

September 29, 2000

Mr. Benjamin F. Montoya  
Chairman, President & Chief Executive Officer  
Public Service Company of New Mexico  
Alvarado Square  
Albuquerque, New Mexico 87158

SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3 -  
ORDER APPROVING APPLICATION REGARDING PROPOSED CORPORATE  
RESTRUCTURING AND APPROVING CONFORMING AMENDMENTS  
(TAC NOS. MA8406, MA8407, MA8408, MA8774, MA8775, AND MA8776)

Dear Mr. Montoya:

The enclosed Order responds to the application dated March 3, 2000, from Public Service Company of New Mexico (PNM) requesting approval (pursuant to Title 10, *Code of Federal Regulations*, Section 50.80) of the proposed indirect transfer of PNM's licenses to hold minority ownership interests (both owned and leased) in the Palo Verde Nuclear Generating Station (Palo Verde) Units 1, 2, and 3 to a newly created holding company, Manzano Corporation (Manzano), in connection with a proposed restructuring of PNM. Supplemental information on this application was forwarded to the Nuclear Regulatory Commission (NRC) by PNM's outside counsel, Shaw Pittman, in letters dated August 14, August 17, and September 7, 2000. The proposed restructuring encompasses the formation of Manzano, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company (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). The Safety Evaluation in support of the Order is also enclosed. Please note that because of sensitive financial disclosures provided by PNM, our Safety Evaluation, which references such disclosures, is being provided in a proprietary and non-proprietary version. This Order has been forwarded to the Office of the Federal Register for publication.

By letter dated April 26, 2000, Arizona Public Service Company requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to change the name on the Palo Verde licenses from PNM to Manzano Energy Corporation. The Order also approves the conforming license amendments, which include license conditions that conform the license to reflect conditions of approval of the transfer. The amendments will be issued and made effective at the time the proposed restructuring of PNM is completed.

### **PROPRIETARY INFORMATION**

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**PROPRIETARY INFORMATION**

B. F. Montoya

- 2 -

September 29, 2000

If you have any questions regarding this matter, please contact me at (301) 415-3062.

Sincerely,

*/RA/*

Mel Fields, Project Manager, Section 2  
Project Directorate IV & Decommissioning  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-528, STN 50-529,  
and STN 50-530

Enclosures: 1. Order  
2. Conforming Amendments  
3. Safety Evaluation (non-proprietary)  
4. Safety Evaluation (proprietary)

cc w/encls 1 - 3: See next page

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September 29, 2000

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Mel Fields, Project Manager, Section 2  
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\*No major changes to SE.

\*\*See previous concurrence

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**PROPRIETARY INFORMATION**

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Palo Verde Generating Station, Units 1, 2, and 3

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August 18, 1999

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.

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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- f. 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

FRN: ML003756578

ACCESSION NUMBER: ML003756590

\*No major changes to SE.

\*\*See previous concurrence

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ARIZONA PUBLIC SERVICE COMPANY, ET AL.

DOCKET NO. STN 50-528

PALO VERDE NUCLEAR GENERATING STATION, UNIT 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.  
License No. NPF-41

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by the Arizona Public Service Company (APS or the licensee) on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority dated April 26, 2000, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations set forth in 10 CFR Chapter I;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
  - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. NPF-41 is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance:

ARIZONA PUBLIC SERVICE COMPANY, ET AL.

DOCKET NO. STN 50-529

PALO VERDE NUCLEAR GENERATING STATION, UNIT 2

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.  
License No. NPF-51

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by the Arizona Public Service Company (APS or the licensee) on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority dated April 26, 2000, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations set forth in 10 CFR Chapter I;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
  - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. NPF-51 is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance:

ARIZONA PUBLIC SERVICE COMPANY, ET AL.

DOCKET NO. STN 50-530

PALO VERDE NUCLEAR GENERATING STATION, UNIT 3

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.  
License No. NPF-74

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for amendment by the Arizona Public Service Company (APS or the licensee) on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority dated April 26, 2000, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations set forth in 10 CFR Chapter I;
  - B. The facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission;
  - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
  - D. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public; and
  - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
2. Accordingly, Facility Operating License No. NPF-74 is amended as indicated in the attachment to this license amendment.
3. This license amendment is effective as of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

Attachment: Changes to the Operating License

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENTS NOS. \_\_\_\_\_, AND

FACILITY OPERATING LICENSES NOS. NPF-41, NPF-51, AND NPF-74

DOCKET NOS. STN 50-528, STN 50-529, AND STN 50-530

Replace the following pages of Operating Licenses Nos. NPF-41, NPF-51, and NPF-74 with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the substantive areas of change.

OPERATING LICENSE NO. NPF-41 (Unit 1)

REMOVE

INSERT

ALL (1 thru 7)

1 thru 9\*

\*Text has been shifted on pages 8 and 9; these pages contain no substantive change.

OPERATING LICENSE NO. NPF-51 (Unit 2)

REMOVE

INSERT

ALL (1 thru 8)

1 thru 9\*

\*Page 5 included for continuity; no change on this page. Text has been shifted on page 9; this page contains no substantive change.

OPERATING LICENSE NO. NPF-74 (Unit 3)

REMOVE

INSERT

ALL (1 thru 5)

1 thru 7\*

\*Text has been shifted on page 7; this page contains no substantive change.

ARIZONA PUBLIC SERVICE COMPANY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

EL PASO ELECTRIC COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY

MANZANO ENERGY CORPORATION

LOS ANGELES DEPARTMENT OF WATER AND POWER

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

DOCKET NO. STN 50-528

PALO VERDE NUCLEAR GENERATING STATION, UNIT 1

FACILITY OPERATING LICENSE

License No. NPF-41

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
  - A. The application for license filed by Arizona Public Service Company, on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico (now known as Manzano Energy Corporation), Los Angeles Department of Water and Power, and Southern California Public Power Authority (licensees), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in 10 CFR Chapter I and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Palo Verde Nuclear Generating Station, Unit 1 (facility) has been substantially completed in conformity with Construction Permit No. CPPR-141 and the application, as amended, the provisions of the Act and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);

Amendment No.

