

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

----- X
In the matter of :
ARIZONA PUBLIC SERVICE :
COMPANY, et al., :
(Palo Verde Nuclear :
Generating Station, Unit 2) :
----- X

DOCKET NO. STN 50-529

APPLICATION IN RESPECT OF SALE AND
LEASEBACK TRANSACTIONS BY

PUBLIC SERVICE COMPANY OF NEW MEXICO

February 14, 1986

8602180252 860214
PDR ADOCK 05000529
I. PDR



TABLE OF CONTENTS

	<u>Page</u>
Section 1. RELIEF REQUESTED	1
Section 2. BACKGROUND	3
Section 3. DESCRIPTION OF THE PROPOSED SALE AND LEASEBACK TRANSACTIONS	4
Section 3.1. Sale of Unit 2.	5
Section 3.2. Purchase Price.	7
Section 3.3. Lease Term and Renewal Option.	8
Section 3.4. Purchase Option.	8
Section 3.5. Quiet Enjoyment; Rights of PNM.	8
Section 3.6. Net Lease.	9
Section 3.7. Capital Improvements.	9
Section 3.8. Support Agreements. . . . .	.10
Section 3.9. The ANPP Participation Agreement. . . . .	.10
Section 4. CONDITIONS PRECEDENT TO THE TRANSACTIONS . . . . .	.12
Section 5. SCHEDULE OF THE SALE AND LEASEBACK TRANSACTIONS . . . . .	.13
Section 6. SUPPORTING INFORMATION . . . . .	.15
Section 7. ENVIRONMENTAL CONSIDERATIONS . . . . .	.17

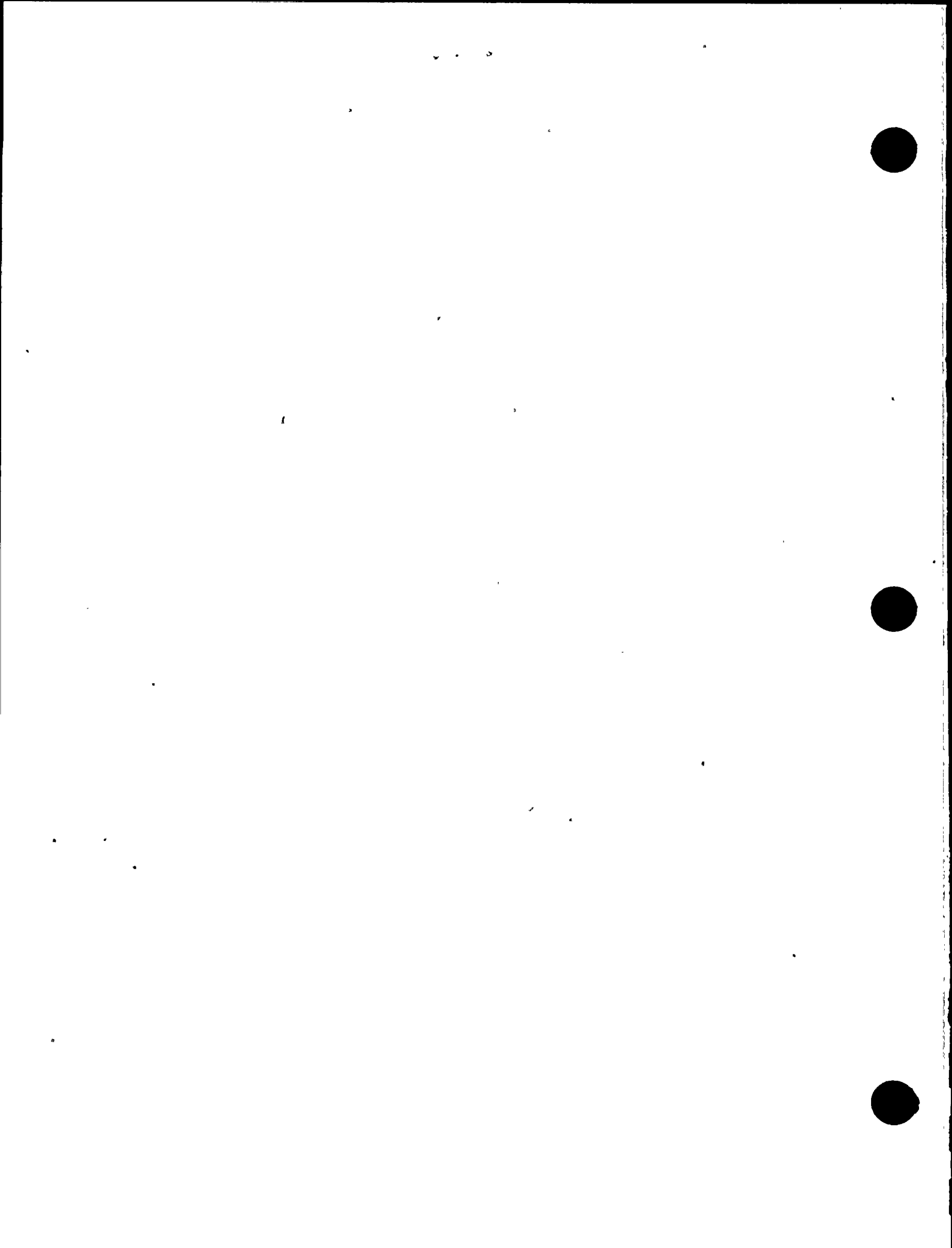
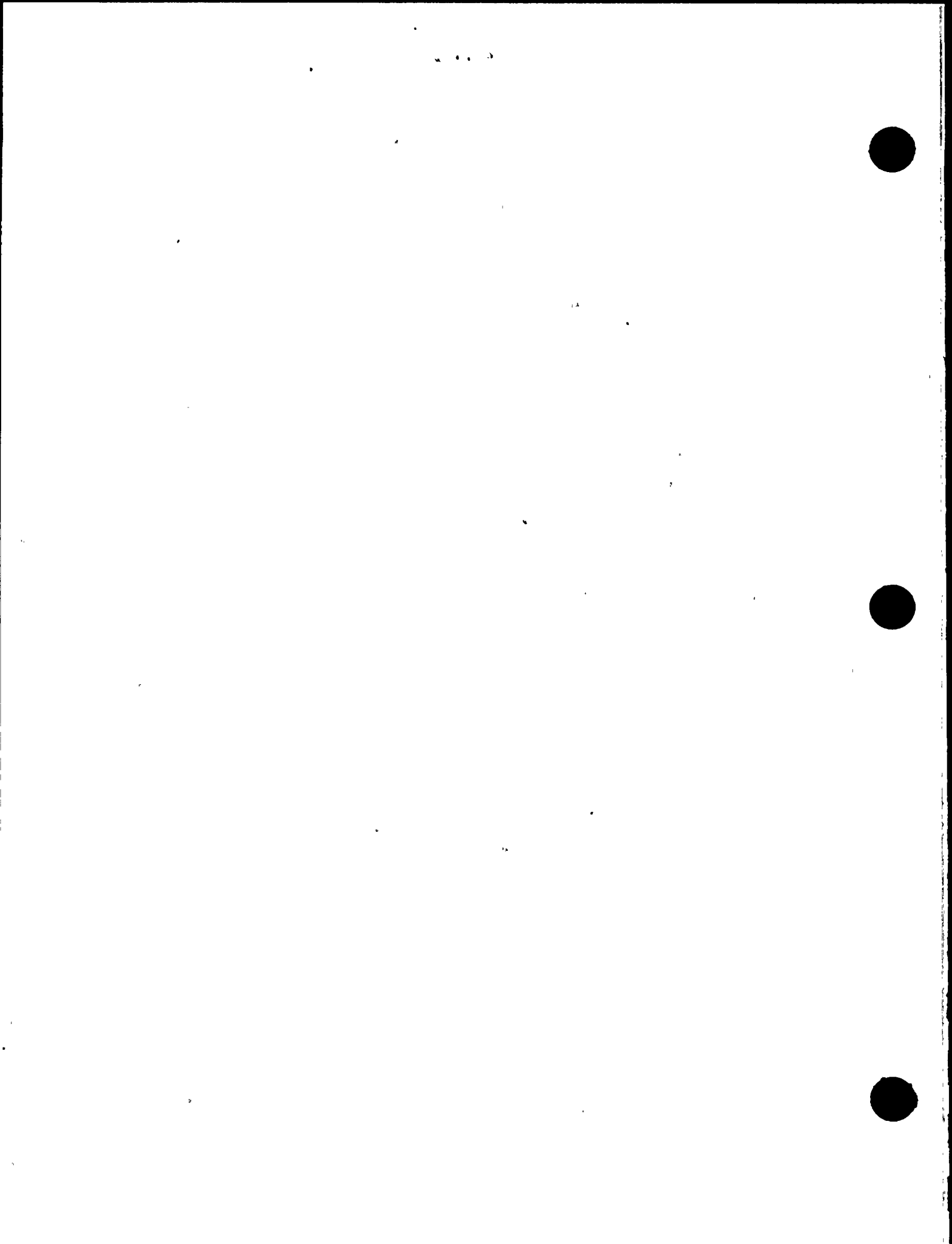


TABLE OF CONTENTS, Continued

	<u>Page</u>
Section 8. ANTITRUST CONSIDERATIONS . . . . .	.17
Section 9. NO SIGNIFICANT HAZARDS CONSIDERATION .	.18
Section 10. FOREIGN OWNERSHIP CONSIDERATIONS . . . .	.19
Section 11. RESPONSIBILITY FOR MANAGEMENT OF UNIT 2 . . . . .	.20
Section 12. BASIS FOR RELIEF REQUESTED . . . . .	.21

EXHIBITS

Exhibit A	Order of the New Mexico Public Service Commission with respect to PVNGS Unit 1
Exhibit B	Order of the Federal Energy Regulatory Commission with respect to PVNGS Unit 1
Exhibit C	Supplement to General Information Concerning Public Service Company of New Mexico



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X
In the matter of :
ARIZONA PUBLIC SERVICE : DOCKET NO. STN 50-529
COMPANY, et al., :
(Palo Verde Nuclear :
Generating Station, Unit 2) :
-----X

APPLICATION IN RESPECT OF
SALE AND LEASEBACK TRANSACTIONS BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

Arizona Public Service Company (APS), as Project Manager and Operating Agent of Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2 and 3, submits this application on behalf of Public Service Company of New Mexico (PNM), a licensee under Facility Operating License No. NPF-46 (the Unit 2 License).

