above named employees from involvement in NRC-licensed activities for some specified time or take other enforcement action deemed appropriate;
- (f) information as to why the Commission should have reasonable assurance that, in the future, the above name employees will abide by NRC regulations that protect individuals who engage in protected activities (such as supplying safety concerns to NRC);
- (g) any other information the licensee believes to be relevant to the Commission's decision in this matter.

16. Petitioners seek NRC actions as delineated above within a reasonable time to insure that the health and safety of the general public is protected from the devastating affects of radioactive fission products which may be inadvertently released subject to a nuclear accident at the Palo Verde station.



The Honorable Ivan Selin  
Chairman of the Commission  
U.S. Nuclear Regulatory Commission  
November 14, 1994  
Page No. 5

Respectfully submitted,

  
Thomas J. Saporito, Jr.  
President and CEO

Service Sheet

cc: Honorable James Taylor  
Executive Director for Operation  
U.S. Nuclear Regulatory Commission  
White Flint Building  
Washington, D.C. 20500

Honorable James Lieberman  
Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
White Flint Building  
Washington, D.C. 20500

Administrator  
U.S. Nuclear Regulatory Commission  
NRC Region IV  
Arlington, Texas

Oscar DeMiranda, SAC RII  
U.S. Nuclear Regulatory Commission  
NRC Region II  
Atlanta, Georgia

Ms. Linda E. Mitchell  
Post Office Box 1234  
Buckeye, Arizona 85326

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**Florida Energy Consultants, Inc.**

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FACSIMILE TRANSMISSIONDATE: NOV. 14, 1994PAGES: (8) - (including this cover page)TO: HON. James Taylor  
NRC - EDO  
Washington, D.C.FAX: ~~000258~~ (301) - 504-7162

FROM: Thomas J. Saporito, Jr.

MESSAGE: PALO VERDE 10 CFR 2.206  
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Docket No.  
(10 C.F.R. § 2.206)

Mr. Thomas J. Saporito, Jr.  
President and CEO  
Florida Energy Consultants, Inc.  
1620 North U.S. Hwy. 1, Suite 6  
Jupiter, Florida 33469-3241

Dear Mr. Saporito:

I am writing to acknowledge receipt of your letter of November 14, 1994, to the Chairman of the Nuclear Regulatory Commission (NRC). Your letter requests that Linda E. Mitchell and Florida Energy Consultants, Inc. be granted an administrative public hearing, and leave to intervene in such a hearing, before the NRC Atomic Safety and Licensing Board (Board). Your letter also requests that the Nuclear Regulatory Commission issue a confirmatory order requiring the Licensee to immediately bring all three units at the Palo Verde Nuclear Generating Station to 0% power until such time as the Licensee can demonstrate corrective actions obviating any inference of a hostile work environment and issue a Demand for Information (DFI) to the Licensee seeking an explanation as to why the NRC can have confidence that the Licensee will assure that an environment exists free of harassment, intimidation and discrimination, both in general throughout its organization and particularly with respect to certain named individuals. In addition, with respect to these individuals, we interpret your letter to also request that the NRC require the Licensee to provide for a description of these individuals' current employment duties and responsibilities, an explanation as to why the NRC can have confidence that these individuals will comply with NRC requirements, information as to why the Commission should not take action to prohibit these individuals from involvement in NRC-licensed activities, information as to why the NRC should have reasonable assurance that these individuals will abide by NRC regulations that protect individuals who engage in protected activities, and any other information the Licensee believes to be relevant to the Commission's decision in this matter.

Your letter asserts as a basis for your requests that the Licensee has been the subject of numerous complaints filed under the Energy Reorganization Act of 1974 and adjudicated by the Department of Labor under the employee protection provisions found under 29 C.F.R. Part 24. In addition, your letter asserts that a hostile work environment is pervasive and encompasses all three units at Palo Verde, as well as being condoned and fostered by Licensee management to dissuade employees at Palo Verde from identifying safety concerns internally or directly to NRC representatives. Your letter also asserts that you are subject to physical harm and the loss of personal property should Palo Verde experience a nuclear accident as a direct or indirect result of the hostile work environment at this facility.