- D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D below);
  - E. Arizona Public Service Company<sup>\*</sup> is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
  - F. The licensees have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements", of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs, and after considering available alternatives, the issuance of this Facility Operating License No. NPF-41, subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
  - I. The receipt, possession, and use of source, byproduct and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70.
2. Pursuant to approval by the Nuclear Regulatory Commission at a meeting held on May 30, 1985, the license for fuel loading and low power testing, License No. NPF-34, issued on December 31, 1984, is superseded by Facility Operating License No. NPF-41 hereby issued to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico (now known as Manzano Energy Corporation), Los Angeles Department of Water and Power, and Southern California Public Power Authority (licensees) to read as follows:

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<sup>\*</sup>Arizona Public Service Company is authorized to act as agent for Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Manzano Energy Corporation, Los Angeles Department of Water and Power, and Southern California Public Power Authority and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

- A. This license applies to the Palo Verde Nuclear Generating Station, Unit 1, a pressurized water reactor and associated equipment (facility) owned by the licensees. The facility is located on the licensees' site in Maricopa County, Arizona and is described in the licensees' Final Safety Analysis Report, as supplemented and amended; in the related CESSAR Final Safety Analysis Report, as supplemented and amended through Amendment No. 8 and referenced in the licensees' Updated Final Safety Analysis Report; and in their Environmental Report, as supplemented and amended through Supplement No. 4.
- B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
- (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Manzano Energy Corporation, Los Angeles Department of Water and Power, and Southern California Public Power Authority to possess, and Arizona Public Service Company (APS) to use and operate the facility at the designated location in Maricopa County, Arizona, in accordance with the procedures and limitations set forth in this license;
  - (2) Pursuant to the Act and 10 CFR Part 70, APS to receive, possess and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the licensees' Final Safety Analysis Report, as supplemented and amended and the CESSAR Final Safety Analysis Report as supplemented and amended through Amendment No. 8 and referenced in the licensees' Updated Final Safety Analysis Report;
  - (3) Pursuant to the Act and 10 CFR Parts 30, 40 and 70, APS to receive, possess and use at any time any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
  - (4) Pursuant to the Act and 10 CFR Part 30, 40 and 70, APS to receive, possess and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
  - (5) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, APS to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

(6)(a) Pursuant to an Order of the Nuclear Regulatory Commission dated December 12, 1985, the Public Service Company of New Mexico (PNM), now known as Manzano Energy Corporation, was authorized to transfer a portion of its ownership share in Palo Verde, Unit 1 to certain institutional investors on December 31, 1985, and at the same time has leased back from such purchasers the same interest in the Palo Verde, Unit 1 facility. The term of the lease is to January 15, 2015, subject to a right of renewal. Additional sale and leaseback transactions (for a term expiring on January 15, 2015) of all or a portion of PNM's remaining ownership share in Palo Verde Unit 1 are hereby authorized until June 30, 1987. Any such sale and leaseback transaction is subject to the representations and conditions set forth in the aforementioned applications of October 19, 1985, February 5, 1986, October 16, 1986 and November 26, 1986, and the Commission's Order of December 12, 1985, consenting to such transactions. Specifically, the lessor and anyone else who may acquire an interest under this transaction are prohibited from exercising directly or indirectly any control over the licensees of the Palo Verde Nuclear Generating Station, Unit 1. For purposes of this condition, the limitations in 10 CFR 50.81, "Creditor Regulations," as now in effect and as they may be subsequently amended, are fully applicable to the lessor and any successor in interest to that lessor as long as the license for Palo Verde, Unit 1 remains in effect; this financial transaction shall have no effect on the license for the Palo Verde nuclear facility throughout the term of the license.

(b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the terms or conditions of any lease agreements executed as part of this transaction; (ii) the ANPP Participation Agreement, (iii) the existing property insurance coverage for the Palo Verde nuclear facility, Unit 1 as specified in license counsel's letter of November 26, 1985, and (iv) any action by the lessor or others that may have an adverse effect on the safe operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Arizona Public Service Company (APS) is authorized to operate the facility at reactor core power levels not in excess of 3876 megawatts thermal (100% power) in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A, as revised through Amendment No. \_\_\_\_\_, and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. APS shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan, except where otherwise stated in specific license conditions.

(3) Antitrust Conditions

This license is subject to the antitrust conditions delineated in Appendix C to this license.

(4) Operating Staff Experience Requirements

Deleted

(5) Post-Fuel-Loading Initial Test Program (Section 14, SER and SSER 2)\*

Deleted

(6) Environmental Qualification

Deleted

(7) Fire Protection Program

APS shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety analysis Report for the facility, as supplemented and amended, and as approved in the SER through Supplement 11, subject to the following provision:

APS may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

(8) Emergency Preparedness

Deleted

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\*The parenthetical notation following the title of many license conditions denotes the section of the Safety Evaluation Report and/or its supplements wherein the license condition is discussed.

- (9) Results of Piping Vibration Test Program (Section 3.9.2, SER)  
Deleted
- (10) Response to Salem ATWS Event (Section 7.2, SSER 7, and Section 1.11, SSER 8)  
Deleted
- (11) Supplement No. 1 to NUREG-0737 Requirements  
Deleted
- (12) Radiochemistry Laboratory (Section 7.3.1.5(3), Emergency Plan)  
Deleted
- (13) RCP Shaft Vibration Monitoring Program (Section 5.4.1, SSER 12)  
Deleted
- (14) Additional Conditions  
Deleted
- (15) Manzano Energy Corporation License Transfer Conditions
  - (a) 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.
  - (b) 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.
  - (c) Manzano Energy shall have 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.

- (d) 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 the September 29, 2000, Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.
- (e) 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.
- (f) Manzano Energy's decommissioning trust agreement for Palo Verde Unit 1 shall provide that:
  - (i) 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 this license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.
  - (ii) 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.
  - (iii) 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.
  - (iv) 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.
  - (v) 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.

- D. The facility requires an exemption from Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 (Section 6.2.6, SSER 7). This exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. This exemption is, therefore, hereby granted pursuant to 10 CFR 50.12. With the granting of this exemption, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.
  
- E. The licensees shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The Safeguard Contingency Plan is incorporated into the Physical Security Plan. The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Palo Verde Nuclear Station Physical Security Plan," with revisions submitted through March 18, 1997; and "Palo Verde Nuclear Generating Station Guard Training and Qualification Plan," with revisions submitted through December 26, 1987. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.
  