1. Relief Requested

PNM proposes to refinance its construction financing for PVNGS Unit 2 (Unit 2) by entering into one or more sale and leaseback transactions relating to all or a portion of PNM's 10.2% undivided ownership interest in Unit 2 and a portion of PNM's remaining undivided ownership interest in certain PVNGS common facilities (said interest in Unit 2 and such portion of the common facilities being



hereinafter collectively referred to as the Unit 2 Facilities).¹ The relief requested by this Application is the issuance of an order (i) consenting to the sale and leaseback transactions described in this Application and (ii) authorizing the Director of the Office of Nuclear Reactor Regulation to amend the Unit 2 License by adding a new paragraph, 2.B(6), as follows:

(6) Pursuant to an Order of the Nuclear Regulatory Commission dated April __, 1986, Public Service Company of New Mexico (PNM) is authorized to transfer and PNM may transfer portions of its ownership share in Palo Verde Unit 2 to certain institutional investors and concurrently may lease back each such interest. The basic term of each lease will expire on November 15, 2015, subject to a right of renewal. The sale and leaseback transactions are subject to the representations and conditions set forth in the February 14, 1986 Application by Arizona Public Service Company in Respect of Sale and Leaseback Transactions by PNM and the Commission's Order of April __, 1986, consenting to such transactions. Specifically, the lessors and anyone else who may acquire an interest under these transactions are prohibited from exercising directly or indirectly any control over the licensees of Palo Verde 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 lessors and any successor in interest to such lessors as long as the license for Palo Verde Unit 2 remains in effect. These transactions shall have no effect on the license for Palo Verde Unit 2 throughout the term of the license.

1. PNM will also sell an undivided interest in certain real property interests associated with the Unit 2 Facilities. PNM will retain its entire 10.2% ownership interest in all so-called "section 1250 property" such as the administration building, the administration annex building, the technical support center and the visitor center. PNM will also retain its entire ownership interest in all nuclear fuel and transmission facilities associated with PVNGS.



Further, the licensees are required to notify the Commission in writing (1) prior to any change in (i) the terms or conditions of any lease agreements executed as part of such transactions; (ii) the ANPP Participation Agreement or (iii) the existing insurance for Palo Verde Unit 2 and (2) of any action by any lessor or others that may have an adverse effect on the safe operation of Palo Verde Unit 2.

This paragraph 2.B(6) will become effective as to any sale and leaseback transaction only upon receipt by the Office of Nuclear Reactor Regulation of supplemental information concerning the institutional investors which are parties to such transaction and the expiration of 10 days (or any shorter period permitted by such Office) without notice to PNM of Commission objection to any such institutional investor.

2. Background

By application dated October 18, 1985 (the Unit 1 Application), APS, on behalf of PNM, requested approval for PNM to sell and lease back all or a portion of PNM's 10.2 percent ownership interest in PVNGS Unit 1 (Unit 1), and all or a proportionate share of one-third of PNM's 10.2 percent ownership interest in certain Palo Verde common facilities (collectively, the Unit 1 Facilities). On December 12, 1985, the Nuclear Regulatory Commission issued an Order² (i) consenting to sale and leaseback transactions with respect to PNM's interest in the Unit 1 Facilities and (ii) authorizing the Director of the Office of Nuclear Reactor Regulation to amend Facility Operating License NPF-41 (the Unit 1 License) to reflect PNM's position as lessee in respect of Unit 1. On December 26, 1985,

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



the Unit 1 License was so amended. On February 6, 1986, APS, on behalf of PNM, filed with the Commission a Supplemental Application, dated February 5, 1986, relating to the Unit 1 Application with respect to additional Unit 1 sale and leaseback transactions proposed to be consummated in 1986 by PNM.

As shown below, the transactions described in this Application are similar in all significant respects to the transactions entered into by PNM with respect to the Unit 1 Facilities. In addition, the relief requested in this Application by APS, on behalf of PNM, is the same relief (based upon similar facts) as was granted by the Nuclear Regulatory Commission in its Order of December 12, 1985.

3. Description of the Proposed Sale and Leaseback Transactions

PNM proposes to sell to a grantor trust or trusts, the beneficiaries of which will be institutional equity investors (the Equity Investors), the Unit 2 Facilities, including without limitation all or a portion of PNM's 10.2% generation entitlement share in Unit 2. Each such investor will enter into a trust agreement with The First National Bank of Boston (hereinafter, in such capacity, the Owner Trustee) who will take and hold title to the Unit 2 Facilities sold by PNM. The Owner Trustee will in turn lease the Unit 2 Facilities, and assign the acquired generation entitlement share, back to PNM for a term of approximately 29-1/2 years for a stipulated basic rent.

At the time of filing of this Application, the forms of documents relating to the proposed transactions have not been prepared. It is expected, however, that the forms of such documents will be similar in all respects material to the Commission's consideration of this Application to the documents executed in connection with the transactions described in the Unit 1 Application.³ In light of such circumstances, the following description is offered as a summary of certain significant aspects of the transaction.

3.1. Sale of Unit 2. PNM proposes to refinance its construction financing for Unit 2 by entering into one or more sale and leaseback transactions relating to all or a portion of the Unit 2 Facilities. Each lease agreement will be with the Owner, Trustee (in such capacity, the Lessor) acting for the related Equity Investor. Trusts formed by the Equity Investors will hold title to the respective purchased interests in the Unit 2 Facilities. The Lessors will lease the Unit 2 Facilities to PNM under separate leases (the Leases). If the sale and leaseback transactions are completed as to less than all of PNM's interest in the Unit 2 Facilities, PNM will retain an undivided interest in the Unit 2 Facilities.

It is typical in sale and leaseback transactions involving large investments to have multiple Equity Investors. Because of this structure, there will be multiple sets of documents (including the

3. Such documents were provided to the Commission by PNM under cover of a letter dated January 29, 1986, addressed to the Director of Nuclear Reactor Regulation, Attention of Mr. George W. Knighton.



Leases) in substantially the same form, with one set for each of the Equity Investors.

Because discussions with potential Equity Investors are continuing, the identity of the actual Equity Investors who will participate in the proposed transactions is not yet known. Over the last several years, affiliates and subsidiaries of electric utilities (singly or in joint-venture with other equity investors and/or financial intermediaries) have become an increasingly important source of equity investment for sale and leaseback transactions of all types. Although it might seem anomalous that electric utilities would be involved both as lessee and, through an affiliate or subsidiary, as equity investor, this is not surprising in view of the different financial situations of different utilities. Like other investors, some utilities are in the enviable position of seeking tax-advantaged investments. PNM and its financial advisors, Kidder, Peabody & Co. Incorporated and Goldman, Sachs & Co., believe that participation by such Equity Investors may be essential to the successful sale and leaseback by PNM of its entire interest in the Unit 2 Facilities. Affiliates and subsidiaries of electric utilities would be purely passive investors and would have the same investment purpose as any other Equity Investor. Because participation by such entities in the proposed sale and leaseback transactions would have no effect whatsoever to the operation of PVNGS, or the generation of electricity or transmission thereof, the presence of such entities as Equity Investors should have no impact on the requested relief.



In addition, if PNM is unable to sell all of its interest in the Unit 2 Facilities to third-party Equity Investors (as is expected to be the case with PVNGS Unit 1), PNM may consummate a sale and leaseback transaction for all or a portion of such unsold interest with an affiliate or subsidiary of PNM on essentially the same terms as those involving unrelated Equity Investors except that certain provisions of certain agreements (for example, covenants governing mergers by PNM) may be suspended or otherwise modified for so long as the PNM affiliate is the Equity Investor in such transaction. The provisions that may be suspended or otherwise modified will not be, either singly or in the aggregate, material to this Application, the supporting documents or the Commission's consideration of this Application.

3.2. Purchase Price. The Unit 2 Facilities will be sold to the Lessors at a fair market price which may be approximately \$450 million if all of PNM's interest in the Unit 2 Facilities is sold. Prior to the closing of the lease transactions, an appraisal will confirm that the purchase price is a reasonable estimate of fair market value. The appraisal, to be conducted by an appraiser selected by the Equity Investors, will also determine that, after approximately 31-1/2 years, the estimated remaining economic life of the Unit 2 Facilities will be long enough and their estimated value will be great enough to establish the Leases as true leases for Federal tax purposes.



3.3. Lease Term and Renewal Option. The basic term of each of the Leases is expected to be approximately 29-1/2 years. PNM will seek an option, at the end of the basic term, to renew each of the Leases for a renewal term of approximately 2 years at a rental payment equal to 50 percent of the original rent. The fixed rent renewal period may be extended under limited circumstances. Additionally, PNM will seek from the Equity Investors the option, but no obligation, to continue renewing each of the Leases at fair market rentals for the remaining life of the Unit 2 Facilities.

