

UNITED STATES OF AMERICANUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
PUBLIC SERVICE COMPANY)	Docket Nos. STN 50-528,
OF NEW MEXICO)	STN 50-529, and STN 50-530
)	
(Palo Verde Nuclear Generating)	
Station Units 1, 2, and 3))	
)	

ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE
RESTRUCTURING AND APPROVING CONFORMING AMENDMENTS

I.

Public Service Company of New Mexico (PNM) holds minority ownership interests (both owned and leased) in Palo Verde Nuclear Generating Station (Palo Verde) Units 1, 2, and 3, and in connection therewith is a holder of Facility Operating Licenses Nos. NPF-41, NPF-51, and NPF-74 for Palo Verde. The facility is located in Maricopa County, Arizona. Other co-licensees for Palo Verde are Arizona Public Service Company (APS) (owner or lessee of a 29.1 percent share of each of the three units), Salt River Project Agricultural Improvement and Power District (owner of a 17.49 percent share), El Paso Electric Company (owner of a 15.8 percent share), Southern California Edison Company (owner of a 15.8 percent share), Southern California Public Power Authority (owner of a 5.91 percent share), and Los Angeles Department of Water and Power (owner of a 5.70 percent share). APS is the licensed operator of the Palo Verde units. The remaining licensees hold possession-only licenses.

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, PNM filed an application dated March 3, 2000, requesting approval of the indirect transfer of the Palo Verde licenses, to the extent held by PNM, to a new holding company, Manzano Corporation (Manzano). Supplemental information on this application was forwarded to the NRC by PNM's outside counsel, Shaw Pittman, in letters dated August 14, August 17, and September 7, 2000. Manzano, presently a subsidiary of PNM, was formed to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999. The proposed restructuring encompasses the formation of Manzano and Manzano becoming the holding company for PNM, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company to be named "Public Service Company of New Mexico" (with PNM and such affiliated company being under common control by Manzano), and a change in PNM's name to Manzano Energy Corporation (Manzano Energy). By application dated April 26, 2000, APS requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to reflect in the Palo Verde licenses the name change of PNM to Manzano Energy Corporation that will occur in connection with the restructuring. APS will retain its existing ownership interest in, and remain the licensed operator of Palo Verde after the restructuring of PNM, and is not otherwise involved in the restructuring. Similarly, none of the other co-licensees are involved in the restructuring of PNM. No physical changes to the facility or operational changes are being proposed in the applications filed by PNM and APS. Notice of the applications and an opportunity for hearing was published in the FEDERAL REGISTER on May 26, 2000 (65 FR 34370). No written comments or hearing requests were filed.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information submitted by PNM in its application, the supplements thereto, and other information before the Commission, the NRC staff has determined that the proposed restructuring will not affect the qualifications of PNM to hold the licenses referenced above to the same extent now held by PNM, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a Safety Evaluation dated September 29, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o) and 2234; and 10 CFR 50.80, IT IS

HEREBY ORDERED that the application regarding the proposed restructuring of PNM and indirect license transfers is approved, subject to the following conditions:

1. Manzano Energy shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Manzano Energy to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Manzano Energy's consolidated net utility plant, as recorded on Manzano Energy's books of account.
2. Manzano Energy shall continue to provide decommissioning funding assurance, to be held in its decommissioning trusts for Palo Verde Units 1, 2, and 3, from the date of the indirect license transfers, as represented in the respective March 3, 2000, application, as supplemented. In addition, Manzano Energy shall ensure that contractual arrangements with its transmission and distribution affiliate to obtain necessary decommissioning funds for Palo Verde through non-bypassable charges will be established and maintained until the decommissioning trusts are fully funded.
3. Manzano Energy shall enter into an agreement with its transmission and distribution affiliate that shall require the deposit of funds collected for decommissioning funding from wires charges into Manzano Energy's decommissioning trust accounts. A copy of the agreement shall be forwarded to the NRC prior to the completion of the proposed restructuring of PNM.
4. Manzano Energy shall take all necessary steps to ensure that its decommissioning trusts are maintained in accordance with the March 3, 2000, application, as supplemented, and the requirements of this Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.

5. Manzano Energy shall inform the Director of the Office of Nuclear Reactor Regulation within 30 days of approval by the New Mexico Public Regulation Commission of the stranded cost mechanism of recovering decommissioning costs. Within such 30-day period, Manzano Energy shall state the total decommissioning costs subject to stranded cost recovery and the schedule for funding decommissioning costs.
6. Manzano Energy's decommissioning trust agreements for each of the three units shall provide that:
 - a. The use of assets in both the qualified and non-qualified funds shall be limited to expenses related to decommissioning of the unit as defined by the NRC in its regulations and issuances, and as provided in the unit's license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.
 - b. Investments in the securities or other obligations of Manzano Energy or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.
 - c. No disbursements or payments from the trust, other than for ordinary administrative expenses, shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of the payment. In addition, no such disbursements or payments from the trust shall be made if the trustee receives prior written notice of objection from the Director of the Office of Nuclear Reactor Regulation.

- d. The trust agreement shall not be modified in any material respect without 30 days prior written notification to the Director of the Office of Nuclear Reactor Regulation.
- e. The trustee, investment advisor, or anyone else directing the investments made in the trust shall adhere to a "prudent investor" standard, as specified in 18 CFR 35.32(3) of the Federal Energy Regulatory Commission's regulations.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), license amendments as indicated in Enclosure 2 to the cover letter forwarding this Order to reflect the subject restructuring action and conditions of this Order are approved. The amendments shall be issued and made effective at the time the proposed restructuring action is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated March 3, 2000, supplemental application and submittals dated April 26, August 14, August 17, and September 7, 2000, and the Safety Evaluation dated September 29, 2000, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 29th day of September 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

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Dated at Rockville, Maryland, this 29th day of September 2000.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

ACCESSION NUMBER: ML003756578

*No major changes to SE.

**See previous concurrence

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