- F. Except as otherwise provided in the Technical Specifications or the Environmental Protection Plan, APS shall report any violations of the requirements contained in Section 2.C of this license in the following manner: Initial notification shall be made within 24 hours in accordance with the provisions of 10 CFR 50.72 with written follow-up within 30 days in accordance with the procedures described in 10 CFR 50.73(b), (c) and (e);

- G. The licenses shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims; and
- H. This license is effective as of the date of issuance and shall expire at midnight on December 31, 2024.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By

Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

Enclosures:

1. Attachment 1 - [Requirements for Initial Mode 1 Entry] - Deleted
2. Attachment 2 - [Operating Staff Experience Requirements] -Deleted
3. Attachment 3 - [Emergency Response Capabilities] - Deleted
4. Appendix A -  
Technical Specifications
5. Appendix B -  
Environmental Protection Plan
6. Appendix C -  
Antitrust Conditions
7. Appendix D - [Additional Conditions] - Deleted

Date of Issuance: June 1, 1985

ARIZONA PUBLIC SERVICE COMPANY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

EL PASO ELECTRIC COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY

MANZANO ENERGY CORPORATION

LOS ANGELES DEPARTMENT OF WATER AND POWER

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

DOCKET NO. STN 50-529

PALO VERDE NUCLEAR GENERATING STATION, UNIT 2

FACILITY OPERATING LICENSE

License No. NPF-51

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
  - A. The application for license filed by Arizona Public Service Company, on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico (now known as Manzano Energy Corporation), Los Angeles Department of Water and Power, and Southern California Public Power Authority (licensees), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in 10 CFR Chapter I and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Palo Verde Nuclear Generating Station, Unit 2 (facility) has been substantially completed in conformity with Construction Permit No. CPPR-142 and the application, as amended, the provisions of the Act and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);

Amendment No.

- D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D below);
  - E. Arizona Public Service Company<sup>\*</sup> is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
  - F. The licensees have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements", of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs, and after considering available alternatives, the issuance of this Facility Operating License No. NPF-51, subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
  - I. The receipt, possession, and use of source, byproduct and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40 and 70.
2. Pursuant to approval by the Nuclear Regulatory Commission at a meeting held on April 23, 1986, the license for fuel loading and low power testing, License No. NPF-46, issued on December 9, 1985, is superseded by Facility Operating License No. NPF-51 hereby issued to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico (now known as Manzano Energy Corporation), Los Angeles Department of Water and Power, and Southern California Public Power Authority (licensees) to read as follows:

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<sup>\*</sup>Arizona Public Service Company is authorized to act as agent for Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Manzano Energy Corporation, Los Angeles Department of Water and Power, and Southern California Public Power Authority and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

- A. This license applies to the Palo Verde Nuclear Generating Station, Unit 2, a pressurized water reactor and associated equipment (facility) owned by the licensees. The facility is located on the licensees' site in Maricopa County, Arizona and is described in the licensees' Final Safety Analysis Report, as supplemented and amended; in the related CESSAR Final Safety Analysis Report, as supplemented and amended through Amendment No. 8 and referenced in the licensees' updated Final Safety Analysis Report; and in their Environmental Report, as supplemented and amended.
- B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
- (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Manzano Energy Corporation, Los Angeles Department of Water and Power, and Southern California Public Power Authority to possess, and Arizona Public Service Company (APS) to use and operate the facility at the designated location in Maricopa County, Arizona, in accordance with the procedures and limitations set forth in this license;
  - (2) Pursuant to the Act and 10 CFR Part 70, APS to receive, possess and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the licensees' Final Safety Analysis Report, as supplemented and amended, and the CESSAR Final Safety Analysis Report as supplemented and amended through Amendment No. 8 and referenced in the licensees' updated Final Safety Analysis Report;
  - (3) Pursuant to the Act and 10 CFR Parts 30, 40 and 70, APS to receive, possess and use at any time any byproduct, source and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
  - (4) Pursuant to the Act and 10 CFR Part 30, 40 and 70, APS to receive, possess and use in amounts as required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
  - (5) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, APS to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

- (6)(a) Public Service Company of New Mexico (PNM), now known as Manzano Energy Corporation, is authorized to transfer all or a portion of its 10.2% ownership share in Palo Verde, Unit 2 and a proportionate share of a third of PNM's interest in the Palo Verde common facilities to certain equity investors identified in its submissions of August 6 and November 26, 1986, and at the same time to lease back from such purchasers such interest sold in the Palo Verde, Unit 2 facility. The term of the lease is for approximately 29-½ years subject to a right of renewal. Additional sale and leaseback transactions of all or a portion of PNM's remaining ownership share of Palo Verde, Unit 2 are hereby authorized until June 30, 1987. Any such sale and leaseback transaction is subject to the representations and conditions set forth in the aforementioned application of February 14, 1986, and the subsequent submittals dated April 22, June 10, July 29, July 30, August 6, and August 7, October 16 and November 26, 1986, as well as the letters of the Director of the Office of Nuclear Reactor Regulation dated August 12 and December 11, 1986, consenting to such transactions. Specifically, the lessor and anyone else who may acquire an interest under this transaction are prohibited from exercising directly or indirectly any control over the licensees of the Palo Verde Nuclear Generating Station, Unit 2. For purposes of this condition the limitations in 10 CFR 50.81, "Creditor Regulations," as now in effect and as they may be subsequently amended, are fully applicable to the lessor and any successor in interest to that lessor as long as the license for Palo Verde, Unit 2 remains in effect; this financial transaction shall have no effect on the license for the Palo Verde nuclear facility throughout the term of the license.
- (b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the terms or conditions of any lease agreements executed as part of this transaction; (ii) the ANPP Participation Agreement, (iii) the existing property insurance coverage for the Palo Verde nuclear facility, Unit 2 as specified in licensee counsel's letter of November 26, 1985, and (iv) and action by the lessor or others that may have an adverse effect on the safe operation of the facility.
- (7)(a) Deleted
- (b) Deleted

(8)(a) Arizona Public Service Company is authorized to transfer all or a portion of its 29.1% ownership share in Palo Verde, Unit 2 to certain equity investors identified in its submissions of August 6, August 8 and December 5, 1986, and at the same time to lease back from such purchasers such interest sold in the Palo Verde, Unit 2 facility. The term of the lease is for approximately 29-½ years subject to a right of renewal. Additional sale and leaseback transactions of all or a portion of APS's remaining ownership share in Palo Verde, Unit 2 are hereby authorized until June 30, 1987. Any such sale and lease back transaction is subject to the representations and conditions set forth in the aforementioned application of May 2, 1986, and the subsequent submittals dated July 30, August 2, August 6, August 7, August 8, August 13, October 16 and December 5, 1986, as well as the letters of the Director of the Office of Nuclear Reactor Regulation dated August 15, and December 11, 1986, consenting to such transactions. Specifically, the lessor and anyone else who may acquire an interest under this transaction are prohibited from exercising directly or indirectly any control over the licensees of the Palo Verde Nuclear Generating Station, Unit 2. For purposes of this condition the limitations in 10 CFR 50.81, "Creditor Regulations," as now in effect and as they may be subsequently amended, are fully applicable to the lessor and any successor in interest to the lessor as long as the license for Palo Verde, Unit 2 remains in effect; this financial transaction shall have no effect on the license for the Palo Verde nuclear facility throughout the term of the license.