3.4. Purchase Option. PNM will have the option, but no obligation, at the end of the basic term and at the end of each renewal term to purchase the Unit 2 Facilities at their fair market value at that time.

3.5. Quiet Enjoyment; Rights of PNM. During the term of the Leases, the Lessors will warrant that, so long as PNM is in compliance with the terms of the Leases, PNM's sole possession and use of, and rights with respect to, the Unit 2 Facilities shall not be interrupted by the Lessors or any person claiming through the Lessors. PNM will be empowered with respect to the Unit 2 Facilities to be and act as the "Participant" under the ANPP Participation Agreement⁴ with full and exclusive authority to exercise and perform all of the rights and duties of a Participant thereunder. Additionally, PNM will retain the exclusive right to sell and dispose

4. See 3.9 below.



of the power and energy derived from the generation entitlement share in Unit 2 associated with the Unit 2 Facilities.

3.6. Net Lease. The Leases will be "net leases" under which PNM will be responsible for paying all taxes, insurance premiums, operating and maintenance costs, and all other similar costs associated with the Unit 2 Facilities (including obligations as the Participant in respect of the Unit 2 Facilities under the ANPP Participation Agreement).⁵ The purpose of these provisions is to ensure that the Lessors are subject only to normal financing risks and not to operational risks or responsibilities.

3.7. Capital Improvements. Any addition, betterment or enlargement of the Unit 2 Facilities, or replacement of units of property within the Unit 2 Facilities (Capital Improvement) will be PNM's obligation under the Leases. PNM may, but will not be obligated to, request that the Lessors provide financing under the Leases (Supplemental Financing) for their respective shares of Capital Improvements. The terms and conditions of any Supplemental Financing will be subject to mutual agreement between PNM and each Equity Investor and the aggregate amount of all Supplemental Financings is expected to be limited to approximately \$200,000,000, assuming all of PNM's interest in the Unit 2 Facilities is sold. Each Equity Investor will have the option, but no obligation, to make additional equity investments in Capital Improvements which are the subject of

5. See 3.9 below.



Supplemental Financings. Concurrently with any Supplemental Financing, the rent payments will be adjusted to support the amortization of the additional debt issued in connection with the Supplemental Financing and to preserve the Equity Investors' net economic return.

3.8. **Support Agreements.** PNM and the Lessors will enter into support agreements which will provide the Lessors with such rights in parts of PNM's interest in PVNGS not constituting Unit 2 Facilities as may be necessary to enable them to realize the residual value of their interests. In particular, effective upon termination of the Leases (unless PNM shall have exercised its option to purchase the Unit 2 Facilities), certain rights in nuclear fuel, transmission facilities to the ANPP Switchyard and other retained assets⁶ will be made available to the Lessors for the remaining economic life of the Unit 2 Facilities to satisfy Internal Revenue Service guidelines for a "true lease" characterization, particularly with regard to negating any "limited use" characteristics of the Unit 2 Facilities.

3.9. **The ANPP Participation Agreement.** The construction, operation and maintenance of PVNGS and the rights and duties of the joint owners of and participants in PVNGS are governed by the ANPP Participation Agreement dated August 23, 1973, as amended (the ANPP Participation Agreement). Under the ANPP Participation Agreement, APS, as agent for all of the ANPP Participants, has been appointed as

6. For a description of the retained assets, see footnote 1 above.

the project manager responsible for the construction of PVNGS and as the operating agent responsible for the operation and maintenance of PVNGS. The ANPP Participation Agreement provides the delegations of authority to APS necessary to permit APS to carry out such functions in a manner which complies with all laws, regulations, permits and licenses (including the Unit 2 License).

The ANPP Participation Agreement also establishes the rights and obligations of the ANPP Participants. One of the primary obligations assumed by the ANPP Participants under the ANPP Participation Agreement is the obligation to share the costs of construction, operation, maintenance, decommissioning and capital improvements of PVNGS, in accordance with their respective generation entitlement shares. So long as an ANPP Participant is not in default in its obligations under the ANPP Participation Agreement, such Participant is entitled to schedule power based on its generation entitlement share of the generating capability of such unit available at the time of such scheduling.

The ANPP Participation Agreement provides the ANPP Participants with oversight of PVNGS and the actions of APS as project manager and operating agent through participation in three standing committees: the Administrative Committee, the Engineering and Operating Committee and the Auditing Committee. Generally, all actions which each of the committees is authorized to take must be approved by the unanimous vote of all members entitled to vote on such committee. In the event any committee is unable to agree on any

matter (with certain limited exceptions) which the committee is authorized to determine, the project manager/operating agent is authorized and obligated to take such action and expend such funds as in its discretion is necessary to the proper construction, operation and maintenance of PVNGS, pending resolution of such inability or failure to agree. Additionally, in the event of an operating emergency, the operating agent is authorized and obligated to take such action as it, in its sole discretion, may deem prudent and necessary.

Amendment No. 10 to the ANPP Participation Agreement permits the proposed sale and leaseback transactions, subject to the satisfaction of certain criteria. As with the transactions described in the Unit 1 Application, the transactions described in this Application will meet such criteria. PNM will request that the ANPP Administrative Committee make the determinations necessary to permit consummation of the proposed transactions.

4. Conditions Precedent to the Transactions

The proposed transactions are subject to the following conditions precedent, in addition to others commonly associated with any financial transaction of this nature:

(a) The approval of the transactions by the New Mexico Public Service Commission (NMPSC) as required by the laws of the State of New Mexico, such approval to be in form and substance



satisfactory to all parties to such transactions;⁷

(b) Receipt of an opinion of counsel to PNM specializing in Federal Energy Regulatory Commission (FERC) matters, satisfactory in form and substance to all parties to the transactions, to the effect that the Equity Investors and the Owner Trustee will not, as a result of their holding title to the Unit 2 Facilities, become "public utilities" as defined in section 203(a) of the Federal Power Act. PNM's special counsel specializing in FERC matters has determined that an application for an exemptive order from FERC, such as was obtained in respect of Unit 1,⁸ will not be necessary since transactions of this nature have been favorably ruled upon on numerous occasions by FERC;

(c) The actions of the Commission requested in this Application; and

(d) The determinations required to be made in respect of the transactions by the ANPP Administrative Committee.

5. Schedule of the Sale and Leaseback Transactions

If the proposed sale and leaseback transactions are to include the economic benefit to PNM of transferring to the Lessors the investment credit available with respect to Unit 2 (which results

7. A copy of the Order of the NMPSC in respect of the transactions described in the Unit 1 Application is attached hereto as Exhibit A.

8. A copy of the FERC Order in respect of the transactions described in the Unit 1 Application is attached hereto as Exhibit B.



in lower annual rent payments), such transactions must be consummated within three months of the date on which Unit 2 is first synchronized (utilizing its nuclear steam supply system) with the main transmission grid, the latter date being the date on which Unit 2 is first "placed-in-service" for purposes of the investment credit under section 46 of the Internal Revenue Code. Under current schedules, first synchronization is expected to be completed on or about March 26, 1986. If this schedule is met, sales of interests in the Unit 2 Facilities must occur not later than June 26, 1986.

To meet the projected deadline it is planned that preliminary conditional commitments will be obtained from the Equity Investors in a timely manner. The First National Bank of Boston has already committed to act as Owner Trustee. It is expected that approval of the proposed transactions by the NMPSC will also be obtained in a timely manner and that the proposed transactions will themselves be consummated on or before June 26, 1986 (assuming synchronization on March 26, 1986). The economic aspects of certain transactions may, however, require a closing prior to April 30, 1986. Certain Equity Investors have tax years that end other than on December 31. If an Equity Investor's tax year ends on April 30, the closing of a transaction prior to that date yields more favorable tax benefits to the investor and a lower yearly rent obligation to PNM, resulting in further savings to PNM's ratepayers. PNM may receive a proposal from such an Equity Investor.



To achieve this schedule it will be necessary that:

- (i) notice of this Application be published in the Federal Register not later than March 15, 1986, thereby allowing 40 days to elapse prior to the making by the Commission of a determination in respect of this Application; and
- (ii) the requested order and amendment to the Unit 2 License be issued and become effective not later than April 25, 1986.

6. Supporting Information

The general information respecting applicant PNM required by 10 CFR 50.33 (a) through (d) was provided by Exhibit A to the Unit 1 Application, which information is incorporated herein by reference. Since the date of the Unit 1 Application, there has been no change in the information so provided, except for such changes to the information required by 10 CFR 50.33(d)(3)(i) and (d)(3)(ii) as are set forth in Exhibit C to this Application. Promptly upon their becoming available (currently expected to be in March, 1986), copies of PNM's 1985 Annual Report and PNM's Annual Report on Form 10-K for the fiscal year ended December 31, 1985 will be provided by PNM to the Commission. A copy of PNM's Quarterly Report on Form 10-Q for the quarter ended September 30, 1985 has previously been provided under cover of the November 21, 1985 letter to which reference is made below.

The general information respecting the Owner Trustee required by 10 CFR 50.33 (a) through (d) was provided by Exhibit A attached to the Unit 1 Application, which information is herein



incorporated by reference. To the best knowledge of PNM, since the date of the Unit 1 Application, there has been no material change in the information so provided. Promptly upon their becoming available (currently expected to be in March or early April), copies of Bank of Boston Corporation's 1985 Annual Report and Bank of Boston Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 1985, will be provided to the Commission. The First National Bank of Boston, the Owner Trustee, is the principal operating subsidiary of Bank of Boston Corporation.

The Equity Investors have yet to be identified. Upon PNM's accepting a proposal from a potential Equity Investor, PNM will, as promptly as possible, provide to the Commission (i) the purchase price of the portion of the Unit 2 Facilities in respect of which each Equity Investor will make its initial commitment to invest and (ii) the most recent publicly-available annual and interim financial statements for such Equity Investor.

