

Docket No.: 50-528

DEC 26 1985

Mr. E. E. Van Brunt, Jr.
Executive Vice President
Arizona Nuclear Power Project
Post Office Box 52034
Phoenix, Arizona 85072-2034

Dear Mr. Van Brunt:

Subject: Issuance of Amendment No. 3 to Facility Operating License NPF-41
for Palo Verde Unit 1

The Commission has issued the enclosed Amendment No. 3 to Facility Operating License No. NPF-41 for the Palo Verde Nuclear Generating Station, Unit 1. The amendment has been issued pursuant to a Commission Order of December 12, 1985.

This amendment: (i) changes the license to reflect the status of Public Service Company of New Mexico (PNM) as a lessee of a portion of the Palo Verde Unit 1 facility as set forth in the sale and leaseback agreement entered into by PNM on December 31, 1985; (ii) requires the licensees to provide the NRC with advanced notice of any changes in certain specified documents concerning the Palo Verde facility; and (iii) requires the licensees to notify the NRC of any action by the lessor which might have an adverse effect on the safe operation of the facility.

A copy of the Safety Evaluation supporting the amendment is also enclosed.

Sincerely,

George W. Knighton, Director
PWR Project Directorate No. 7
Division of PWR Licensing-B

Enclosures:

1. Federal Register Notice
2. Amendment No. 3 to NPF-41
3. Safety Evaluation

cc: See next page

*Previous concurred on by:

PBD-7 *EAL*
EALicitra/yt
12/24/85

PBD-7*
JLee
12/13/85

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RD 12/24

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Mr. E. E. Van Brunt, Jr.
Arizona Nuclear Power Project

Palo Verde

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[Docket No. STN 50-528]

**Arizona Public Service Co.;
Consideration of an Application for
Approval of a Proposed Transfer of
Interests Under a Proposed Sale and
Leaseback Transaction, Proposed no
Significant Hazards Determination,
Solicitation of Comments and
Opportunity for Hearing**

The Nuclear Regulatory Commission
is considering an application dated

October 18, 1985, filed by Arizona Public Service Company (APS) on behalf of Public Service Company of New Mexico (PNM) and The First National Bank of Boston, as Owner Trustee (Owner Trustee), for the issuance of an order under 10 CFR Part 50 approving (i) the transfer by PNM to the Owner Trustee of the fee interest and (ii) the simultaneous transfer by the Trustee back to PNM of a long-term (28½ years, approximately) possessory leasehold interest in a major portion of PNM's 10.2 percent interest in Palo Verde Nuclear Generating Station (PVNGS) Unit 1 as contemplated in the proposed sale and leaseback financing transaction described in the application. Under the proposed transaction, it is represented that PNM would remain in possession of its present interests in PVNGS under a leasehold rather than by virtue of ownership.

Under Facility Operating License NPF-41, issued June 1, 1985, PNM, APS and other named utilities are licensed to possess PVNGS Unit 1, and APS is licensed to use and operate the facility. PVNGS Unit 1 is part of a three unit PVNGS project jointly owned by those utilities, with PNM having a 10.2 percent interest in PVNGS Unit 1 and the PVNGS project's common facilities. Under a Arizona Nuclear Power Project (ANPP) Participation Agreement, each owner of the PVNGS project is obligated to pay a share, equal to its ownership interest, of all costs of construction, maintenance, operation, capital improvements and decommissioning of each of the PVNGS units, and entitled to share equal to its ownership interests of the electrical output of the units. APS is authorized to act as agent for the other licensees of PVNGS Unit 1, and has exclusive responsibility and control over the physical construction, maintenance and operation of the facility.

APS has filed the subject application on behalf of PNM seeking Commission's approval for PNM to sell to the Owner Trustee for the benefit of equity investors, all or a portion of PNM's 10.2 percent ownership interest in PVNGS Unit 1 and all or a proportionate share of one-third of PNM's interest in the PVNGS project's common facilities, with the Owner Trustee simultaneously leasing back these interests to PNM for a basic term of about 28½ years with rights of renewal and repurchase. The application does not request any amendment or transfer of the license NPF-41 as it is not requested that the Owner Trustee have any right of possession in, absent a further license amendment, or control over PVNGS Unit 1. Those rights would remain solely in

the PNM, as a lessee rather than an owner, and the other present licensees of PVNGS Unit 1. APS would continue to be the sole licensee authorized to use and operate PVNGS Unit 1.

It is proposed that throughout the term of the leaseholds PNM will have the full and exclusive authority and responsibility to exercise and perform all of the rights and duties of a Participant in PVNGS under the ANPP Participation Agreement. PNM will also retain responsibility for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for 10.2 percent of the costs of decommissioning associated with PVNGS Unit 1.