(b) Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the terms or conditions of any lease agreements executed as part of this transaction; (ii) the ANPP Participation Agreement, (iii) the existing property insurance coverage for the Palo Verde nuclear facility, Unit 2 as specified in licensee counsel's letter of November 26, 1985, and (iv) any action by the lessor or others that may have an adverse effect on the safe operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Arizona Public Service Company (APS) is authorized to operate the facility at reactor core power levels not in excess of 3876 megawatts thermal (100% power) in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A, as revised through Amendment No. , and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. APS shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan, except where otherwise stated in specific license conditions.

(3) Antitrust Conditions

This license is subject to the antitrust conditions delineated in Appendix C to this license.

(4) Operating Staff Experience Requirements (Section 13.1.2, SSER 9)\*

Deleted

(5) Initial Test Program (Section 14, SER and SSER 2)

Deleted

(6) Fire Protection Program

APS shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report for the facility, as supplemented and amended, and as approved in the SER through Supplement 11, subject to the following provision:

APS may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

(7) Inservice Inspection Program (Sections 5.2.4 and 6.6, SER and SSER 9)

Deleted

(8) Supplement No. 1 to NUREG-0737 Requirements

Deleted

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\*The parenthetical notation following the title of many license conditions denotes the section of the Safety Evaluation Report and/or its supplements wherein the license condition is discussed.

(9) Additional Conditions

Deleted

(10) Manzano Energy Corporation License Transfer Conditions

- (a) 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.
- (b) 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.
- (c) Manzano Energy shall have 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.
- (d) 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 the September 29, 2000, Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.
- (e) 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.
- (f) Manzano Energy's decommissioning trust agreement for Palo Verde Unit 2 shall provide that:

- (i) 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 this license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.
  - (ii) 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.
  - (iii) 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.
  - (iv) 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.
  - (v) 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.
- D. (1) APS has previously been granted an exemption from Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50. This exemption was previously granted in Facility Operating License NPF-46 pursuant to 10 CFR 50.12.
- (2) Deleted

With the granting of these exemptions, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

- E. The licensees shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The Safeguard Contingency Plan is

incorporated into the Physical Security Plan. The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Palo Verde Nuclear Station Physical Security Plan," with revisions submitted through March 18, 1997; and "Palo Verde Nuclear Generating Station Guard Training and Qualification Plan," with revisions submitted through December 26, 1987. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.

- F. Except as otherwise provided in the Technical Specifications or the Environmental Protection Plan, APS shall report any violations of the requirements contained in Section 2.C of this license in the following manner: Initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System with written follow-up within 30 days in accordance with the procedures described in 10 CFR 50.73(b), (c) and (e);
- G. The licensees shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims; and
- H. This license is effective as of the date of issuance and shall expire at midnight on December 9, 2025.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By

Darrell G. Eisenhut, Acting Director  
Office of Nuclear Reactor Regulation

Attachments:

1. [Requirements for Initial Mode 1 Entry] - Deleted
2. [Schedule for NUREG-0737, Sup. 1, Requirement (SPDS)] - Deleted
3. Appendix A -  
    Technical Specifications
4. Appendix B  
    Environmental Protection Plan
5. Appendix C  
    Antitrust Conditions
- 6 Appendix D - [Additional Conditions] - Deleted

Date of Issuance: April 24, 1986

ARIZONA PUBLIC SERVICE COMPANY

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

EL PASO ELECTRIC COMPANY

SOUTHERN CALIFORNIA EDISON COMPANY

MANZANO ENERGY CORPORATION

LOS ANGELES DEPARTMENT OF WATER AND POWER

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

DOCKET NO. STN 50-530

PALO VERDE NUCLEAR GENERATING STATION, UNIT 3

FACILITY OPERATING LICENSE

License No. NPF-74

1. The Nuclear Regulatory Commission (the Commission or the NRC) has found that:
  - A. The application for license filed by Arizona Public Service Company, on behalf of itself and the Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico (now known as Manzano Energy Corporation), Los Angeles Department of Water and Power, and Southern California Public Power Authority (licensees), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in 10 CFR Chapter I and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Palo Verde Nuclear Generating Station, Unit 3 (facility) has been substantially completed in conformity with Construction Permit No. CPPR-143 and the application, as amended, the provisions of the Act and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
  - D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I (except as exempted from compliance in Section 2.D below);

Amendment No.

- E. Arizona Public Service Company<sup>\*</sup> is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
  - F. The licensees have satisfied the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs, and after considering available alternatives, the issuance of this Facility Operating License No. NPF-74, subject to the conditions for protection of the environment set forth in the Environmental Protection Plan attached as Appendix B, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
  - I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70.
2. Pursuant to approval by the Nuclear Regulatory Commission at a meeting held on November 25, 1987, the license for fuel loading and low power testing, License No. NPF-65, issued on March 25, 1987, is superseded by Facility Operating License No. NPF-74 hereby issued to the Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico (now known as Manzano Energy Corporation), Los Angeles Department of Water and Power, and Southern California Public Power Authority (licensees) to read as follows:
- A. This license applies to the Palo Verde Nuclear Generating Station, Unit 3, a pressurized water reactor and associated equipment (facility) owned by the licensees. The facility is located on the licensees' site in Maricopa County, Arizona and is described in the licensees' Final Safety Analysis Report, as supplemented and amended; in the related CESSAR Final Safety Analysis Report, as supplemented and amended through Amendment No. 8 and referenced in the licensees' Updated Final Safety Analysis Report; and in their Environmental Report, as supplemented and amended.