By letter dated November 21, 1985, Mudge Rose Guthrie Alexander & Ferdon submitted the response of PNM to the Request for Additional Information-Application in Respect of a Sale and Leaseback Financing Transaction for Palo Verde Unit 1 dated November 7, 1985, such request having been made by George W. Knighton, Chief, Licensing Branch No. 3, Division of Licensing. PNM will in due course file with the Commission the anticipatory response of PNM based upon the expectation that a request similar to the November 21, 1985 Request will be made with respect to the Unit 2 Facilities transactions.



7. Environmental Considerations

The proposed conveyances of the Unit 2 Facilities to the Owner Trustees and the lease of the Unit 2 Facilities to PNM by the Lessors do not involve any design or physical change to Unit 2, any change in the transmission or other facilities associated with Unit 2, any change in types or amounts of effluents from Unit 2, any change in the potential for accidental releases from Unit 2 or any change in the authorized power level of Unit 2. Accordingly, the grant of the relief requested by this Application does not present an unreviewed environmental impact. Pursuant to 10 CFR 51.5(d)(4), no environmental impact statement, negative declaration or environmental impact appraisal need be prepared in connection with this Application.

8. Antitrust Considerations

As noted above,⁹ among the Equity Investors from which PNM expects to receive proposals are affiliates and/or subsidiaries of electric utilities. These utilities may be in any geographic region of the country, including Arizona and California. These entities are an important potential source of equity investment for sale/leasebacks of PNM's interest in PVNGS. These entities, like any other Equity Investor, will not have, so long as the related Leases

9. See 3.1 above.



are in effect, any right to power or energy generated at PVNGS,¹⁰ and such power and energy will be distributed in the manner as is now set forth in the ANPP Participation Agreement as though no sale and leaseback transactions had been consummated. The transactions described in this Application do not present any unreviewed antitrust considerations not previously addressed in connection with issuance of the Unit 2 License.¹¹ To the extent that antitrust considerations could be affected by an Equity Investor which is an affiliate or subsidiary of an electric utility entering into possession of an interest in the Unit 2 Facilities upon termination of its Lease, the restrictions imposed by the requested amendment to the Unit 2 License will give the Commission an opportunity to make further determinations concerning antitrust and other licensing concerns in light of the circumstances at the time such change in possession takes place.

PNM will submit to the Commission a memorandum in support of this Application addressing the possible antitrust concerns raised by the participation by an Equity Investor which is an affiliate or subsidiary of an electric utility.

9. No Significant Hazards Consideration

The consummation of the proposed sale and leaseback

10. See 3.5 above.

11. A similar determination was made by the Staff of the Commission in connection with the Unit 1 Application. See Policy Paper SECY-85-367, p. 9.



transactions will not involve any increase in the probability or consequences of an accident previously evaluated, or create the possibility of an accident that is new or that is different from any accident previously evaluated, or involve any reduction in any margin of safety. Accordingly, the consummation of the transfers of the Unit 2 Facilities as contemplated by the proposed sale and leaseback transactions does not involve a "significant hazards consideration" within the meaning of that phrase as defined in 10 CFR 50.92. A similar determination was made by the Commission in connection with the Unit 1 Application.

10. Foreign Ownership Considerations

Certain Equity Investors may be "owned", "controlled" or "dominated" by a foreign corporation within the meaning of Section 103d of the Atomic Energy Act. In Policy Paper SECY-85-367, the Staff took the position that, if a licensing requirement were not imposed on the Equity Investors, then the prohibition of Section 103d need not be addressed.¹² In its Order of December 12, 1985, the Commission concurred in the "no license" position. It is respectfully submitted, therefore, that possible foreign control of an Equity Investor should not prohibit the license amendment requested by this Application. This conclusion is only reinforced by the fact that the proposed transactions, like the December 31, 1985

12. Policy Paper SECY-85-367, pp. 9-10, fn. 7. See 8 above.



transactions, do not subject PNM to the will of the Equity Investors or otherwise give the Equity Investors the power to direct PNM's actions with respect to Unit 2.

11. Responsibility for Management of Unit 2

The consummation of the proposed sale and leaseback transactions will not result in any change in the responsibilities, obligations or authorities of APS as the licensee under the Unit 2 License authorized to operate and maintain Unit 2, or as Operating Agent under the ANPP Participation Agreement. Under the terms of the proposed Leases and pursuant to the ANPP Participation Agreement, PNM will continue throughout the term of the Leases to be a Participant under the ANPP Participation Agreement, entitled to a 10.2% generation entitlement share of the power and energy generated by Unit 2, entitled to a full vote on all significant determinations relating to Unit 2 and obligated to pay 10.2% of the costs of operating and maintaining Unit 2.

It is not necessary to issue a license to the Owner Trustee and/or Equity Investors since only APS, as Operating Agent, and the other Unit 2 licensees, including PNM, are able to insure that Unit 2's operation is consistent with the Commission's licensing responsibilities. APS and the other Unit 2 licensees alone have control of and responsibility for the Operating Agent with respect to the operation and maintenance of Unit 2. The limited nature of the ownership rights of the Owner Trustee and/or the Equity Investors



makes it unnecessary for the Commission to license them. Neither the Owner Trustee nor any of the Equity Investors will have (i) any ability to restrict or inhibit compliance with the security, safety or other regulations of the Commission, (ii) any capacity to control the use or disposal of Unit 2 nuclear fuel, or (iii) any right to use or direct the use of the Unit 2 Facilities or any other part of PVNGS. Although legal title to the Unit 2 Facilities will reside with the Owner Trustee, the current regime of control, supervision and responsibility will be unaltered by the proposed transactions. APS is and will remain responsible to the Commission for the proper operation and maintenance of Unit 2.

Facts similar to the foregoing were submitted to the Commission in connection with the Unit 1 Application and served as a basis for the Commission's December 12, 1985 Order with respect thereto.

12. Basis for Relief Requested

The sale and leaseback transactions described in this Application are the same in all respects material to the Commission's consideration of this Application as the transactions described in the Unit 1 Application. In both cases, the basic term of each applicable lease agreement is in excess of 29 years, subject to certain renewal options, and is joined with a fair market value purchase option at the end of the basic lease term and each renewal term. All such lease agreements will provide that, so long as PNM is in



compliance with the terms of the lease agreements, PNM's sole possession and use of, and rights with respect to the leased facilities, will not be interrupted by the Lessors or any person claiming through the Lessors. In addition, PNM will be empowered with respect to the Unit 2 Facilities (whether or not subject to a sale and lease-back transaction) to be and act as the "Participant" under the ANPP Participation Agreement, which sets forth the rights and duties of each of the owners of PVNGS.¹³

Additionally, PNM will retain the exclusive right to sell and dispose of its share of power and energy from PVNGS without limitation arising from any lease agreement. All such lease agreements are or will be "net leases" under which PNM will be responsible for paying all taxes, insurance premiums, operating and maintenance costs, costs related to capital improvements and decommissioning and all other similar costs and expenses associated with PNM's share of the leased facilities. Although provisions may be made for the Equity Investors to make a limited initial contribution toward decommissioning, such an approach would not diminish PNM's primary and unconditional obligations with respect to decommissioning. Under each lease agreement PNM will be obligated to make semi-annual lease payments to the Lessor which will repay and provide a return on each Equity Investor's investment in the Unit 2 Facilities and which will pay principal and interest on debt obligations issued to finance a

13. See 3.9 above.

portion of the purchase price of the Unit 2 Facilities.¹⁴ The rights acquired by the Lessors, the Equity Investors and their respective successors and assigns in and to the Unit 2 Facilities may, in each case, 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 applicable Commission license, the Atomic Energy Act and the Commission's regulations. Lastly, the Lessors and the Equity Investors will acknowledge that before taking possession of any part of PVNGS, they will be subject to applicable requirements concerning (i) the issuance of a license by the Commission authorizing such possession or (ii) the transfer of the Commission license authorizing PNM to possess an interest in PVNGS upon application for transfer of such license filed pursuant to applicable law.

As can be seen from the foregoing, the basis for the relief requested in the present Application is the same as the basis upon which relief was granted with respect to the Unit 1 Application. The benefits that motivated the Unit 1 Application also motivate this Application: New Mexico ratepayers will experience substantial long-term savings both from the lower cost of capital thereby made available and from the leveled revenue requirements inherent in the sale and leaseback transaction.¹⁵ PNM's preliminary estimate is that the proposed transactions will reduce the ratepayer revenue requirements associated with Unit 2 by approximately \$490 million

14. See Section 4.10 of the Memorandum dated October 18, 1985 in support of the Unit 1 Application for a description of debt financing for the sale and leaseback transactions relating to Unit 1. The same or similar debt financing arrangements will be made with respect to the Unit 2 Facilities.

15. See Policy Paper SECY-85-367, p. 4.



over the life of Unit 2. In present value terms, this would represent savings of approximately \$40 million over continued traditional financing. Additionally, PNM's overall financial stability will be further enhanced. The relief requested in this Application is the same relief (based upon similar facts) requested in the Unit 1 Application, and the Commission's action, it is respectfully submitted, should be governed by its response to the Unit 1 Application.



WHEREFORE, APS requests on behalf of PNM that the Commission grant the relief requested in Section 1 hereof or in such other form and/or subject to such conditions in addition to those stated in such Section as the Commission may deem appropriate.

