



Palo Verde Nuclear
Generating Station

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10 CFR 50.12

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U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
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Washington, DC 20555-0001

Dear Sirs:

**Subject: Palo Verde Nuclear Generating Station (PVNGS) Unit 1
Docket No. STN 50-528
Unit 1 Decommissioning Trust Fund Balance - Request for
Temporary Exemption**

In accordance with the provisions of 10 CFR 50.12(a), "Specific Exemptions," Arizona Public Service Company (APS) is requesting a temporary exemption from the requirements in 10 CFR 50.82(a)(8) to the extent necessary to authorize APS to transfer up to \$5 million in assets from its nuclear decommissioning trust (NDT) for PVNGS Unit 1 to the NDT for PVNGS Unit 3. APS' NDTs for both PVNGS units will continue to meet NRC's financial assurance requirements pursuant to 10 CFR 50.75(e)(1)(ii) both prior to and after the proposed transfer of assets. A detailed description of this exemption request and justification for the exemption are provided in the enclosure to this letter.

No new commitments are being made to the NRC by this letter.

APS requests that this exemption request be reviewed and approved no later than December 7, 2001. If APS is unable to transfer some of the surplus from its Unit 1 NDT to its Unit 3 NDT, APS would bear unnecessary costs to augment the Unit 3 NDT. Should you have any questions, please contact Thomas N. Weber at (623) 393-5764.

Sincerely,

GRO/SAB/GAM/kg

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Enclosure: Unit 1 Decommissioning Trust Fund Balance - Request for Temporary
Exemption from 10 CFR 50.82(a)(8)

cc: E. W. Merschoff (NRC Region IV)
L. R. Wharton (NRC/NRR Project Manager)
J. H. Moorman (NRC Resident Inspector)
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Unit 1 Decommissioning Trust Fund Balance Request for Temporary Exemption from 10 CFR 50.82(a)(8)

Background

10 CFR 50.82(a)(8) states:

- (8)(i) Decommissioning trust funds may be used by licensees if --
 - (A) The withdrawals are for expenses for legitimate decommissioning activities consistent with the definition of decommissioning in §50.2;
 - (B) The expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and;
 - (C) The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure the availability of funds to ultimately release the site and terminate the license.

(ii) Initially, 3 percent of the generic amount specified in §50.75 may be used for decommissioning planning. For licensees that have submitted the certifications required under §50.82(a)(1) and commencing 90 days after the NRC has received the PSDAR, an additional 20 percent may be used. A site-specific decommissioning cost estimate must be submitted to the NRC prior to the licensee using any funding in excess of these amounts.

(iii) Within 2 years following permanent cessation of operations, if not already submitted, the licensee shall submit a site-specific decommissioning cost estimate.

(iv) For decommissioning activities that delay completion of decommissioning by including a period of storage or surveillance, the licensee shall provide a means of adjusting cost estimates and associated funding levels over the storage or surveillance period.

10 CFR 50.2:

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits--

- (1) Release of the property for unrestricted use and termination of the license; or
- (2) Release of the property under restricted conditions and termination of the license.

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Unit 1 Decommissioning Trust Fund Balance Request for Temporary Exemption from 10 CFR 50.82(a)(8)

Requested Exemption

In accordance with the provisions of 10 CFR 50.12(a), "Specific Exemptions," Arizona Public Service Company (APS) is requesting a temporary exemption from the requirements in 10 CFR 50.82(a)(8) to the extent necessary to authorize APS to transfer up to \$5 million in assets from its nuclear decommissioning trust (NDT) for PVNGS Unit 1 to the NDT for PVNGS Unit 3. APS' NDTs for both PVNGS units will continue to meet NRC's financial assurance requirements pursuant to 10 CFR 50.75(e)(1)(ii) both prior to and after the proposed transfer of assets. A detailed description of this exemption request and justification for the exemption are provided below.