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<sup>\*</sup>Arizona Public Service Company is authorized to act as agent for Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Manzano Energy Corporation, Los Angeles Department of Water and Power, and Southern California Public Power Authority, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

- B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
- (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Manzano Energy Corporation, Los Angeles Department of Water and Power, and Southern California Public Power Authority to possess, and Arizona Public Service Company (APS) to use and operate the facility at the designated location in Maricopa County, Arizona, in accordance with the procedures and limitations set forth in this license;
  - (2) Pursuant to the Act and 10 CFR Part 70, APS to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the licensees' Final Safety Analysis Report, as supplemented and amended, and the CESSAR Final Safety Analysis Report as supplemented and amended through Amendment No. 8 and referenced in the licensees' Updated Final Safety Analysis Report;
  - (3) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, APS to receive, possess, and use at any time any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, as sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
  - (4) Pursuant to the Act and 10 CFR Part 30, 40, and 70, APS to receive, possess, and use in amounts required any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
  - (5) Pursuant to the Act and 10 CFR Parts 30, 40, and 70, APS to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.
- C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

Arizona Public Service Company (APS) is authorized to operate the facility at reactor core power levels not in excess of 3876 megawatts thermal (100% power) in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A, as revised through Amendment No. , and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. APS shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan, except where otherwise stated in specific license conditions.

(3) Antitrust Conditions

This license is subject to the antitrust conditions delineated in Appendix C to this license.

(4) Initial Test Program (Section 14, SER and SSER 2)

Deleted

(5) Additional Conditions

Deleted

(6) Manzano Energy Corporation License Transfer Conditions

(a) 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.

(b) 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.

- (c) Manzano Energy shall have 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.
- (d) 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 the September 29, 2000, Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.
- (e) 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.
- (f) Manzano Energy's decommissioning trust agreement for Palo Verde Unit 3 shall provide that:
  - (i) 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 this license and any amendments thereto. However, upon completion of decommissioning, as defined above, the assets may be used for any purpose authorized by law.
  - (ii) 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.
  - (iii) 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.
  - (iv) 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.

- (v) 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.
- D. APS has previously been granted an exemption from Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50. This exemption was previously granted in Facility Operating License NPF-65 pursuant to 10 CFR 50.12.

With the granting of this exemption, the facility will operate, to the extent authorized herein, in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

- E. The licensees shall fully implement and maintain in effect all provisions of the Commission-approved physical security, guard training and qualification, and safeguards contingency plans including amendments made pursuant to provisions of the Miscellaneous Amendments and Search Requirements revisions to 10 CFR 73.55 (51 FR 27817 and 27822) and to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The Safeguard Contingency Plan is incorporated into the Physical Security Plan. The plans, which contain Safeguards Information protected under 10 CFR 73.21, are entitled: "Palo Verde Nuclear Station Physical Security Plan," with revisions submitted through March 18, 1997; and "Palo Verde Nuclear Generating Station Guard Training and Qualification Plan," with revisions submitted through December 26, 1987. Changes made in accordance with 10 CFR 73.55 shall be implemented in accordance with the schedule set forth therein.
- F. APS shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety analysis Report for the facility, as supplemented and amended, and as approved in the SER through Supplement 11, subject to the following provision:

APS may make changes to the approved fire protection program without approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

- G. Except as otherwise provided in the Technical Specifications or the Environmental Protection Plan, APS shall report any violations of the requirements contained in Section 2.C of this license in the following manner: Initial notification shall be made within 24 hours to the NRC Operations Center via the Emergency Notification System, with written follow-up within 30 days in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e);

- H. The licensees shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims; and
- I. This license is effective as of the date of issuance and shall expire at midnight on March 25, 2027.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Attachments:

1. [Requirements for Initial Mode 1 Entry] - Deleted
2. Appendix A -  
    Technical Specifications
3. Appendix B -  
    Environmental Protection Plan
4. Appendix C -  
    Antitrust Conditions
5. Appendix D - [Additional Conditions] - Deleted

Date of Issuance: November 25, 1987

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION  
PROPOSED RESTRUCTURING OF  
PUBLIC SERVICE COMPANY OF NEW MEXICO TO FORM HOLDING COMPANY  
(MANZANO CORPORATION), AND CONFORMING AMENDMENTS  
PALO VERDE NUCLEAR GENERATING STATION UNITS 1, 2, & 3  
DOCKET NOS. STN 50-528, STN 50-529, AND STN 50-530

1.0 INTRODUCTION

By application dated March 3, 2000, Public Service Company of New Mexico (PNM) requested that the Nuclear Regulatory Commission (NRC) approve, pursuant to 10 CFR 50.80, the indirect transfer of PNM's licenses to hold minority ownership interests (both owned and leased) in the Palo Verde Nuclear Generating Station (Palo Verde) Units 1, 2, and 3 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 eventually become the holding company for PNM, 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 its establishment as the holding company for PNM, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company (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 letter dated April 26, 2000, Arizona Public Service Company (APS) requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to change the Palo Verde licenses to reflect PNM's proposed name change to Manzano Energy Corporation. APS requested an implementation schedule for these amendments that will coincide with the implementation schedule of the transfer request.

Facility Operating Licenses Nos. NPF-41, NPF-51, and NPF-74 for Palo Verde are held by the following co-licensees: 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), PNM (owner or lessee of a 10.2 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.

PNM is currently an integrated public utility subject to the jurisdiction of the New Mexico Public Regulation Commission (PRC) with respect to retail electric and gas rates. The Federal Energy Regulatory Commission (FERC) has jurisdiction over wholesale electric rates.

New Mexico's Restructuring Act contains, as a significant component of the transition to customer choice, the separation of those aspects of a utility's business that will remain subject to PRC regulation, including electric power transmission and distribution, from its other business operations, such as power generation, which will not be subject to PRC regulation. According to the license transfer application, the restructuring proposed by PNM is the first step in the company's accomplishment of the required transition. The transition plan is to include proposed tariffs for transmission and distribution services, and is to include a non-bypassable wires charge to enable collection of "stranded costs."

The supplemental submittals not specifically referenced in the *Federal Register* notice of the proposed indirect transfers and conforming amendment did not expand the scope of the applications as noticed in the *Federal Register*.

## 2.0 FINANCIAL QUALIFICATIONS ANALYSIS

In the application, PNM asserts that, as Manzano Energy, it will remain an electric utility as defined in 10 CFR 50.2, following the proposed restructuring. The regulation at 10 CFR 50.2 states that an electric utility is "any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority." Electric utilities are presumed financially qualified to hold a Part 50 license. The application states that Manzano Energy will sell "all, or a substantial portion of, the electricity it generates and provides to [the affiliated transmission and distribution subsidiary of Manzano] through cost-of-service type rates filed with and subject to the approval of the FERC." However, figures supplied in Exhibit 4 of the application indicate that power sales at market-based rates will account for a large portion of Manzano Energy's income. For example, for the period August - December 2000, the ratio of revenue from regulated power sales and regulated sources to total revenue is [ ], while the ratio of revenue from market-based tariff sales to total revenue is [ ]. Projected figures for January - December 2001 show [ ] of income coming from regulated power sales and regulatory sources and [ ] of income coming from market-based tariff sales. The Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance") states: "[T]o the extent that power reactor licensees have received rate regulator approval to use market-based rates for a significant portion of their nuclear-related revenues (i.e., greater than 20 percent), the NRC will not consider them to be subject to traditional cost-of-service rate regulation for that portion of their rates."