Respectfully submitted,

ARIZONA PUBLIC SERVICE COMPANY

By Edwin E. Van Brunt, Jr.
Edwin E. Van Brunt, Jr.
Executive Vice President-ANPP

Dated: February 14, 1986



STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Edwin E. Van Brunt, Jr., represent that I am the Executive Vice President-ANPP, that the foregoing document has been signed by me on behalf of Arizona Public Service Company with full authority to do so, that I have read such document and know its contents, and that to the best of my knowledge and belief, the statements made therein are true.

Edwin E. Van Brunt, Jr.
Edwin E. Van Brunt, Jr.

Sworn before me this 14th day of February, 1986

Eddie Batchelder
Notary Public

My Commission Expires Feb. 11, 1989



1. 2. 3. 4. 5. 6. 7. 8. 9. 10.



11. 12. 13. 14. 15. 16. 17. 18. 19. 20.



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X
In the matter of :
ARIZONA PUBLIC SERVICE :
COMPANY, et al., :
(Palo Verde Nuclear :
Generating Station, Unit 2) :
-----X

DOCKET NO. STN 50-529

APPLICATION IN RESPECT OF SALE AND
LEASEBACK TRANSACTIONS BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

EXHIBIT A

ORDER OF THE NEW MEXICO PUBLIC
SERVICE COMMISSION WITH RESPECT TO
PVNGS UNIT 1

BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

THE MATTER OF THE PETITION OF PUBLIC
SERVICE COMPANY OF NEW MEXICO FOR
AUTHORIZATIONS RELATING TO THE
PROPOSED SALE AND LEASEBACK OF
AN UNDIVIDED OWNERSHIP INTEREST
IN UNIT 1 AND CERTAIN COMMON
FACILITIES AT PALO VERDE NUCLEAR
GENERATING STATION,

CASE NO. 1995

PUBLIC SERVICE COMPANY OF NEW MEXICO,

PETITIONER.

O R D E R

THIS MATTER having come before the New Mexico Public Service Commission ("Commission") at its emergency open meeting upon the Recommended Decision of the Hearing Examiner Michael Barlow, and upon the briefs on exceptions filed by PNM, and a letter by the Office of the Attorney General indicating that it takes no exceptions, and the Commission being otherwise fully informed of the premises:

The Commission FINDS AND CONCLUDES:

1. The Statement of the Case and the Discussion of the Hearing Examiner (as set forth in his Recommended Decision attached hereto as Exhibit A), which are incorporated by reference as if fully set forth herein, are ADOPTED, APPROVED and ACCEPTED as the Statement of the Case and Discussion of the Commission, except as modified by any provisions of this Order or of the Opinion which the Commission will be issuing in the immediate future;



2. Public Service Company of New Mexico ("PNM") is a New Mexico corporation that owns, operates, leases or controls plants, property or facilities for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat, power or other uses within the State of New Mexico;

3. PNM is certified and authorized to conduct the business of providing public utility service within the State of New Mexico;

4. PNM is a public utility as defined in the Public Utility Act, NMSA 1978, Sections 62-3-1, et seq., (Repl. Pamp. 1984);

5. The Commission has jurisdiction over the parties and over the subject matter herein;

6. PNM owns an undivided interest in three units and in common facilities of an electric generating project known as the Arizona Nuclear Power Project and as the Palo Verde Nuclear Generating Station ("ANPP" or "PVNGS");

7. PNM proposes to enter into two or more leveraged lease financing transactions ("Lease Transactions") for all or a portion of its 10.2 percent undivided ownership interest in Unit 1 of PVNGS, and up to all or a proportionate share of one-third of its 10.2 percent undivided ownership interest in common facilities of PVNGS. Said interest in Unit 1 and in said common facilities is hereinafter referred to collectively as the "Facilities";

8. Specifically, the Lease Transactions which PNM proposes involve PNM's sale of the Facilities to, and then lease of the

Facilities back from, institutional investors (the "Equity Investors"). Through a process of competitive bidding and negotiation, Burnham Leasing Corporation, Chrysler Capital Corporation and Mellon Financial Services Leasing Group, or affiliates of any of the foregoing, have tentatively been selected as Equity Investors for a portion of the Facilities. PNM is seeking one or more additional Equity Investors for all or a portion of the remainder;

9. PNM is considering that one of PNM's wholly-owned subsidiaries or affiliated interests may participate in the Lease Transaction as an Equity Investor if necessary to complete the sale of PNM's entire interest in the Facilities. PNM should seek and obtain separate approval by the Commission prior to any participation in the Lease Transaction by one of PNM's subsidiaries or affiliates after due consideration by the Commission of the unique issues which such participation may raise;

10. Under the proposed Lease Transaction, each of the Equity Investors will form a trust for the purpose of holding title to its undivided interest in the Facilities. The trustees under the trusts will act as lessors (the "Lessors") of the Facilities and will lease the Facilities to PNM under one or more leases ("Leases"). PNM will retain ownership of easements, rights-of-way and other real property rights and certain transmission facilities associated with the Facilities, but by easements and other agreements will make such rights and facilities available to the Lessors for a period equal to the



economic useful life of the Facilities. PNM will retain the right to use all such rights and facilities during the term of the Leases;

11. The Facilities will be sold to the Lessors at a fair market price that is expected to result in no book gain or loss to PNM and which may be approximately \$446,000,000 if all of PNM's interest in Unit 1 and one-third of PNM's interest in the related common facilities is sold;

12. If PNM requests and the Lessors agree to financing of capital improvements to Unit 1 of PVNGS and associated common facilities (not to exceed a total of \$25,000,000.00) through the issuance of additional debt, as used in this Order the terms "Lease Transactions" and "Facilities" also include such additional or modified terms and conditions as are reasonably necessary to consummate such agreement.

13. Prior to the closing of the Lease Transaction, an appraisal will confirm that the purchase price is a reasonable estimate of fair market value, in order to comply with certain Internal Revenue service requirements to preserve the tax benefits of the transactions. The Lessors will borrow approximately 70% to 80% of the purchase price by causing public debt to be issued by a funding corporation (the "Funding Corporation") formed for the purpose. Although the public debt would be issued by the Funding Corporation, such debt would be non-recourse to the Lessors and the Equity Investors. The public debt would be indirectly secured by an assignment of the rentals due from PNM under the Leases. PNM will be the named



"registrant" in the Registration Statement that will be filed with the United States Securities and Exchange Commission in connection with issuance of the public debt;

14. Although the Lessors will be the owners of the Facilities, PNM will remain responsible for all expenses of operation and maintenance. The initial term of the Leases will be approximately twenty-nine years, and PNM will have certain renewal options. In addition, PNM will have certain options to repurchase the Facilities. The rent to be paid by PNM over the term of the Leases will be a function of the interest rates payable on the public debt, among other things. The rent will be subject to adjustment in the event the 99th Congress enacts certain legislation affecting tax benefits;

15. The evidence shows that the present value cost of the Facilities to ratepayers will be lower under the Lease Transactions than under PNM ownership, whether calculated by traditional ratemaking methods or by Inventorying ratemaking methods that were approved by the Commission in Case No. 1804. PNM presently estimates a \$147 million savings in present worth of revenue requirements under traditional ratemaking and \$53 million of present worth savings under Inventorying ratemaking, if all of its interest in Unit 1 and related common facilities (excluding any additional capital improvements as discussed in paragraph 12 of these Findings and Conclusions) are sold;

16. PNM will continue to maintain sufficient incentives to make off-system sales from plant in Inventory, due to the potential unrecovered "at-risk" costs and AFUDC subject to the



Inventory cap which remain after approval of the Lease Transactions;

17. The Lease Transactions also will provide substantial benefits to PNM's shareholders;

18. The Lease Transactions fairly balance the interests of PNM's ratepayers and shareholders and the public interest.

19. The proceeds to PNM from the Lease Transactions will be used for one or more of the following purposes: the acquisition of additional public utility property; the construction, completion, extension or improvement of PNM's public utility facilities; the improvement or maintenance of its public utility service; the discharge or lawful refunding of its public utility obligations; the reimbursement of monies actually expended for such purposes from income or from any other monies in PNM's treasury not secured by or obtained from this issue, assumption or guarantee of securities within five years prior to the filing of the Petition herein; for any of the aforesaid purposes. The purposes of the Lease Transactions are permitted by the Public Utility Act, Section 62-3-1, et seq., NMSA 1978 (Repl.Pamp. 1984) as amended;

20. The aggregate amount of securities of PNM outstanding and proposed to be outstanding after the consummation of the Lease Transactions will not exceed the fair value of the properties and business of PNM;

21. For purposes of this Order and for future accounting treatment, the common facilities at the PVNGS should be allocated equally among the three units of the project;

22. The "weighted annual lease payment factor," as used in this Order, means the weighted average percentage rate negotiated with Lessors which, when multiplied by the sales price, determines the annual lease payment;

23. The "weighted annual lease payment factor" for the Lease Transactions should not exceed 11.7%;

24. All other issues of ratemaking treatment for the Lease Transactions and whether the Commission's Final Order in Case No. 1804, which established Inventorying, needs to be amended to reflect the approval of the Lease Transactions, should be determined in a separate case which PNM shall file at least 120 days prior to the date that it needs to obtain a final order from the Commission. The Commission retains full authority over the Facilities, and over all issues of ratemaking treatment for the lease payments, the costs of and any gains or losses from the sale and leaseback concerning said Facilities, including the authority to disallow any or all of the lease expenses and transaction costs on a used-and-useful basis, on the basis of imprudency in the cost of the Facilities, or on any other lawful basis, and the approval of the Lease Transactions granted by this Order is contingent on the Commission's retention of such full authority;

25. The case described in paragraph 24 of the Findings and Conclusions should include, but not necessarily be limited to determining:

a. what responsibility, if any, ratepayers should bear for costs from any casualty losses at PVNGS or indemnification



costs which PNM may have to pay the Equity Investors if certain changes in the tax law occur in the future;

b. what responsibility, if any, ratepayers should bear for decommissioning costs associated with PVNGS Unit 1 (and related common facilities) associated with that portion of the life of such Unit during which it is not owned or leased by PNM;

c. what share, if any, ratepayers should bear of the costs of consummating the Lease Transactions; and

d. what share, if any, of any gains or losses from the Lease Transactions should be borne by shareholders and ratepayers;

26. The Lease Transactions are not exempt within the meaning of NMSA, 1978, Section 62-6-8, (Repl.Pamp. 1984);

27. The prior approval by the Commission of the Lease Transactions is required under NMSA 1978, Section 62-6-6, (Repl.Pamp. 1984);

28. The purposes of the Lease Transactions are permitted under NMSA 1978, Section 62-6-6, (Repl.Pamp. 1984);

29. Due and timely notice of this proceeding was published in a newspaper of general circulation in the county in which PNM's principal office in New Mexico is located; and

30. The Lease Transactions as described in the Petition, testimony and exhibits of PNM for the Facilities as described in paragraphs 7, 11 and 12 of the Findings and Conclusions in this Order should be approved subject to the limitations and conditions set forth in this Order.

