

June 25, 2001

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 -
SUPERSEDING ORDER APPROVING MODIFIED APPLICATION REGARDING
PROPOSED CORPORATE RESTRUCTURING (TAC NOS. MB2101, MB2102,
AND MB2103)

Dear Mr. Montoya:

The enclosed Order responds to the letters dated March 20 and May 15, 2001, from counsel for Public Service Company of New Mexico (PNM) that informed the Commission of New Mexico Senate Bill 266, "An Act Relating to Electric Utilities; Delaying Customer Choice Provisions and Implementation of the Electric Utility Industry Restructuring Act of 1999" (SB 266). This Order supersedes the Order issued on September 29, 2000, that approved indirect license transfers that would occur in connection with the proposed restructuring of PNM as described in the application dated March 3, 2000, as supplemented through September 7, 2000, and the conforming amendments, in its entirety. The enclosed Order approves the indirect license transfers that would occur under a modified restructuring of PNM described by the letters dated March 20 and May 15, 2001, subject to the conditions specified in the Order. The Safety Evaluation in support of the Order is also enclosed. This Order has been forwarded to the Office of the Federal Register for publication.

The letter of May 15, 2001, states that PNM does not now intend to change its name. Thus, the previously approved conforming amendments to reflect a new name of the licensee are no longer required and the enclosed Order does not include such amendments, thereby withdrawing the previous conforming amendments approval. If you have any questions regarding this matter, please contact me at (301) 415-3062.

Sincerely,
/RA/

Jack N. Donohew, Senior Project Manager, Section 2
Project Directorate IV
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. Safety Evaluation

cc w/encls: See next page

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

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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))	
)	

SUPERSEDING ORDER APPROVING MODIFIED APPLICATION REGARDING
PROPOSED CORPORATE RESTRUCTURING

I.

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

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, PNM filed an application dated March 3, 2000, requesting approval of the indirect

transfer of the Palo Verde licenses, to the extent held by PNM, to a new holding company to be established, then proposed to be named 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. The new holding company was to be established to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999. The proposed restructuring of PNM would have encompassed 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 would have occurred in connection with the planned restructuring. APS would have retained its existing ownership interest in, and would have remained the licensed operator of Palo Verde after the above restructuring of PNM, and otherwise would not have been involved in the restructuring. Similarly, none of the other co-licensees would have been involved in the restructuring of PNM. No physical changes to the facility or operational changes were 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 received.

III.

By an Order dated September 29, 2000, the application regarding the proposed restructuring of PNM was approved, subject to certain conditions contained in that Order. To date, the proposed restructuring has not occurred. The application for conforming license amendments was also approved by the Order, but the amendments were to be issued and made effective only at the time the proposed restructuring action was completed, including in particular the name change of PNM.

Subsequently, by letters dated March 20 and May 15, 2001, from counsel for PNM, the Commission was informed that in March of 2001 the State of New Mexico enacted into law Senate Bill 266, "An Act Relating to Electric Utilities; Delaying Customer Choice Provisions and Implementation of the Electric Utility Industry Restructuring Act of 1999" (SB 266). With respect to PNM's proposed restructuring that was the subject of the September 29, 2000, Order, SB 266 does not affect PNM's plans to establish a new holding company for PNM. However, it delays until January 1, 2007, the start of customer choice in the retail electricity market, and, therefore, delays PNM's plans to separate its transmission and distribution assets into a new affiliate. Any such plans for separation will now be required to be refiled with the New Mexico Public Regulation Commission (NMPRC) by 2005, and approved by NMPRC by 2006.

According to the March 20 and May 15, 2001, submittals, in light of SB 266, there have been several changes to the information provided in the March 3, 2000, application and supplements thereto. In summary, in contrast to earlier information provided in the March 3, 2000, application and supplements thereto, PNM was an "electric utility," under the definition set forth in 10 CFR 50.2, in the year 2000, and expects to continue to be such until at least 2007, notwithstanding the establishment of a new holding company; the name of the company, which has already been formed, to eventually become the holding company for PNM is "PNM

Resources, Inc.” and it will keep that name following its establishment as PNM’s holding company. PNM will not change its name at this time.

The March 20 and May 15, 2001, submittals state that the establishment of the new holding company will have no effect on current decommissioning funding arrangements for PNM’s share of decommissioning costs for the facility, and will not affect the technical qualifications of the licensed operator, APS. Previous information regarding the nationality of the holding company, its directors, principal officers, and shareholders provided in the March 3, 2000, application, and supplement thereto, remains valid, according to PNM. Also, PNM does not now intend to change its name, so the previously approved conforming amendments to the operating licenses to reflect a new name of the licensee are no longer required at this time.