Although a significant portion of income will be from regulated power sales over the next 2 years, the NRC staff does not find that Manzano Energy will qualify as an "electric utility" under 10 CFR 50.2. However, as discussed below, the NRC staff finds that Manzano Energy will meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f), and thus the proposed restructuring will not affect Manzano Energy's financial qualifications.

Under 10 CFR 50.33(f), a non-electric utility, in order to demonstrate its financial qualifications, must provide information which shows the following:

As a non-electric utility applicant for multiple operating licenses, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses. Also, it must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source of funds to cover these costs.

Also, 10 CFR 50.33(k)(1) requires that a license applicant must provide information as described in 10 CFR 50.75 indicating how reasonable assurance will be provided that funds will be available to decommission its facility. Manzano Energy's proposals for decommissioning funding assurance following the restructuring are discussed in Section 3.0 of this evaluation.

The March 3, 2000, application states the following concerning financial qualifications:

Subsequent to the restructuring, the deregulated businesses to be retained by Manzano Energy will comprise approximately 52 percent of PNM's pre-restructuring total assets, accounting for approximately 60 percent (\$699 million in 1999) of PNM's pre-restructuring operating revenues and 47 percent (\$39 million in 1999) of its pre-restructuring net income. The approximate net book value of the assets comprising the deregulated businesses to be owned by Manzano Energy will be over \$1.5 billion. See Manzano Energy's opening proforma balance sheet (included as a confidential document in Exhibit 5). It is expected that upon the restructuring, Manzano Energy will have 53 percent debt and 47 percent equity. At the end of this year, Manzano Energy is anticipated to have 49 percent debt and 51 percent equity, and these proportions are expected to change to 43 percent debt and 57 percent equity by 2004. Exhibits 6 and 7 (also included as confidential documents) are the estimated proforma income and cash flow statements of Manzano Energy for the five-year period following the restructuring.

Table 1 shows a pro forma 5-year projected income statement of Manzano Energy for the 5-year period following the restructuring.

In accordance with the NRC Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1), the Manzano Energy Proforma Projected Income Statement provides the estimated total annual operating costs for the facilities to be owned by Manzano Energy. The source of funds to cover the operating expenses will be the operating revenues. The Projected Income Statement shows that the anticipated revenues from sales of capacity and energy by Manzano Energy provides reasonable assurance of adequate funds to meet its ongoing operating expenses. The projected revenues from the sale of electricity from the nuclear units in particular are expected to provide sufficient income to cover Manzano Energy's share of the operating costs of the Palo Verde units.

Table 1

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<b>MANZANO ENERGY</b>					
<b>PROFORMA FIVE-YEAR PROJECTED INCOME STATEMENT (\$1000)</b>					
<b>Revenues:</b>					
Revenues from Bundled Svc	[				]
Stranded Cost Collection	[				]
Nuclear Decomm. Recovery	[				]
FERC Tariff Customers	[				]
Other	[				]
<b>Total:</b>	[				]
<b>Variable Costs:</b>					
General	[				]
<b>Total:</b>	[				]
<b>Gross Margin:</b>	[				]
<b>Non-Fuel O&amp;M Expenses:</b>					
Direct	[				]
Production Nuclear	[				]
Palo Verde Leases	[				]
Corporate	[				]
<b>Total:</b>	[				]
Other Taxes	[				]
Depreciation	[				]
Income Taxes	[				]
Interest Expense	[				]
<b>Total Expenses:</b>	[				]
<b>Other Income &amp; Deductions:</b>	[				]
<b>Net Income:</b>	[				]

The staff found that projections of operating expenses are consistent with historical operating costs. However, the staff believes that one line item required more extensive review: projected revenues from 2000-2004 as stated in the proprietary income and cash flow statements. Projected revenues are the product of expected megawatt-hour sales and of PNM's market price assumptions as stated in the Exhibit 4 - "Proforma Manzano Energy Revenues From Power Sales at Rates Set by FERC and the PRC and Other Revenues From Regulatory Sources." Projected revenues and net income are adequate to cover Manzano Energy's expected expenses and to provide the parent company with favorable returns on its expected investment in Manzano Energy. However, in a competitive market, prices, revenue, and net income levels could be significantly lower than anticipated by PNM during some portion(s) of the 5-year projection period and could result in less funding available for Manzano Energy's share of operational costs for the nuclear units.

The staff's independent analysis focused on the sensitivity of the Manzano Energy revenue forecasts to lower market prices for the purpose of establishing a projected market price "floor" below which Manzano Energy would begin to have difficulty covering its nuclear operating expenses by relying on revenues. The revenue forecasts were analyzed to determine the average annual simple growth rate for the market price which would produce virtually zero net income (or break even level) over the period from 2000 to 2004, and the growth rate was compared to the higher average annual growth rate in the market prices in Manzano Energy's forecast. If a combination of lower prices, capacity factors, revenue or net income levels was to persist for an extended period, Manzano Energy or its parent might decide to continue participation in the nuclear units without profits or, at a certain point, to sell Manzano Energy's ownership shares in one or more of the nuclear units.

A market-based sales price of [ ] from the closing date through December 31, 2000, and [ ] for the calendar year 2001 is forecast in revenue projections in proprietary Exhibit 4 of the March 3, 2000, application.

The staff assessed the likelihood that these various growth rates would materialize for the forecast period 2000-2004. Forecasts of electric rates in competitive markets are subject to many factors that make such predictions speculative; however, the reasonableness of various growth rates may be assessed by considering various factors that would provide an indication of future electricity prices. For example, recent trends in electricity prices can provide inferences on price performance in the more competitive environment expected in the electric power industry.

Data on U.S. retail electricity prices from the Energy Information Administration indicate that the overall price (all sales categories) has declined from its highest level in 1993 (at 6.93 cents per kWh) to 6.88 cents per kWh by 1997. The average retail price for the industrial category declined from 4.85 cents per kWh in 1993 to 4.56 cents per kWh in 1997. Considering this downward trend in retail prices and increasing competition in the electric power industry, the general trend of electricity prices at the retail level is likely to continue downward in the near term.