The Commission ORDERS:



A. To the full extent that the approval and authorization of the Commission are required by the laws of the State of New Mexico, the Commission hereby approves the Petition herein and authorizes PNM to undertake and consummate the Lease Transactions for the Facilities (as described in paragraphs 7, 11 and 12 of the Findings and Conclusions in this Order) substantially in accordance with the structure and business terms reflected in the Petition, testimony and exhibits of PNM, and to take all such action as may be necessary or appropriate in connection therewith, subject to the limitations and conditions contained in this Order;

B. PNM is hereby granted authority to sell and lease back, subject to the limitations and conditions contained in this Order, all or a portion of its 10.2 percent undivided ownership interest in Unit 1, and up to all or a proportionate share of one-third of its 10.2 percent undivided ownership interest in common facilities, of the Arizona Nuclear Power Project pursuant to NMSA, 1978, Section 62-6-12 (Repl.Pamp. 1984);

C. PNM is hereby granted authority to exercise its options to renew the Leases or any of the Leases and to repurchase all or any portion of the facilities in accordance with the terms of the Leases at the fair market value of the Facilities at the time of such renewal or repurchase;

D. PNM is hereby granted the authority, pursuant to NMSA, 1978, Section 62-6-6, (Repl.Pamp. 1984), to issue, assume and guarantee securities in order to consummate, and to perform its obligations and exercise its options under the Lease



Transactions (including financing of up to \$25,000,000 of additional capital improvements as required or permitted by the terms of the Leases within 10 years from the date of this Order, the costs of which will be reflected in an adjustment to lease rentals, as indicated in the testimony and exhibits of PNM), including, but not limited to: (a) early placement of public debt, secured by the direct obligation of PNM, (b) issuance, assumption or guarantee of securities necessary for any private interim financing, (c) issuance of securities necessary for any reoptimization or releveraging of debt following any adjustment of rental payments; and (d) assumption of debt by PNM in connection with any requirement under the Leases that the Company pay Casualty Value, Special Casualty Value, Special Loss Value or Termination Value, (e) adjustment of rents from time to time as required by the Leases, and (f) execution of supplements to the Leases as required or permitted by the Leases;

E. PNM is hereby authorized to enter into the Leases, pursuant to a stipulation entered into a Commission Case No. 1602 requiring Commission approval of certain leases;

F. The Commission hereby acknowledges that, by virtue of NMSA, 1978, Section 62-3-4.1.A., the Lease Transactions shall not cause any of the Equity Investors or the Lessors to be deemed to be a "public utility" subject to the jurisdiction, control or regulation of the Commission;

G. The terms of the Leases and other documents to be entered into a connection with the Lease Transactions are hereby approved, as such terms are outlined in the Petition, testimony



and exhibits of PNM, except, however, the weighted annual lease payment factor shall not exceed 11.7%, and except as otherwise may be inconsistent with or contrary to the limitations and conditions contained in this Order;

H. The terms of the Leases and other documents to be entered into in connection with the Lease Transactions are hereby approved, pursuant to NMSA, 1978, Section 62-3-4.1.B., for the purpose of enabling each of the Equity Investors and the Lessors to qualify for an exemption by the United States Securities and Exchange Commission from the Public Utility Holding Company Act of 1935, as amended (Chapter 2C of Title 15 of the United States Code);

I. For purposes of this Order and for future accounting treatment the common facilities at the Arizona Nuclear Power Project shall be allocated equally among the three units of the project;

J. The Certificate of Convenience and Necessity issued in Commission Case No. 1216 is hereby modified to reflect the approval of the Lease Transactions granted herein;

K. PNM is hereby authorized from time to time to use and apply the proceeds received from the Lease Transactions for one or more of the following purposes: the acquisition of additional public utility property; the construction, completion, extension or improvement of PNM's public utility facilities; the improvement or maintenance of its public utility service; the discharge or lawful refunding of its public utility obligations; the reimbursement of monies actually expended for such purposes



from income or from any other monies in PNM's treasury not secured by or obtained from the issue, assumption or guarantee of securities within five years prior to the filing of the Petition herein; for any of the aforesaid purposes. The proceeds may be invested temporarily pending application to the foregoing purposes;

L. Approval of the Lease Transactions does not include participation by any "affiliated interest" of PNM within the meaning of NMSA 1978, Section 62-3-3 A (Repl. Pamp. 1984), nor by any person ten percent or more of whose voting securities are owned or held, directly or indirectly, by an "affiliated interest" of PNM; PNM shall seek and obtain separate approval by the Commission prior to any agreement to participate in the Lease transaction by one of PNM's subsidiaries or affiliates;

M. Nothing contained in this Order shall be considered to be a consideration or approval of any lease transactions other than the Lease Transactions for the Facilities as described in paragraphs 7, 11 and 12 of the Findings and Conclusions in this Order;

N. Except as expressly determined in this Order, nothing contained herein shall be considered as a determination by the Commission of the value of any of PNM's properties or the justness or reasonableness of any cost or expense incurred by PNM, including, but not limited to its expenditure of up to \$25,000,000.00 in capital improvements on PVNGS Unit 1 and associated common facilities;



O. Except as expressly determined in this Order, nothing contained herein shall be considered as a determination of the appropriate ratemaking treatment for the Lease Transactions, nor of any costs, gains or losses associated therewith, nor of whether the Commission's Final Order in Case No. 1804, which established Inventorying, needs to be amended to reflect the approval of the Lease Transactions. PNM shall file a case proposing such ratemaking treatment as indicated in Paragraph 24 of the Findings and Conclusions in this Order;

P. Nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, has verified the accuracy, completeness or fairness of any factual information contained in any offering circular, registration statement, prospectus, or any other document prepared or delivered in connection with the Lease Transactions, or the accuracy, completeness or fairness of any statements made in connection with the Lease Transactions. Accordingly, nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, has expressed or expresses an opinion as to whether any statement made or document delivered in connection with the Lease Transactions contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

Q. Nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent



or employee thereof, shall have any responsibility for the application or disposal by PNM, or its officers, agents or employees, of any of the proceeds derived from the Lease Transactions;

R. PNM shall, within sixty days following the closing of the Lease Transactions, file with this Commission a report, verified by an officer of PNM before a notary public, stating the consummation, the amount of proceeds, the expenses actually incurred by PNM, and the terms and conditions thereof;

S. Within ten days following the closing of the Lease Transactions, PNM shall file with the Commission true and correct copies of all documents executed in connection with the Lease Transactions, all filings with any governmental authority required to consummate the Lease Transactions, and any order or other official action taken by any other governmental authority which is required to consummate the lease transactions;

T. PNM shall, within six months from the date of this Order, file with this Commission a report, verified by an officer of PNM before a notary public, reflecting the application made by the Company of the proceeds of the Lease Transactions to the purposes herein authorized, and the amounts applied to each such purpose, including, but not limited to:

1. the type of investments in which the proceeds received from the Lease Transactions were invested temporarily pending application to the purposes set forth in paragraph K. of this Order, the amount of income received from such temporary investments, and the dispositions of such income;



2. whether (as presently intended by PNM and expected by the Commission), PNM refunded or called with a portion of the proceeds \$160 million in first mortgage bonds which carries a 17% interest rate, or any other existing securities. If so, then the disposition of the savings achieved thereby. If not, then the reasons for not refunding or calling such securities with a portion of said proceeds;

and PNM shall file like reports at intervals of not more than six months thereafter, until PNM has accounted for the application of the entire proceeds of the Lease Transactions;

U. This Order is effective immediately; and

V. A copy of this Order shall be mailed to the Company, to counsel of record for all parties to this case and to any parties appearing without counsel.

I S S U E D under the Seal of the Commission at Santa Fe, New Mexico this 27th day of November, 1985.

NEW MEXICO PUBLIC SERVICE COMMISSION



Suedeen G. Kelly
SUEDEEN G. KELLY, CHAIRMAN

David B. Smith
DAVID B. SMITH, COMMISSIONER

Marilyn C. O'Leary
MARILYN C. O'LEARY, COMMISSIONER



64

BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

IN THE MATTER OF PETITION OF PUBLIC
SERVICE COMPANY OF NEW MEXICO FOR
AUTHORIZATIONS RELATING TO THE
PROPOSED SALE AND LEASEBACK OF
AN UNDIVIDED OWNERSHIP INTEREST
IN UNIT 1 AND CERTAIN COMMON
FACILITIES AT PALO VERDE NUCLEAR
GENERATING STATION,

Case No. 1995

PUBLIC SERVICE COMPANY OF NEW MEXICO,

Petitioner.