The application proposes that the order authorizing the transfers contemplated by the sale and leaseback transaction incorporate conditions (a) that the rights acquired by the Owner Trustee and any equity investor and any successors and assigns (including any mortgagee or secured party of such Owner Trustee) in and to PVNGS Unit 1 may be exercised only in compliance with and subject to the same requirements and restrictions as would apply to PNM pursuant to the provisions of the License, the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission pursuant to the Act; (b) that neither the Owner Trustee nor any equity investor nor any of their respective successors or assigns may take possession of any interest in PVNGS Unit 1 prior to either (1) the issuance of a license from the Commission authorizing such possession or (2) the transfer of the License authorizing PNM to possess an interest in PVNGS Unit 1 upon an application for transfer of such License filed pursuant to 10 CFR 50.80 (b); and (c) that neither the Owner Trustee nor any equity investor nor any of their respective successors and assigns need become a licensee under the License unless and until the Commission shall have issued an amendment of such License authorizing such Owner Trustee, equity investor, successor or assign to take possession of an interest in PVNGS Unit 1 or shall have approved a transfer of PNM's License to such Owner Trustee, equity investor, successor or assign. In addition, the Commission may also incorporate such other conditions or amend the license in such manner as it believes necessary to protect the public health, safety and interest.

The application also asserts that the grant of the relief requested, which

essentially is a recognition of the conversion of PNM's right of possession of an interest in PVNGS Unit 1 from a fee interest to a leasehold, does not present an unreviewed environmental impact and that no environmental impact statement or appraisal need be prepared in acting upon the application.

No determination has been made of whether granting the request would require an amendment or transfer of license NPF-41. Should a license amendment be necessary, the Commission will have made findings required by the Atomic Energy Act of 1954, amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that an amendment, if needed, would involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The applicant's request is for approval of the sale and leaseback transaction with PNM remaining in possession of its present interests in PVNGS and continuing to be obligated to pay its share of all costs of construction, maintenance, operation, capital improvements and decommissioning. The Owner Trustee would not have any right of possession in, absent further license amendment, or control over PVNGS Unit 1. APS would be the sole licensee authorized to use and operate the facility. Based on the above, and under the criteria in 10 CFR 50.92(c), the Staff proposed to determine, if a license amendment is necessary, that amendment to the license would not involve significant hazards considerations.

The Commission is seeking public comments on the application and this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to

Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday.

Further, although no determination has been made to hold hearings on the subject application, by December 5, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in any hearings which may be held. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date and it is determined that a hearing be held, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are

sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration and whether hearings are necessary. The final determination will serve to decide when the hearing, if any, is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that a license amendment involving a significant hazards consideration is necessary, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW,

Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message address to Edward J. Butcher: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Arthur C. Gehr, Snell & Wilmer, 3100 Valley Bank Center, Phoenix, AZ 85073.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(2)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application dated October 18, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the local public document room at the Phoenix Public Library, 12 E. McDowell Road, Phoenix, AZ 85004.

Dated at Bethesda, Maryland, this 1st day of November, 1985.

For the Nuclear Regulatory Commission,
Frank J. Miraglia,
Deputy Director, Division of Licensing, Office
of Nuclear Reactor Regulation.
[FR Doc. 85-28371 Filed 11-4-85; 8:45 am]
BILLING CODE 7990-01-01



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

ARIZONA PUBLIC SERVICE COMPANY, ET AL.

DOCKET NO. STN 50-528

PALO VERDE NUCLEAR GENERATING STATION, UNIT NO. 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 3
License No. NPF-41

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The present amendment, issued in response to the October 18, 1985 application by the Arizona Public Service Company (APS) in respect of a sale and leaseback financing transaction by licensee, Public Service Company of New Mexico, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act) and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The Commission by an order on December 12, 1985 stated:

On October 18, 1985 the Arizona Public Service Company filed with the NRC an Application In Respect Of A Sale And Leaseback Financing Transaction By Public Service Company Of New Mexico. The Commission has determined that in the totality of the circumstances presented to it, this proposed financial transaction with the license amendment recommended by the staff and subject to the conditions specified in this order are acceptable under the Atomic Energy Act and the Commission regulations. This conclusion is subject to the condition that the lessor and anyone else who may acquire an interest under the transaction which is the subject of this application are prohibited from exercising directly or indirectly any control over the licensees of the Palo Verde nuclear facility. For purposes of this condition, the limitations in 10 C.F.R. 50.81 "Creditor Regulations" as now in effect and as they may be subsequently amended are fully applicable to the named lessor and any successor in interest to that lessor as long as the license for the Palo Verde nuclear facility remains in effect. Accordingly, this financial transaction shall have no effect on the license for the Palo Verde nuclear facility throughout the term of the license.