However, it is difficult to predict the direction of prices likely to be paid for Manzano Energy's power in its market area. Manzano Energy will probably be selling power primarily at market-based prices after the expiration of its Power Sales Agreement that it will have with its

transmission and distribution affiliate, and these prices will be a mix of competitively determined retail and wholesale prices. Also, trends in retail and wholesale electricity prices vary from one region to another, so Manzano Energy's prices within its market area may not follow national trends. Thus, the recent downward trend in national retail prices may not necessarily produce a significant downward influence on prices for the Palo Verde units.

The North American Electric Reliability Council (NERC) projects that capacity margins will decline substantially in the Western Systems Coordinating Council (WSCC) region in which the Palo Verde nuclear units operate between 1998 and 2007. (See NERC's Reliability Assessment 1998-2007, October 1998, page 11.) The 23.0 percent capacity margin in 1998 in the WSCC region will decline to 12.1 percent in 2007, according to the NERC forecast. NERC concludes that lower capacity margins can diminish the ability of the bulk electric supply systems to respond to higher than projected demand for electricity caused by extreme weather or unforeseen outages. Actual demand growth rates, driven by a strong economy, are much higher than current projections. This trend would tend to cause market prices of electricity to increase, other factors remaining equal, and suggests that PNM's price projections are reasonable.

After reviewing several forecasts of U.S. electricity prices and other relevant information (such as a forecast of regional capacity margins), the staff concludes that attempting to forecast the growth rate, or even the direction of change, for market-based prices in the Palo Verde market area is too speculative to be useful for contingency analyses. The staff's analysis of Manzano Energy's 5-year projected income statement indicates that a revenue shortfall of 9.1 percent over the 2000 to 2004 period would be the breakeven level that would allow Manzano Energy to cover its operating expenses with virtually zero net income. Nevertheless, the staff concludes from its independent analysis that, even if prices for Manzano Energy power were to increase at an average annual rate lower than that anticipated by PNM, Manzano Energy would not be precluded from meeting its financial obligations for its share of the Palo Verde units in a manner that would protect the public health and safety.

Based on the above analysis, the staff has concluded that the projected income statement shows that the anticipated revenues from sales of capacity and energy from Palo Verde provide reasonable assurance of an adequate source of funds to meet Manzano Energy's ongoing operating expenses for its share of the PVNGS units.

Proprietary Exhibit 8 to the March 3, 2000, application contains pro forma estimates for the next 5 years of Manzano Energy's share of operating costs for the Palo Verde units and available funds to defray those costs. The exhibit shows that adequate cash will be available to meet Manzano's share of Palo Verde operating costs and that there will be adequate funds available to cover all its nuclear-related financial obligations during a postulated 6-month outage of all three Palo Verde units. In addition, the application states that Manzano Energy will have sufficient financial strength to retain the capability for raising and managing capital. It will own considerable generating assets in addition to its interests in the Palo Verde units. Palo Verde capacity will comprise less than 26 percent of Manzano Energy's total owned and leased electric generating capacity and 27 percent of the total value of its assets. Additionally, Manzano Energy's interests in non-nuclear electric generation assets, with a book value of approximately \$422 million, will not be subject to the prior claim of a mortgage in favor of debt security holders or other creditors. PNM states that Manzano Energy, as a Palo Verde

licensee, will have a financial claim on its non-nuclear generation assets of no less priority than the claims of external creditors.

The staff finds that PNM has provided reasonable assurance that it as Manzano Energy will be able to obtain adequate funding to possess PNM's 10.2 percent share of the Palo Verde units and to cover its share of the estimated operating costs for the period of the current licenses, as well as sufficient documentation of specific legal and financial relationships that support this conclusion.

However, in view of the NRC's concern that holding company structures can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plant, the NRC's practice has been to condition license transfer approvals involving new holding company structures upon a requirement that the licensee not transfer significant assets from the licensee to an affiliate without first notifying the NRC. This requirement assists the NRC in assuring that a licensee will continue to maintain adequate resources to contribute to the safe operation and decommissioning of its facility. Thus, the following is to be made a condition of approval in the transfer order as well as a conforming license condition:

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.

### 3.0 DECOMMISSIONING FUNDING

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

The regulation at 10 CFR 50.33(k) requires that an application for an operating license for a utilization facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

The use of an external sinking fund is an allowable method to provide financial assurance for decommissioning funding. Specifically, 10 CFR 50.75(e)(1)(ii)(B) provides that an external sinking fund may be the exclusive mechanism relied upon for providing financial assurance for decommissioning for those licensees that are no longer rate regulated, if the licensees' source of revenue for the external sinking fund is a non-bypassable charge, and if the total amount will provide funds estimated to be needed for decommissioning. As set forth in 10 CFR 50.2, non-bypassable charges are defined as:

those charges imposed over an established time period by a Government authority that affected persons or entities are required to pay to cover costs associated with the decommissioning of a nuclear power plant. Such charges include, but are not limited to, wire charges, stranded cost charges, transition

charges, exit fees, other similar charges, or the securitized proceeds of a revenue stream.

PNM, as a rate-regulated electric utility, currently maintains nuclear decommissioning trusts for its share of interests in the Palo Verde units. The nuclear decommissioning trusts utilize the external sinking fund financial assurance mechanism provided in 10 CFR 50.75(e)(1)(ii). On March 30, 1999, PNM submitted information to the NRC regarding the status of the nuclear decommissioning trusts. These existing nuclear decommissioning trusts will be maintained by Manzano Energy, which will continue to utilize the external sinking fund method following the restructuring, with periodic deposits to be made to the funds over the remaining operating life of the units.

After the restructuring, PNM, renamed Manzano Energy, will continue to own the existing nuclear decommissioning trusts and will continue to utilize an external sinking fund method for providing financial assurance for decommissioning. Section 7 of the New Mexico Restructuring Act concerns the recovery of transition and stranded costs and states that the Public Utilities Commission shall determine the non-bypassable wires charges for recovery of transition costs and stranded costs. The act also states that nothing in the Electric Utility Industry Restructuring Act of 1999 shall be interpreted to require the Public Utilities Commission to make any order involving rates or wires charges that would result in a public utility losing its eligibility to exclusively use external sinking fund methods for decommissioning obligations pursuant to Federal guidelines.