RECOMMENDED DECISION OF THE HEARING EXAMINER

COMES NOW Michael Barlow, Hearing Examiner, in this matter,
submits the following Recommended Decision to the New Mexico
Public Service Commission pursuant to Rule R20-2, Second Revised
General Order No. 1.

STATEMENT OF THE CASE:

On October 9, 1985, Public Service Company of New Mexico
("PNM") filed a Petition with the New Mexico Public Service
Commission ("Commission") to enter into two or more sale and
leaseback transactions relating to all or a portion of PNM's
undivided 10.2 percent interest in Unit 1 of the Palo Verde
Nuclear Generating Station ("PVNGS"), also referred to as the
Arizona Nuclear Power Projects, together with all or a
proportionate share of one-third of PNM's undivided ownership
share of 10.2 percent undivided interest in the common



facilities. PNM further requested Commission approval for the issuance, assumption and guarantee of securities in conjunction with the sale and leaseback transactions to the extent that the transactions constitute the issuance, assumption or guarantee of securities.

On October 11, 1985, the Hearing Examiner issued an Order setting this matter for public hearing on November 12, 1985 at 9:00 o'clock a.m. at the offices of the Commission. Said Order further provided that good cause exists to continue this matter beyond the thirty day requirement of Section 62-6-9, NMSA 1978 (Repl.Pamp. 1984) due to the non-routine and complex nature of the case, and because approvals were also being sought to sell and lease public utility plant or property pursuant to Section 62-6-12, NMSA 1978 (Repl.Pamp. 1984). The Notice setting forth the procedural requirements and hearing date attached to the said Order was duly published.

Upon said Notice, this matter came on for hearing before the Hearing Examiner at the designated time and place. The following appearances were made:

For PNM:

Richard B. Cole, Esq.
Brian O'Rourke, Esq.
Keleher & McLeod, P.A.
Albuquerque, New Mexico

For the Attorney General of New Mexico:

Wayne Shirley, Esq.
Steven S. Michel, Esq.
Assistant Attorneys General
Santa Fe, New Mexico



For the United States Executive Agencies:

Captain Thomas Sounhein
Assistant Staff Judge Advocate
Kirtland Air Force Base, New Mexico

For Don Hancock:

Don Hancock
Pro Se
Albuquerque, New Mexico

For Commission Staff:

Charles F. Noble, Esq.
Staff Counsel
Santa Fe, New Mexico

No other appearances were made and no commentators from the public appeared at the hearing. The following individuals presented prefiled and oral testimony in this matter:

PNM:

Albert J. Robison
Robert B. Starnes
Ronald A. Zanoni
Billy D. Lackey

For Attorney General General of New Mexico:

Bruce Poster

For Commission Staff:

John E. Curl

The public hearings in this matter concluded at 2:30 p.m. on November 13, 1985.

DISCUSSION:

By Order dated February 8, 1977 in Case No. 1216, the Commission granted PNM a Certificate of Public Convenience and Necessity to participate in the Arizona Nuclear Power Project or PVNGS. PNM was granted the authority to participate in that project as a tenant in common and allowed to own, operated and maintain an undivided 10.2 percent interest in each of three PVNGS units, together with all common facilities incident to the units.

According to information provided by PNM in this proceeding, PVNGS Unit 1 is now completed and was synchronized with the main transmission grid on June 10, 1985. PNM expects said Unit 1 to reach full power level operation by the end of 1985. The expected in-service date of Unit 1 is April 1, 1986.

As noted in the Statement of the Case, PNM proposes to sell up to the full 10.2 percent undivided ownership in PVNGS Unit 1 together with all or a proportionate share of one-third of the 10.2 percent undivided interest in the common facilities owned by PNM. An outline of the proposed transaction is as follows:

1. PNM would sell these facilities to institutional investors at the fair market price thereof. It is expected that the sales price will be approximately \$446,000,000 if all of PNM's interest in Unit 1 and the full one-third of the common facilities are sold. An appraisal will be conducted prior to closing to confirm that the negotiated purchase price is a reasonable estimate of the fair market value. If less than the



full fair market value is committed to by the institutional investors, PNM would sell only a proportionate share of its 10.2 percent undivided interest in Unit 1 or restructure the transaction to eliminate the common facilities from the sale.

2. PNM would then lease the facilities sold and transferred back from the institutional investors through a trust to be formed by each of the institutional investors. The basic term of the leases would be 29 years.

The trustees of the trusts formed by the institutional investors would hold title to the respective undivided interests of the institutional investors and would act as lessors of the facilities sold and leased by PNM. PNM would pay semiannual lease payments to the lessors in an amount calculated to repay the capital investments of the equity investors over the term of the lease plus a return on such capital investment. The transaction costs, the interest rate on the debt obligations described below and an amortization schedule for the repayment of principal on the debt would be included in a "lease factor" which would determine the semiannual lease payments to be made by PNM to the lessors. The interest rate on debt obligations remains a variable until the closing of the transaction.

3. PNM would retain ownership of the easements, right-of-way and real property associated with Unit 1 and the common facilities. PNM would also retain the nuclear fuel and electric transmission facilities associated with these facilities.



4. PNM would remain fully responsible for all expenses of operation and maintenance of the facilities sold and transferred as well as all taxes and insurance premiums. PNM is bound by certain agreements with the other PVNGS participants to such operation and maintenance obligations and the proposed transaction would not alter such participation obligations.

5. The lessors would borrow between 70 percent and 80 percent of the purchase price to be paid to PNM from a funding corporation formed solely for that purpose. The funding corporation would borrow the debt portion of the purchase price by issuing public debt which would be secured by a security interest in the facilities sold and transferred by PNM. The public debt would be paid from the rental payments from PNM pursuant to the lease of the facilities sold and transferred. PNM would be the registrant for the Registration Statement that would be filed with the Securities and Exchange Commission.

At the end of the basic 29 year term of the leases, PNM would have the option of renewal for a term of 2 years with rent to be set at 50 percent of the original rent. Thereafter, renewal would be at fair market rental for the remaining life of the facilities. PNM would further have the option to purchase the facilities at the then fair market value at the end of the basic term of the leases and each renewal period.

After the rent to be paid by PNM has been determined, there could be certain occurrences that would cause the rents to be adjusted. If the 99th Congress enacts amendments to the Internal



Revenue Code in such a way that the tax benefits of equity investors are adversely affected, the rents would be adjusted to protect the investors' economic return. PNM is negotiating a maximum adjustment for a change in tax laws.

The rents of PNM could also be subject to adjustment if PNM requests and the lessors agree to financing of capital improvements to PVNGS through the issuance of additional debt. Such debt would be issued in the same manner as the debt for the purchase price discussed above. The rents would be adjusted to reflect the amortization of the additional debt to preserve the net economic return of the equity investors. PNM originally requested that the Commission grant authority to issue, assume and guarantee securities for capital improvements without limitation. PNM has modified that request and now asks for authority to issue up to \$25,000,000 in securities to fund capital improvements through the lease transactions.

While all parties to the proceeding agree that the ratemaking treatment for the requested transaction and rental payments to be made by PNM will be addressed in future proceedings (Robinson testimony, p.20, Tr. 244-245, 258), the Attorney General requests that three conditions be imposed by the Commission in this proceeding that would limit the exposure of PNM's ratepayers. The Attorney General would have the Commission specify a maximum lease payment that PNM would be allowed to contract for. PNM has agreed that the maximum weighted annual lease factor will be 11.7



percent which is acceptable to the Attorney General. Tr. 140,

244

Next, the Attorney General would have the Commission limit ratepayer exposure in case of casualty loss at PVNGS and for tax law change indemnification to the equity investors. Poster testimony, p.5. PNM would be required to pay the lessors an amount equal to the difference between an agreed casualty value and the insurance proceeds received by the lessors in the case of a total loss of the facilities involved in the transaction. The casualty value would be calculated in a way to assure that the equity investors are kept whole. The Attorney General correctly asserts that under no circumstances should ratepayers assume responsibility for costs in excess of the actual benefits they receive from the transaction. Tr. 244, 245. While the Commission is not setting the ratemaking treatment for the proposed transaction, the Commission should adopt this policy.

The Attorney General further asserts that the Commission should shield ratepayers from decommissioning costs associated with that portion of the life of PVNGS Unit 1 during which it is not owned or leased by PNM. Poster testimony, pp.5-6. Under PNM's proposal, it remains responsible for all decommissioning costs of Unit 1 even if it does not renew the lease or exercise the option to purchase. Tr. 18-20. The Commission should find that ratepayers would be responsible only for decommissioning costs associated with that portion of the life of Unit 1 when PNM owns or leases the Unit.



It is agreed by parties that the Commission would retain full authority over the ratemaking treatment for the lease payments and costs of the sale and leaseback as previously noted. It is also acknowledged by PNM that the Commission will retain full authority to disallow portions of the lease payment expenses on the basis of a used-and-useful test and on the basis of imprudence of PVNGS costs. Tr. 209. It is further generally agreed that PNM, its stockholders and future PNM ratepayers will realize significant benefits from the transaction. Curl testimony, pp.2-3, Poster testimony, p.2.

Staff witness Curl found that the equity investors would be able to use a higher degree of leverage in the purchase of the facilities by financing 70 to 80 percent of the purchase price through debt. This would lower the capital costs for the facilities. Curl testimony, p.2. Mr. Curl also found that the equity investors could utilize the tax consequences of ownership such as interest expense and accelerated depreciation better than PNM. Tax savings would then be passed on to ratepayers through lease payments that would be less than the revenue requirements associated with PNM ownership. Curl testimony, pp.2-3. Mr. Curl concluded that these benefits outweigh the risks associated with tax law changes which could affect the amount of lease payments. Curl testimony, p.3.

