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November 13, 2000

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, D.C. 20555

**Re: Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (Docket Nos. STN 50-528/529/530, Facility Operating License Nos. NPF-41, NPF-51, NPF-74)--Application By Public Service Company of New Mexico for Consent to Indirect Transfers of Control and Approval of License Amendments to Reflect Licensee's Name Change**

Ladies and Gentlemen:

On March 3, 2000 Public Service Company of New Mexico ("PNM") submitted an application under Section 184 of the Atomic Energy Act as amended, 22 U.S.C. § 2234, and 10 C.F.R. § 50.80 ("Application") for NRC's consent to the indirect transfer of control of PNM's licenses to hold minority interests (both owned and leased) in the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 ("PVNGS") to a holding company (Manzano Corporation) created to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, NMSA 1978, §§ 62-3A-1 through 23 (1999). As a result of the restructuring, the name of the holder of PNM's licenses will be changed to Manzano Energy Corporation ("Manzano Energy"). The NRC granted its consent to the transfer, subject to specified conditions, on September 29, 2000. 65 F.R. 60222 (October 10, 2000).

In its application, PNM noted that the proposed restructuring requires approval of other regulatory agencies in addition to consent from the NRC, and indicated that the NRC Project Manager for PVNGS would be kept informed of the progress made by the other regulatory agencies in granting their approvals. The purpose of this letter is to report on the status of the approval of the proposed restructuring by the other agencies involved.

As noted in prior correspondence, the main three regulatory agencies, in addition to the NRC, whose approval is needed in order for the restructuring to be completed are the New Mexico Public Regulation Commission ("NMPRC"), the United States Securities and Exchange Commission ("SEC") and the Federal Energy Regulatory Commission ("FERC"). PNM has applied for approval of its proposed restructuring with all three agencies.

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On October 30, 2000 FERC issued an "Order Authorizing Disposition Of Jurisdictional Facilities And Corporate Reorganization," 93 FERC ¶ 62,071, in which it granted, subject to specified conditions, PNM's request for authorization to (1) implement a plan of corporate reorganization resulting in the formation of Manzano Corporation as a holding company; and (2) transfer certain assets to a new corporation that will assume the PNM name and become a subsidiary of the holding company. A copy of the FERC Order is enclosed. PNM believes that this approval from FERC is sufficient (as far as that agency is concerned) to proceed to complete the restructuring.<sup>1</sup>

There have also been developments in the process before the NMPRC. The NMPRC hearing examiner conducted a hearing on the separation plan, which was concluded on September 5, 2000. Separate hearings on Standard Offer Service were held on October 20 and 21, 2000. Briefs on corporate separation issues have been filed by the parties. The parties are now awaiting a recommended decision from the hearing examiner. PNM and the other parties are also holding meetings to discuss a potential settlement of the issues involved in PNM's overall transition plan, which includes stranded and nuclear decommissioning costs.

In a parallel development, the NMPRC Staff and certain other public and private parties filed on August 17, 2000 a motion with the NMPRC to defer NMPRC's decision on all separation plans filed by New Mexico's electric utilities until after the 2001 legislative session. The motion was based on alleged problems with high prices and inadequate supply of electric power being experienced in California and other states since the implementation of electric utility deregulation.

PNM, among others, opposed the motion to defer NMPRC decision on the utility separation plans currently before the Commission. Nonetheless, the NMPRC issued an Order on October 18, 2000 that reopens four rulemaking proceedings that govern the code of conduct for utilities, the standard offer service to be made available by public utilities, the licensing of competitive power suppliers and customer protections under the restructuring

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<sup>1</sup> In connection with granting its approval to the PNM corporate reorganization, FERC issued a Notice Amending Docket No. Assignment (Docket No. EL00-118-000, October 27, 2000) in which it reassigned to a new docket PNM's request for FERC authorization for waivers of the requirements of Order Nos. 888, 889 and 2000 with respect to Manzano Energy Corporation's future functions, and a disclaimer of jurisdiction over transactions within the meaning of section 305(a) of the FPA. While PNM's requests in Docket No. EL00-118-000 are still pending, the matters in which action is sought by FERC are collateral to the restructuring and transfer of assets and do not have to be favorably resolved before the restructuring can be completed.

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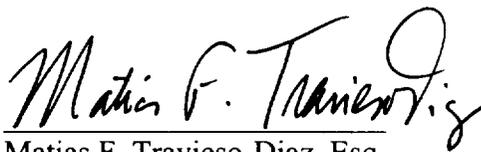
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legislation. The records in those proceedings have been reopened to allow the parties to file supplemental comments in light of recent experience in other states with the deregulation of electricity. While these proceedings are separate from the PNM separation proceeding, it is likely that approval of the PNM restructuring will be delayed until comments are received on the reopened proceedings and the NMPRC decides what changes, if any, shall be made to the regulatory framework for public utility deregulation.

There are no new developments in the SEC proceeding.

If the NRC requires additional information concerning this Application, please contact the undersigned or Terry R. Horn, Vice President and Treasurer, (505) 241-2119.