PNM states in the application that, as contemplated by the Restructuring Act, PNM will submit a proposal for the use of a non-bypassable wires charge to be collected by PNM's transmission and distribution affiliate on behalf of Manzano Energy for recovery of stranded costs. The nuclear decommissioning costs for Palo Verde Units 1 and 2 will be included as specifically identified elements of stranded costs. The application states that Palo Verde Unit 3 decommissioning funding obligations will continue to be met from cash generated by stranded cost recoveries. The transmission and distribution affiliate, under an agreement with Manzano Energy, will deposit the required amounts in the Unit 3 decommissioning trust. A supplement to the application dated August 17, 2000, provided a draft of the Generation Services Agreement between Manzano Energy and what will become its transmission and distribution affiliate. The agreement states that the affiliate agrees to act as agent for Manzano Energy to collect those decommissioning costs included in retail electric rates from the affiliate's customers and to transmit those proceeds to Manzano Energy's decommissioning trusts. The collection of nuclear decommissioning costs will be addressed in a separate agreement between the affiliate and Manzano Energy.

In the March 30, 1999, status report on the decommissioning funds, PNM made the following comments on its source of revenues for the external sinking funds:

As reflected in this Report, PNM continues to rely exclusively on the external sinking fund mechanism for financial assurance for its decommissioning obligations with respect to its interest in Palo Verde Unit 3. PNM's interest in Palo Verde Unit 3 has never been in its rate base and was permanently excluded from New Mexico Retail rates by a New Mexico Public Utility Commission order issued in 1989. Nevertheless, PNM is, in a general sense, "indirectly" collecting

Unit 3 decommissioning through cost of service based revenues within the meaning of 10 CFR 50.75(e)(1)(ii)(A).

In 1998, PNM collected more than 80 percent of its gas and electric utility revenues from cost of service based rates, and PNM's electric revenues from its interest in Unit 3 represented less than 20 percent of PNM's electric revenues. Even though Unit 3 decommissioning costs are not included in rates, the total revenues recovered by PNM through traditional cost of service rates dwarf the ongoing decommissioning funding requirements for Unit 3. For 1998, PNM had retail cost of service electric revenues of more than [        ], as contrasted with the approximate [        ] annual required contribution to PNM's Unit 3 decommissioning trust fund....

The application states that "PNM's stranded cost proposal will seek to have nuclear decommissioning costs covered by a separately-stated charge to be collected over a period in excess of five years. By the time the next biennial report to the NRC is made in March 2001 in accordance with 10 CFR 50.75(f)(1), the precise method for collecting decommissioning costs via the New Mexico wires charge is expected to be known and, if so, will be reported to the Commission." "...Indeed, an agreement to be entered between Manzano Energy and [its transmission and distribution affiliate] will require the [affiliate] to make payments as Manzano Energy's agent in specified amounts into the decommissioning trusts."

The staff concludes that reasonable assurance of decommissioning funding will be provided by the method proposed by PNM in the March 3, 2000, application, provided that the orders approving the license transfers for Palo Verde Units 1, 2, and 3 contain the following conditions (which are to be incorporated into the licenses in essentially the same form as part of the conforming license amendments discussed below):

1. 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.
2. 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.
3. 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 the order approving the respective indirect transfers, and consistent with this safety evaluation.

4. Manzano Energy shall inform the Director of the Office of Nuclear Reactor Regulation within 30 days of approval by the New Mexico PRC 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.
5. 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.

The staff has determined that the foregoing trust provisions are necessary to provide reasonable assurance of decommissioning funding in the case of unregulated non-electric utility entities such as Manzano Energy, which are not subject to traditional State controls on decommissioning funding.

In consideration of the foregoing, the staff concludes that the proposed restructuring of PNM will not affect PNM's ability, as Manzano Energy, to provide reasonable assurance of decommissioning funding.

#### 4.0 TECHNICAL QUALIFICATIONS

APS serves as the operating agent for all the Palo Verde participants for the management, operation, maintenance, and improvement of the Palo Verde units and is the sole licensed operator of the units. The PNM restructuring will have no effect on the management or the number and qualifications of APS technical operating staff who are responsible for operating the Palo Verde units.

#### 5.0 ANTITRUST

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station Unit 1), CLI-99-19, June 18, 1999). Therefore, since the transfer application post-dates the issuance of the Palo Verde Units 1, 2, and 3 operating licenses, no antitrust review is required or authorized.

#### 6.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The shares of common stock of PNM are publicly traded and widely held. The application states that approximately 0.008 percent of PNM's common stock is owned by shareholders with registered addresses outside the U.S. PNM does not anticipate an increase in foreign ownership of Manzano Energy following the proposed restructuring. The application also states that "all of PNM's current directors and principal officers are citizens of the United States; all of the directors and principal officers of both Manzano and Manzano Energy are expected to be U.S. citizens." The application also states that following the restructuring, neither Manzano nor Manzano Energy, both of which are New Mexico corporations, will be owned, controlled, or dominated by an alien, foreign corporation, or foreign government. PNM states that it is not acting as an agent or representative of any other person with respect to the subject application. The NRC staff does not know or have any reason to believe that the proposed restructuring will result in Manzano or Manzano Energy being owned, controlled, or dominated by any foreign person or entity, within the meaning of the prohibition against foreign control in the Atomic Energy Act.

#### 7.0 CONFORMING AMENDMENT

##### 7.1 Introduction

As stated previously, APS requested approval of proposed conforming amendments to the Palo Verde operating licenses. The requested changes simply replace references to Public Service Company of New Mexico with references to Manzano Energy Corporation to reflect the proposed restructuring and name change of PNM.

Supplemental information received that was not specifically the subject of the *Federal Register* notice of the transfer and conforming amendment applications did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

## 7.2 Discussion

The requested changes made to the operating licenses do no more than accurately reflect the renaming of the licensee, which is an integral part of the approved transfer action. In addition to the requested changes, license conditions that conform to certain conditions set forth in the order approving the transfer, and that were identified and discussed earlier in this safety evaluation, are being incorporated. The amendments involve no safety questions and, in light of the imposition of certain conditions in the transfer order, are administrative in nature. Accordingly, the proposed amendments are acceptable.

## 7.3 State Consultation

In accordance with the Commission's regulations, the Arizona State official was notified of the proposed issuance of the amendments. The State official had no comments.

## 7.4 Conclusion With Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

## 8.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of operating licenses issued by the NRC and approval of conforming amendments. Accordingly, the action involved meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

## 9.0 CONCLUSIONS

In view of the forgoing information, the staff concludes that with the appropriate conditions discussed above, the proposed restructuring of PNM will not affect the qualifications of PNM, as Manzano Energy, to hold the licenses for the Palo Verde Units 1, 2, and 3 to the extent now held by PNM, and that the indirect transfer of the respective licenses, to the extent effected by the proposed restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions discussed in this safety evaluation.

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