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 March 20 and May 15, 2001, submittals, and other information before the Commission, the NRC staff has determined that the proposed restructuring of PNM, as modified, described in the March 20 and May 15, 2001, submittals, 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 license amendments approved by the Order dated September 29, 2000, are no longer appropriate in light of the modified proposed restructuring of PNM. These findings are supported by a Safety Evaluation dated June 25, 2001.

IV.

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 Order dated September 29, 2000, is withdrawn and superseded in its entirety by this Order, and that the application regarding the proposed restructuring of PNM and corresponding indirect license transfers, as modified by the March 20 and May 15, 2001, submittals referenced above, is approved, subject to the following conditions:

1. PNM 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 PNM 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 PNM's consolidated net utility plant, as recorded on PNM's books of account.
2. PNM shall notify the Director of the Office of Nuclear Reactor Regulation in writing within thirty (30) days after PNM undergoes any change in status from an electric utility, as defined in 10 CFR 50.2, to a non-electric utility.
3. Should the restructuring of PNM, as described in the March 20 and May 15, 2001, submittals, not be completed by June 30, 2002, this Order shall become null and void, provided, however, upon application and good cause shown, such date may be extended. Any direct or indirect transfers of the Palo Verde licenses as held by PNM, to the extent effected by any further restructuring of PNM involving the separation of its transmission and distribution assets from its generation assets, are not being approved at this time and must be the subject of a new application for prior written consent.

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, the Safety Evaluation dated September 29, 2000, submittals dated March 20 and May 15, 2001, and the Safety Evaluation dated June 25, 2001, 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 25th day of June 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

PROPOSED MODIFIED RESTRUCTURING OF

PUBLIC SERVICE COMPANY OF NEW MEXICO

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 an Order dated September 29, 2000, the application dated March 3, 2000, as supplemented by letters dated August 14, August 17, and September 7, 2000, filed by Public Service Company of New Mexico (PNM) regarding the proposed restructuring of PNM and related indirect license transfers was approved, subject to certain conditions contained in that Order. The application dated April 26, 2000, filed by Arizona Public Service Company (APS), for conforming license amendments was also approved by the Order, but the amendments were to be issued and made effective only at the time the proposed restructuring action was completed, including in particular the name change of PNM that was part of the restructuring action. The Safety Evaluation (SE) dated September 29, 2000, in support of this Order was enclosed with the Order.

Subsequently, by letters dated March 20 and May 15, 2001, from counsel for PNM, the Commission was informed that in March of 2001 the State of New Mexico enacted into law Senate Bill 266, "An Act Relating to Electric Utilities; Delaying Customer Choice Provisions and Implementation of the Electric Utility Industry Restructuring Act of 1999" (SB 266). With respect to PNM's proposed restructuring that was the subject of the September 29, 2000, Order, which has not yet occurred, New Mexico SB 266 does not affect PNM's plans to establish a new holding company for PNM. However, it delays until January 1, 2007, the start of customer choice in the retail electricity market, and, therefore, delays PNM's plans to separate its transmission and distribution assets into a new affiliate. Any such plans for separation will now be required to be refiled with the New Mexico Public Regulation Commission (NMPRC) by 2005, and approved by NMPRC by 2006.

According to the March 20 and May 15, 2001, submittals, in light of SB 266, there have been changes to the information provided in the March 3, 2000, application and the supplements thereto. These changes provide the basis for the current Order which supersedes the Order dated September 29, 2000, in its entirety.

Facility Operating Licenses Nos. NPF-41, NPF-51, and NPF-74 for Palo Verde Nuclear Generating Station, Units 1, 2, and 3, are held by the following co-licensees: APS (the licensed operator of the facility and 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). As indicated above, 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 NMPRC with respect to retail electric and gas rates. The Federal Energy Regulatory Commission has jurisdiction over wholesale electric rates.

New Mexico's Electric Utility Industry Restructuring Act of 1999 requires, as a significant component of the planned transition to customer choice, the separation of those aspects of a utility's business that will remain subject to NMPRC regulation, including electric power transmission and distribution, from its other business operations, such as power generation, which will not be subject to NMPRC regulation. According to the license transfer application, the restructuring of 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."

As discussed above, New Mexico SB 266 delays the implementation of New Mexico's Restructuring Act of 1999.

Accordingly, PNM filed its supplements dated March 20 and May 15, 2001, to its original application, describing changes to PNM's restructuring plan as initially presented, and describing related changes to information previously provided. These supplemental submittals did not expand the scope of the indirect license transfer application that was noticed in the *Federal Register* on May 26, 2000 (65 FR 34370), and effectively rendered unnecessary the conforming license amendment request that was also the subject of the notice.

This SE is based on the SE dated September 29, 2000, and the new information provided in the letters of March 20 and May 15, 2001.