Very truly yours,



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Enclosure

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Public Service Company of New Mexico

Docket Nos. EC00-99-000, EC00-99-001

FEDERAL ENERGY REGULATORY COMMISSION - OFFICE DIRECTOR

93 F.E.R.C. P62,071; 2000 FERC LEXIS 2151

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES  
AND CORPORATE REORGANIZATION

October 30, 2000

CORE TERMS: public utility, transmission, merger, subsidiary, public utilities, generation, indirect, merge, jurisdictional, formation, wholesale, motion to intervene, common stock, reorganization, raising, retail, rebut, corporate reorganization, transfer of ownership, substantive issues, preferred stock, public interest, power supply, concentration, authorization, shareholders, transferred, regulation, electric, estimate

OPINION:

[\*1]

On June 7, 2000, as amended on September 8, 2000, Public Service Company of New Mexico (PSNM) filed an application under section 203 of the Federal Power Act (FPA) n1 requesting Commission authorization to (1) implement a plan of corporate reorganization resulting in the formation of a holding company to be known as Manzano Corporation (Manzano); and (2) for the disposition of certain physical and paper assets from the existing PSNM corporation, to be renamed Manzano Energy Corporation (Manzano Energy), to a new corporation that will assume the PSNM name and become a subsidiary of the holding company (to be known as UtilityCo). n2 According to the application, the proposed reorganization is consistent with electric industry restructuring legislation in New Mexico. n3

- - - - -Footnotes- - - - -

n1 16 U.S.C. § 824b (1994).

n2 PSNM has incorporated this entity with the temporary name of "PNM Electric & Gas Services, Inc." until the reorganization is completed. However, for purposes of the instant application, PSNM refers to the entity as UtilityCo.

n3 Included in the instant application are PSNM requests for waivers of the requirements of Order Nos. 888, 889 and 2000, with respect to Manzano Energy's future functions, and a disclaimer of transactions within the scope of section 305(a) of the FPA, which will be addressed by a separate order to be issued by the Commission in Docket No. EL00-118-000.

- - - - -End Footnotes- - - - -

[\*2]

Description of PSNM's Current Corporate Structure

PSNM is a public utility within the meaning of the FPA. PSNM is engaged in the generation, transmission, distribution, and sale of electricity, and in the transmission, distribution, and sale of natural gas.

Proposed Corporate Reorganization

According to the application, PSNM will contribute certain of its transmission and distribution assets as a capital contribution to UtilityCo, which at that time will be a wholly-owned subsidiary of PSNM, and PSNM will receive common and preferred equity in the UtilityCo subsidiary. In connection with the contribution of assets to UtilityCo, UtilityCo will assume related liabilities and receive deferred credits from PSNM. Simultaneously, UtilityCo will (1) exchange Senior Unsecured Notes (SUNs) for PSNM SUNs in an exchange offer with the existing SUNs holders, and (2) issue new SUNs, commercial paper or use bank financing, in return for cash. UtilityCo will distribute cash to PSNM in connection with the contribution of assets to UtilityCo. PSNM will use that cash to pay certain of its creditors (including general vendors of PSNM that existed prior to separation) over the first twelve months [\*3] of operations following the separation. Upon closing the transaction, certain generator step-up transformers and leads and switchyard facilities at jointly-owned generating stations will be leased by Manzano Energy, the renamed PSNM, to UtilityCo.

The final steps include an exchange offer for PSNM preferred stock, so that those PSNM preferred stockholders who wish to exchange for UtilityCo preferred stock may do so. PSNM will dividend its common stock investment in UtilityCo to Manzano, to create the planned holding company structure with the two major subsidiaries, Manzano Energy and UtilityCo. According to the application, the names will be changed so that PSNM will become Manzano Energy and UtilityCo will become "Public Service Company of New Mexico." In the future, both Manzano Energy and UtilityCo expect to pay dividends to Manzano, subject to the results of operations, financial conditions, and cash flows of each company.

Upon consummation of the formation of the holding company and the separation of the businesses, Manzano will own two separate operating companies: Manzano Energy, which will retain the generation assets of the existing PSNM, and UtilityCo, the owner of electric [\*4] and gas transmission and distribution assets.

Notice of the Application

Notices of the application and the supplement were published in the Federal Register with comments due on or before September 29, 2000. On June 6, 2000, Navajo Tribal Utility Authority (NTUA) filed a motion to intervene raising no substantive issues. On June 7, 2000, Western Area Power Administration (WAPA) filed a motion to intervene raising no substantive issues. On July 17, 2000, Tri-State Generation and Transmission, Inc. (Tri-State) n4 filed a motion to intervene raising no issues.

- - - - -Footnotes- - - - -

n4 Tri-State characterized its motion as out-of-time because the original notice period ended on July 7, 2000. However, because the application was amended with the notice period ending September 29, 2000, Tri-State's motion is considered timely filed.