Justification

Pursuant to the Arizona Nuclear Power Project (ANPP) Participation Agreement, the PVNGS owner participants committed to each other that they would accumulate and maintain certain minimum levels of accumulation of funds in their nuclear decommissioning trusts (NDTs) for each unit, in accordance with a pre-established percentage commitment or "Funding Curve" for each year through the end of plant life. Each participant's percentage funding commitment varies depending on their participation share and state regulatory requirements. Each participant has committed to minimum levels of accumulation, which cannot drop below a "Funding Floor" which is based on a specified percentage of the participant's Funding Curve. Every three years, a site-specific decommissioning cost estimate is performed, and each participant applies the new cost estimate to its pre-established Funding Curve to establish the necessary funding commitment. (A new Decommissioning Cost Estimate for ANPP is being prepared for 2001.)

As a result of their commitments pursuant to the ANPP Participation Agreement, the ANPP participants have agreed to meet decommissioning financial assurance requirements that are currently more rigorous than NRC's minimum requirements. This is reflected in the healthy NDT balances reported in Reference 1.

At the end of this year, the liquidation value (net after-tax and expenses) of APS' Unit 3 NDT may produce a shortfall in valuation for purposes of meeting the more rigorous requirements of the ANPP Participation Agreement. At the same time the liquidation value of APS' Unit 1 NDT likely will produce a surplus within the terms of that agreement. The need for additional funds for APS' Unit 3 NDT is largely due to the increased site-specific cost estimate for Unit 3 (which includes, among other things, costs attributable to common facilities). In addition, significant balances in APS' Unit 3

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NDT do not enjoy the advantages of a tax-qualified fund, resulting in a lower, overall net after-tax rate of return for the Unit 3 NDT. Transferring a portion of the surplus from APS' Unit 1 NDT to its Unit 3 NDT will enable APS to mitigate these effects and maintain appropriate balances in each unit's NDT.

APS proposes to transfer excess funds from its Unit 1 NDT to its Unit 3 NDT in order to better match the amount in each unit's NDT to the site-specific cost estimate, and to maintain the Unit 3 fund balance as specified in the Participation Agreement. Both prior to and after the transfer of up to \$5 million in assets from APS' Unit 1 NDT to the Unit 3 NDT, the NDTs for both units will continue to satisfy APS' decommissioning funding assurance requirements pursuant to 10 CFR 50.75(e)(1)(ii), in that APS will continue to accumulate funds in an external sinking fund pursuant to a "non-bypassable charge," the total amount of which will provide the funds estimated for decommissioning in accordance with applicable NRC requirements.

Moreover, APS' NDTs for both Unit 1 and Unit 3 currently have healthy balances when compared with the NRC's minimum funding requirements, as reflected in Reference 1. These balances are consistent with the funding levels required under the terms of the ANPP Participation Agreement, and the accumulation of funds in the APS NDTs is in accordance with the requirements of the Arizona Corporation Commission. Even after transferring up to \$5 million from APS Unit 1 NDT to its Unit 3 NDT, the remaining balance in APS' Unit 1 NDT will continue to compare favorably with NRC's minimum funding requirements, particularly when the remaining life of unit, planned annual accumulation of additional funds, and projected earnings are taken into account as seen in Reference 1. In addition, the transfer should not impact the total value of assets available for decommissioning, because the planned transfer of assets should not require any sale or liquidation that would have resulting tax consequences.

10 CFR 50.82(a)(8) authorizes licensees to use the trust funds for specific purposes, but does not address whether licensees are authorized to transfer excess funds from one NDT to another NDT among units at the same site. To the extent 10 CFR 50.82 (a)(8), might be construed to prohibit the transfer of assets among the NDTs for units at the same site, APS requests a temporary exemption from any such requirement so that it might complete a transfer of assets of up to \$5 million, if necessary at the end of this year, from APS' Unit 1 NDT to its Unit 3 NDT.

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10 CFR 50.12 Criteria

The standards set forth in 10 CFR 50.12 provide that the Commission may grant exemptions from the requirements of the regulations in this part for reasons consistent with the following:

- the exemption is authorized by law;
- the exemption will not present an undue risk to the public health and safety;
- the exemption is consistent with the common defense and security; and,
- special circumstances are present.

Decommissioning funding requirements are within the discretion of the NRC, and therefore, this exemption is authorized by law. The remaining standards for the exemption are also satisfied, as described below.