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Subject to the foregoing, the Commission consents to the financial transaction as set forth in the application and authorizes the Director of the Office of Nuclear Reactor Regulation to amend the license as described in SECY-85-367 and this order.

- C. The facility will operate in conformity with the above application and the Commission's Order of December 12, 1985, the provisions of Act, and the rules and regulations of the Commission;
 - D. 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;
 - E. The issuance of this amendment will not be inimical to the common defense and security or to the health and safety of the public;
 - F. 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, the license is amended by adding a new paragraph, 2.B(6), as follows:
- (6) Pursuant to an Order of the Nuclear Regulatory Commission dated December 12, 1985, the Public Service Company of New Mexico (PNM) to transfer and PNM has transferred 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. The sale and leaseback transaction is subject to the representations and conditions set forth in the above application and the Commission's Order of December 12, 1985, consenting to such transaction. 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.

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 insurance for the Palo

Verde Nuclear Facility, Unit 1 and (iv) any action by the lessor or others that may have an adverse effect on the safe operation of the facility.

3. This license amendment is effective as of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION



Frank Schroeder, Deputy Director
Division of PWR Licensing-B

Date of Issuance: DEC 26 1985



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO AMENDMENT NO. 3 TO FACILITY OPERATING LICENSE NO. NPF-41

ARIZONA PUBLIC SERVICE COMPANY, ET AL.

PALO VERDE NUCLEAR GENERATING STATION, UNIT NO. 1

DOCKET NO. STN 50-528

1.0 INTRODUCTION

By application dated October 18, 1985, the Arizona Public Service Company (APS) on behalf of Public Service Company of New Mexico (PNM), requested approval for PNM to sell and lease back all or a portion of PNM's 10.2 percent ownership interest in the Palo Verde Nuclear Generating Station, Unit 1, and all or a proportionate share of one-third of PNM's 10.2 percent ownership interest in the Palo Verde common facilities. In addition to information provided in the application, the licensee provided additional financial information by letter dated November 21, 1985.

2.0 COMMISSION ACTION

On December 12, 1985, the Nuclear Regulatory Commission, upon review of the staff's Policy Papers SECY-85-350 and SECY 85-367 which contained a discussion of the proposed transaction, issued an Order ^{1/} consenting to the sale and lease-back transaction. To provide for health and safety concerns, it required that:

- (1) The lessor and anyone else who may acquire an interest under the proposed transaction be prohibited from exercising directly or indirectly any control over the licensees of Palo Verde Unit 1. For purpose 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 named lessor and any successor in interest to that lessor as long as the license for the Palo Verde Unit 1 remains in effect. Accordingly, this financial transaction shall have no effect on the license for Palo Verde Unit 1 throughout the term of the license.

^{1/} Arizona Public Service Company (Palo Verde Unit 1), Docket No. STN 50-528
December 12, 1985.

- (2) The Palo Verde Unit 1 operating license be amended to expressly require that the NRC be notified in writing prior to any change in: (i) the executed lease agreements; (ii) the ANPP Participation Agreement; (iii) the existing insurance policies; and (iv) any action by the lessor or others which may have an adverse effect on the safe operation of the facility.
- (3) The Palo Verde Unit 1 license be amended to reflect PNM's position as a lessee of the facility.

3.0 CONTACT WITH STATE OFFICIAL

The Arizona Radiation Regulatory Agency has been advised of the proposed determination of no significant hazards consideration with regard to this amendment. No comments were received.

4.0 ENVIRONMENTAL CONSIDERATIONS

This amendment only involves the administration of the credit and financial arrangements for Palo Verde Unit 1. The parties will enter into agreements which provide for the sale and leaseback of PNM's ownership share under terms requiring PNM's continued full control and responsibility over this ownership share. The Commission has ordered (footnote 1, supra) that in the administration of this arrangement, the lessor and anyone else who may acquire an interest under this transaction are prohibited from exercising, directly or indirectly, any control of the Palo Verde Unit 1 license. The amendment also includes a new reporting requirement that the NRC must be notified in writing prior to any change in the executed lease agreements, the ANPP participation agreement, and the existing insurance policies. Accordingly, this amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22 (c)(10).

5.0 CONCLUSION

The staff 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 this amendment will not be inimical to the common defense and security or to the health and safety of the public.

Dated: DEC 26 1985

DEC 26 1985

ISSUANCE OF AMENDMENT NO. 3 TO FACILITY OPERATING
LICENSE NPF-41 FOR PALO VERDE UNIT 1

DISTRIBUTION

Docket File 50-528
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