- - - - -End Footnotes- - - - -

PSNM claims that the proposed transaction is consistent with the public interest and will not have an adverse effect on competition, rates or regulation. With respect to competition, PSNM states that the internal [\*5] transfer of control should have no effect on market concentration in the wholesale power market because no market concentration will increase, since Manzano Energy will continue to own the same generation that PSNM now owns. In addition, PSNM notes that as a consequence of the creation of Manzano, Manzano will control no more nor less of the generation market for installed and uncommitted capacity than does the current PSNM. Similarly, PSNM indicates that Manzano should have no greater ability than PSNM to control market entry. Furthermore, PSNM states that there is no effect on wholesale competition due to the transfer of the transmission assets concerned, which will remain covered by the existing PSNM Open Access Transmission Tariff (OATT) once that OATT is transferred to UtilityCo along with the transmission and distribution assets. PSNM notes that wholesale sales customers of PSNM will retain all of their rights, with existing bundled contracts either to be split into transmission rights and obligations (transferred to UtilityCo) and power supply rights (remaining with Manzano Energy Corporation), or, where necessary, through contracts remaining with Manzano Energy with transmission [\*6] provided by agreements between Manzano Energy and UtilityCo. Finally, PSNM states that the Commission has held that its formation of a holding company and the resultant change of control over PSNM, will not adversely affect competition. n5

- - - - -Footnotes- - - - -

n5 *Baltimore Gas & Electric Co.*, 86 FERC P62,110 at 64,138 (1999).

- - - - -End Footnotes- - - - -

With regard to rates, PSNM states that wholesale power supply rates, and rates for transmission and generation-based ancillary services, will remain unaffected by the proposed transaction, subject to change only in the manner provided by the FPA.. In addition, PSNM states that a retail rate freeze now in effect will also not be disturbed by the transaction and will remain in effect through the beginning of retail open-access in New Mexico.

With respect to regulation, PSNM states that both UtilityCo and Manzano Energy will be subject to this Commission's jurisdiction. In addition, PSNM states that the New Mexico Public Regulation Commission will retain authority over all of the resulting [\*7] companies' retail activities.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, n6 NTUA, WAPA, and Tri-State's motions to intervene serve to make them parties to this proceeding.

-Footnotes-

n6 18 CFR § 385.214(a) (2) (2000).

-End Footnotes-

As noted above, PSNM is a public utility under the FPA. In Central Vermont Public Service Corporation (Central Vermont), n7 the Commission concluded that the transfer of ownership and control of jurisdictional facilities, through a transfer of a public utility's common stock from existing shareholders to a newly-created holding company, constitutes a disposition of jurisdictional facilities requiring prior Commission approval under section 203. Consistent with the Commission's holding in Central Vermont, because PSNM's proposed reorganization involves the transfer of ownership of its common stock from existing shareholders to Manzano, the transaction is subject to the requirements of section 203.

-Footnotes-

n7 39 FERC P61,295 (1987).

-End Footnotes-

[\*8]

While PSNM is not proposing to merge with another holding company at this time, it is possible that in the future such a merger may take place. In an order approving a similar holding company formation by Illinois Power Company, the Commission clarified its jurisdiction under section 203 regarding the effect that mergers of public utility holding companies have on their public utility subsidiaries. n8 While noting that it does not have jurisdiction over public utility holding company mergers or consolidations, the Commission concluded that, ordinarily, when public utility holding companies merge, an indirect merger involving their public utility subsidiaries also takes place, and that Commission approval under section 203 would be required. Consequently, the Commission stated:

We therefore will presume, subject to rebuttal, that mergers between public utility holding companies also accomplish an indirect merger of their public utility subsidiaries. [\*9] If the public utilities can rebut the presumption, we will find that jurisdiction will not attach until such time as the public utility subsidiaries formally merge or consolidate their facilities. If the public utilities cannot rebut the presumption, section 203 approval of the indirect merger of the public utilities will be required. n9

-Footnotes-

n8 *Illinois Power Co.*, 67 FERC P61,136 (1994).

n9 67 FERC at 61,354-55.

-End Footnotes-

Accordingly, PSNM is advised that, in the event Manzano or any successor public utility should seek to merge with another public utility holding company, PSNM and any other affected public utility are required to file under section 203 evidence to rebut the presumption that such a merger would not also result in an indirect merger of the public utility subsidiaries, or, alternatively, for approval of an indirect merger of the public utilities.

Based on the application and the foregoing analysis, and in the absence of opposition to the application, it is concluded that the disposition of jurisdictional facilities by PSNM in the above-described [\*10] corporate reorganization is consistent with the public interest and is hereby authorized, subject to the following conditions:

(1) The proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application;

(2) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter whatsoever now pending or which may come before the Commission;

(3) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

(4) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate;

(5) In the event that Manzano should seek to merge with another public utility holding company, the public utilities of those companies are required to make appropriate filings under section 203 of the FPA;

(6) PSNM or its affiliates shall make appropriate filings under section 205 of the FPA, as necessary, to implement the transaction; and

(7) Applicants shall promptly notify [\*11] the Commission of the date on which the disposition of the jurisdictional facilities is consummated.

Authority to act on this matter is delegated to the Director, Division of Corporate Applications, pursuant to 18 C.F.R. § 375.307. This order constitutes final agency action. Requests for rehearing by the Commission may be filed within thirty (30) days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Michael C. McLaughlin, Director

Division of Corporate Applications