2.0 FINANCIAL QUALIFICATIONS ANALYSIS

As discussed in the SE dated September 29, 2000, the staff had concluded that PNM would not be an electric utility as defined in 10 CFR 50.2, following the proposed restructuring, and thus reviewed the financial qualifications of PNM based on proprietary information regarding expected costs and revenues provided by PNM.

In the March 20 and May 15, 2001, submittals, however, PNM provided information showing that it was an electric utility, under 10 CFR 50.2, in 2000, and would continue to be an electric utility following the establishment of a new holding company. In light of this new information, the staff

now concludes that the proposed restructuring of PNM will not affect the financial qualifications of PNM, which are presumed adequate under NRC regulations given PNM's status as an electric utility.

Given PNM's indication in its original application and in the March 20 and May 15, 2001, supplements that at some point in the future it will be changing its status to a non-electric utility consistent with New Mexico's deregulation plans, the staff has concluded that the Order approving the indirect license transfers that would occur by reason of the establishment of a new holding company should be conditioned upon PNM notifying the NRC of any change in its electric utility status within 30 days of such change.

Also, in view of the NRC's concern that corporate restructurings involving indirect license transfers can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's facility, the NRC's practice is to condition corresponding license transfer approvals 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 should be made a condition of the Order approving the revised application regarding the proposed establishment of a new holding company by PNM:

PNM 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 PNM 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 PNM's consolidated net utility plant, as recorded on PNM's books of account.

3.0 DECOMMISSIONING FUNDING

In the March 20 and May 15, 2001, submittals, it is stated that the establishment of the new holding company will not result in any modification to current decommissioning funding arrangements for PNM's share of decommissioning costs for the facility. The arrangements currently involve annual contributions to external sinking funds under 10 CFR 50.75. In light of the above, the staff finds that the proposed restructuring of PNM, as modified, will not affect PNM's decommissioning funding arrangements and adequate assurance of decommissioning funding. Since the staff's evaluation of decommissioning funding in the SE dated September 29, 2000, was based on the separation of PNM's transmission and distribution assets which is no longer occurring at this time, the conditions in the September 29, 2000, Order relating to decommissioning arrangements and the decommissioning trust agreement are no longer appropriate and should not, therefore, be carried forward to the superseding Order being issued at this date.

4.0 TECHNICAL QUALIFICATIONS

In the March 20 and May 15, 2001, submittals, it is stated that the establishment of the new holding company will have no effect on the technical qualifications of the licensed operator, APS.

Therefore, the staff's evaluation on technical qualifications in the SE dated September 29, 2000, is not changed by the new information in these two submittals.

In the SE dated September 29, 2000, the staff stated the following:

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.

In consideration of the foregoing, the staff concludes that the PNM restructuring, as modified, will have no effect on the technical qualifications of APS.

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, 49 NRC 441 (1999). Therefore, since the transfer application, as modified, 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

According to the March 20 and May 15, 2001, submittals, previous information regarding the nationality of the holding company, its directors, officers, and principal shareholders provided in the March 3, 2000, application, and supplements thereto, remains as stated. Therefore, the staff's evaluation on foreign ownership, control or domination in the SE dated September 29, 2000, is not changed. Accordingly, the NRC staff does not know or have any reason to believe that the proposed restructuring of PNM, as modified, will result in PNM or its proposed holding company 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 AMENDMENTS

The Order issued on September 29, 2000, approved conforming amendments. APS had requested approval of proposed conforming amendments to the Palo Verde operating licenses in its application of April 26, 2000, and the requested changes were simply to replace references to Public Service Company of New Mexico with references to Manzano Energy Corporation to reflect the originally proposed restructuring and name change of PNM.

Based on the letters of March 20 and May 15, 2001, PNM does not now intend to change its name. Therefore, the conforming amendments previously approved by the Order of September 29, 2000, to reflect a new name for PNM are no longer required. Thus, the NRC staff concludes that the license amendments approved by the Order dated September 29, 2000, are no longer appropriate in light of the modified proposed restructuring of PNM. Based on this, the license amendments approved by the Order dated September 29, 2000, are no longer valid

and the previous approval is being withdrawn by not being part of the current Order that supercedes the Order of September 29, 2000, in its entirety.

8.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of an indirect transfer of operating licenses issued by the NRC. 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 foregoing information, the staff concludes that (1) the proposed modified restructuring of PNM will not affect the qualifications of PNM, as holder of the licenses for the Palo Verde Units 1, 2, and 3 to the extent now held by PNM, and (2) the indirect transfer of the respective licenses, to the extent effected by the proposed modified 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 SE and the superseding Order.

Principal Contributors: Jack Donohew
Michael Davis

Dated: June 25, 2001