Your current requests are similar to the requests in a petition dated May 12, 1993, as supplemented on May 28, 1993, in which you requested that the NRC institute a proceeding pursuant to 10 C.F.R. Section 2.202 to modify, suspend, or revoke the Palo Verde Nuclear Generating Station operating licenses; initiate actions to immediately shut down the three nuclear reactors at Palo

Verde, take escalated enforcement action against the Licensee and/or Licensee management personnel, and take immediate actions to cause an exhaustive survey of Licensee employees at Palo Verde to ascertain the scope and breadth of any chilling effect that may exist at the nuclear station and to discover if Licensee management actions, if any, were effective in limiting any chilling effect at the nuclear station. In addition, the bases for your current requests are similar to the bases in your May 12, 1993, requests. You asserted as bases for your prior requests, in part, that the Licensee had violated 10 C.F.R. Section 50.7, "Employee Protection"; alleged the Licensee's reputation of leading the nation in whistleblower complaints; pointed to the Department of Labor discrimination cases involving Licensee employees, Linda Mitchell and Sarah Thomas, and the resulting issuance by the NRC of a Notice of Violation and Proposed Imposition of Civil Penalties on September 20, 1992; and asserted continuing discrimination by the Licensee against you in denying you employment at the Palo Verde Nuclear Generating Station. Since your May 12, 1993, and November 14, 1994, requests are similar, the staff is treating the current letter together with the petition of May 12, 1993, as supplemented, for purposes of preparing a Director's Decision.

Your Petition has been referred to the Office of Nuclear Reactor Regulation for action in accordance with 10 C.F.R. § 2.206. As provided by 10 C.F.R. § 2.206, the NRC will take appropriate action on your requests within a reasonable time. I have enclosed for your information a copy of the notice that is being filed with the Office of the Federal Register for publication.

Sincerely,

William T. Russell, Director  
Office of Nuclear Reactor Regulation

Enclosure: As stated

U.S. NUCLEAR REGULATORY COMMISSION

Docket No.

PALO VERDE NUCLEAR GENERATING STATION  
(License No. )

RECEIPT OF PETITION FOR DIRECTOR'S DECISION  
UNDER 10 C.F.R. § 2.206

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Notice is hereby given that by Petition dated November 14, 1994, Florida Energy Consultants, Inc. (FEC) and Linda E. Mitchell (Petitioners), in a Petition signed by Mr. Thomas J. Saporito, Jr., request that they be granted an administrative public hearing, and leave to intervene in such a hearing, before the NRC Atomic Safety and Licensing Board (Board). The Petitioners also request that the NRC issue a confirmatory order requiring the Licensee to immediately bring all three units at the Palo Verde Nuclear Generating Station to 0% power until such time as the Licensee can demonstrate corrective actions obviating any inference of a hostile work environment and issue a Demand for Information (DFI) to the Licensee seeking an explanation as to why the NRC can have confidence that the Licensee will assure that an environment exists free of harassment, intimidation and discrimination, both in general throughout its organization and particularly with respect to certain named individuals. In addition, with respect to these individuals, the NRC interprets the Petition to also request that the NRC require the Licensee to provide a description of these individuals' current employment duties and responsibilities, an explanation as to why the NRC can have confidence that these individuals will comply with NRC requirements, information as to why the Commission should not take action to prohibit these individuals from involvement in NRC-licensed activities, information as to why the NRC should have reasonable assurance that these individuals will abide by NRC regulations that protect individuals who engage in protected activities, and any



other information the Licensee believes to be relevant to the Commission's decision in this matter.

The Petitioners assert as a basis for their requests that the Licensee has been the subject of numerous complaints filed under the Energy Reorganization Act of 1974 and adjudicated by the Department of Labor under the employee protection provisions found in 29 C.F.R. Part 24. In addition, the Petitioners assert that a hostile work environment is pervasive and encompasses all three units at Palo Verde, as well as being condoned and fostered by Licensee management to dissuade employees at Palo Verde from identifying safety concerns internally or directly to NRC representatives. Petitioners assert that they are subject to physical harm and the loss of personal property should Palo Verde experience a nuclear accident as a direct or indirect result of the hostile work environment at this facility.

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the Licensee's reputation of leading the nation in whistleblower complaints; pointed to the Department of Labor discrimination cases involving Licensee employees, Linda Mitchell and Sarah Thomas, and the resulting issuance by the NRC of a Notice of Violation and Proposed Imposition of Civil Penalties on September 20, 1992; and asserted continuing discrimination by the Licensee against the Petitioner in denying him employment at the Palo Verde Nuclear Generating Station. Since the May 12, 1993, and November 14, 1994, requests are similar, the staff is treating the current Petition together with the petition of May 12, 1993, as supplemented, for purposes of preparing a Director's Decision. The Petition has been referred to the Office of Nuclear Reactor Regulation pursuant to 10 C.F.R. § 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition in a reasonable time.

Copies of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, D.C. 20555.

FOR THE NUCLEAR REGULATORY COMMISSION

William T. Russell, Director  
Office of Nuclear Reactor Regulation

Dated at Rockville, Maryland.

This \_\_\_\_\_ day of \_\_\_\_\_ 1994.