This exemption will not present an undue risk to public health and safety and is consistent with the common defense and security. The transfer of funds from APS' Unit 1 NDT to its Unit 3 NDT will result in a more equitable balance of decommissioning funds in each unit's NDT that will more closely match the unit-specific cost estimates. The transfer of assets should not result in a tax liability that could diminish the fund, because there is no planned sale or liquidation of assets. APS will continue to maintain sufficient funds in its NDTs to complete decommissioning, and the activities undertaken by APS will not present an undue risk to public health and safety.

This request for an exemption involves special circumstances as set forth in 10 CFR 50.12(a)(2) and described below:

- The transfer of assets from APS' Unit 1 to its Unit 3 NDT is consistent with the underlying purpose of the rule. As noted in the Statements of Consideration (SOC) (Reference 2) for the Final Rule on Decommissioning of Nuclear Power Reactors, the NRC's primary concern, as a licensee transitions to decommissioning, is that the licensee will have sufficient funds to complete decommissioning, and that the activities undertaken by the licensee will protect the public and environment. Additionally, as noted in the SOC, use of decommissioning trust funds are subject to the requirements that adequate funds will be available to ultimately release the site and terminate the license. The transfer of assets from APS' Unit 1 NDT to its Unit 3 NDT is not expressly precluded by 10 CFR 50.82(a)(8) and does not violate the purpose or intent of the final rule. The total amount transferred from APS' Unit 1 NDT will be surplus of the minimum amounts required under the ANPP Participation Agreement, which imposes more rigorous requirements than the NRC minimum

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requirements imposed by 10 CFR 50.75(c) and 10 CFR 50.75(e)(1)(ii). As such, NRC requirements will continue to be met for both units, and the NDTs for both units will remain funded with healthy balances. In fact, the proposed transfer is consistent with the purposes of the rule, because if the transfer is necessary, it would result in funding levels among the APS NDTs that would more closely match the unit-specific cost estimates and needs. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

- Compliance with any interpretation of 10 CFR 50.82(a)(8) that would prohibit the proposed transfer of assets from APS' Unit 1 NDT to its Unit 3 NDT would result in undue hardship and other costs that are significantly in excess of those contemplated when the regulation was adopted. If APS is unable to transfer some of the surplus from its Unit 1 NDT to its Unit 3 NDT, APS would bear unnecessary costs to augment the Unit 3 NDT. This is unnecessary, because APS' current Unit 3 NDT balances meet NRC's requirements, and APS' Unit 1 NDT balances will meet NRC requirements even after up to \$5 million in assets were transferred to the Unit 3 NDT. APS should not be financially penalized under circumstances where its NDT balances are, and will remain, healthy in accordance with NRC's requirements. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(iii) are satisfied.
- Only temporary relief from 10 CFR 50.82(a)(8) is requested. APS is requesting temporary authority to transfer assets at the end of this year, and the transfer contemplated will be completed no later than the first quarter of 2002. APS will continue to contribute to the decommissioning trust funds as required by the ANPP Participation Agreement and consistent with its use of the external sinking fund method of decommissioning funding assurance in accordance with 10 CFR 50.75(e)(1)(ii). Therefore, the special circumstances of 10 CFR 50.12(a)(2)(v) are satisfied.

Conclusion

10 CFR 50.82(a)(8) might be construed to prohibit a licensee from transferring assets from one unit's NDT to another unit's NDT. However, under the circumstances presented here, such a transfer is not inconsistent with the purpose of the decommissioning rule. The transfer may be necessary to more appropriately distribute the funding levels among the APS NDTs for Units 1 & 3, as well as to maintain APS' contractual obligation to meet specified funding levels for its NDTs. The proposed transfer will not result in insufficient funding for decommissioning for either unit, and both NDTs will remain in compliance with NRC's requirements.

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References:

1. APS Letter No. 102-04550-GRO/SAB/RKB, dated March 29, 2001 from Gregg R. Overbeck to NRC, subject: "Status of Decommissioning Funding".
2. 61 FR 39278, Final Rule – Decommissioning of Nuclear Power Reactors, July 29, 1996.