The savings that would be realized by PNM ratepayers were analyzed by PNM under traditional ratemaking methodology and also utilizing inventory ratemaking procedures. Assuming a sale and

leaseback of the entire undivided interest in PVNGS Unit 1 and one-third of the common facilities, revenue requirements would be reduced by \$36 million in the first year of the lease and by \$146 million in present worth revenue requirements over the life of the facilities using traditional ratemaking methods. Robinson testimony, p.15, Tr. 133, Revised AJR-2. Using inventory ratemaking, leasing is estimated to provide savings of \$53 million in present worth of ratepayer costs over the term of the leases. In the initial year that the facilities would be ratebased, assumed to be 1997, leasing would save \$58 million in revenue requirements. Robinson testimony, p.15, Tr. 131, Revised AJR-2.

PNM stockholders would also realize substantial savings from the proposed transaction. Due to the inventory methodology from Commission Case No. 1804, PNM stands to lose certain "at-risk" costs and AFUDC due to the cap imposed in that case. Under a sale and leaseback scenario, PNM would reduce shareholder losses from unrecovered at-risk costs by \$4.1 million in present value terms and \$12.4 million from unrecovered AFUDC lost to the inventory cap. Tr. 167, 169.

Another benefit of the transaction is availability of cash to PNM. At a sales price of \$446 million, PNM would have approximately \$380 million in cash available after payment of \$101 million in taxes (\$44 million of which would be offset by carry forward investment tax credits) and expenses of approximately \$10 million for the transaction. Tr. 146. While



this cash could be utilized for any of the purposes allowed by Public Utility Act, it could relieve pressure on PNM's construction budget and be used to retire certain debt. Tr.

142. PNM witness Robison testified that PNM presently intends to refund or call \$160 million in first mortgage debt which carries a 17 percent interest rate in October, 1986 with the proceeds. Tr. 142-143. Further debt with high interest rates is also to be retired pursuant to PNM plans. Tr. 143-144, 215.

PNM also contends that the transaction could lead to an improvement in its capital structure which in turn could improve its credit rating. By retiring certain debt with the proceeds and issuing common stock approved by the Commission in Case No. 1979, PNM estimates that would improve the common equity capitalization of its capital structure from the present 36 1/2% to approximately 38%. Tr. 215, 228-229.

At the time of hearing in this matter, several matters remained to be resolved before the transaction proposed by PNM could be closed. These conditions precedent to closing are now being finalized.

One such condition is the finalization of the lease documentation between PNM and the equity investors. However, PNM presented a voluminous exhibit at the hearing, PNM Exhibit A, which consists of draft lease documents. These documents are to be utilized in substantially the form presented if the transaction is approved. Tr. 75.



PNM must also receive approvals from the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC). Both are expected to approve the transaction before the end of the year. Tr. 76-77, 120-121. In addition, PNM must obtain an amendment to the PVNGS Participation Agreement with the other participants in the project. An amendment had been approved by all but two of the participants at the time of hearing. Tr. 77.

Further, there must be no adverse material change in PNM's financial condition for the transaction to occur. Starnes testimony, p.12, Tr. 77-78. This raised the issue of PNM's bond rating and whether or not a down grading of its indenture rating would effect the transaction.

PNM's current First Mortgage Bond rating is A-2 according to Moody's. Tr. 107, 122. The bonds that would be issued as a result of this transaction would most likely be rated one "notch" or level below the First Mortgage rating or A-3 according to Moody's. Robinson testimony, p.12, Tr. 107, 122. At a A-3 rating, the transaction is viable and PNM has predicated the estimated costs and savings based on that assumption.

If PNM's First Mortgage Bond rating were lowered to A-3 as a result of factors including pending Commission Case No. 1916, the bonds for this transaction could be rated by Moody's standards in the "B double A-1" area. This is still an investment grade rating and the transaction would still be viable although at a higher cost of debt which would increase the lease payments. Tr.



122-123. The economic viability of the transaction would have to be reviewed by PNM based on the debt rating which will be available before the debt is issued. Tr. 124. The sale and leaseback transaction in and of itself will be beneficial to PNM's bond rating. Tr. 146.

PNM characterizes the proposed transaction as "only a refinancing." Robison testimony, p.19. Therefore, PNM asserts that the Inventory methodology established in Case No. 1804 does not need to be amended to accommodate the sale and leaseback transaction. Tr. 225-226. PNM witness Robison asserts:

"PVNGS Unit 1 will continue to be used and treated under the current inventory methodology, as owned installed capacity for the purpose of allocating resources and incentives between inventory and ratebase and among units. PNM will continue to use the transfer pricing formula currently in effect for sales to NMPSC jurisdictional customers. PNM will continue to have the same level of "At-Risk" dollars (as defined in the Inventory Stipulation) under the Leases as it would have under ownership." Robison testimony, p.19.

Mr. Robison agrees that the ultimate ratemaking impacts of the sale and lease back transaction should not be harmful to the ratepayers. Tr. 170. Both Mr. Robison and Mr. Poster assert that the parties should address the interpretation of the sale and leaseback transaction in light of the Inventory methodology in detail in the near future. Tr. 225, 246-247. They also agree that the cap on the growth in carrying charges on the deferred



lease expense would be preserved through the Inventory methodology. Tr. 170, 247-248.

Presently, PNM has obtain commitments from three entities that would become equity investors in the transaction is approved. Burnham Leasing Corporation has committed to \$100 million of the purchase price while Chrysler Capital Corporation and Mellon Financial Services Leasing Group have committed to \$150 million and \$50 million respectively. Tr. 111-112. PNM is seeking further equity investors to commit to the remaining \$146 million of the purchase price, including a wholly owned PNM affiliate. Tr. 190.

The possibility of a sale to a PNM affiliate was first raised at the hearings in this matter. PNM witness Robison admits that this would be a novel, complicated and perhaps controversial move has not been fully explored. Tr. 190-191, 226-228. Before final consideration of such a placement, PNM should seek specific Commission approval of a sale and leaseback from an affiliate.

Therefore, having reviewed the Petition and the exhibits and having heard the evidence presented and the statements of counsel, the Hearing Examiner recommends that the Commission F I N D as follows:

1. PNM is a New Mexico corporation that owns, operates, leases or controls plant, property or facilities for the generation, transmission, distribution, sale or furnishing to or for the public of electricity for light, heat, power or other uses within the State of New Mexico.



2. PNM is certified and authorized to conduct the business of providing public utility service within the State of New Mexico.

3. PNM is a public utility as defined in the Public Utility Act, Sections 62-3-1, et seq., NMSA 1978 (Repl.Pamp. 1984).

4. PNM proposes to enter into a leveraged lease financing of all or a portion of its 10.2 percent undivided ownership interest in Unit 1, and up to all or a proportionate share of one-third of its 10.2 percent undivided ownership interest in common facilities, of the Arizona Nuclear Power Project (said interest in Unit 1 and in said common facilities being hereinafter referred to collectively as the "Facilities"). Specifically, PNM proposes to sell the Facilities to, and then lease the Facilities back from, institutional investors (the "Equity Investors"). Through a process of competitive bidding and negotiation, Burnham Leasing Corporation, Chrysler Capital Corporation and Mellon Financial Services Leasing Group, or affiliates of any of the foregoing, have tentatively been selected as Equity Investors for a portion of the Facilities. PNM is seeking one or more additional Equity Investors for all or a portion of the remainder, and has under consideration that one of the PNM's wholly-owned subsidiaries or affiliated interests may participate in the transaction as an Equity Investor if necessary to complete the sale of the entire interest. Separate approval by the Commission for participation in the transaction by one of PNM's subsidiaries or affiliates should be sought and



obtained by PNM. Under the proposed lease financing, each of the Equity Investors will form a trust for the purpose of holding title to its undivided interest in the Facilities. The trustees under the trusts will act as lessors (the "Lessors") of the Facilities and will lease the Facilities to PNM under one or more leases ("Leases"). PNM will retain ownership of easements, rights-of-way and other real property rights and certain transmission facilities associated with the Facilities, but by easements and other agreements will make such rights and facilities available to the Lessors for a period equal to the economic useful life of the Facilities. PNM will retain the right to use all such rights and facilities during the term of the Leases.

5. The Facilities will be sold to the Lessors at a fair market price that is expected to result in no book gain or loss to PNM and which may be approximately \$446,000,000 if all of PNM's interest in Unit 1 and one-third of PNM's interest in the related common facilities is sold. Prior to the closing of the Lease Transaction (as hereinafter defined), an appraisal will confirm that the purchase price is a reasonable estimate of fair market value, in order to comply with certain Internal Revenue service requirements to preserve the tax benefits of the transactions. The Lessors will borrow approximately 70% to 80% of the purchase price by causing public debt to be issued by a funding corporation (the "Funding Corporation") formed for the purpose. Although the public debt would be issued by the Funding



Corporation, such debt would be non-recourse to the Lessors and the Equity Investors. The public debt would be indirectly secured by an assignment of the rentals due from PNM under the Leases. PNM will be the named "registrant" in the Registration Statement that will be filed with the United States Securities and Exchange Commission in connection with issuance of the public debt.

6. Although the Lessors will be the owners of the Facilities, PNM will remain responsible for all expenses of operation and maintenance. The initial term of the Leases will be approximately twenty-nine years, and PNM will have certain renewal options. In addition, PNM will have certain options to repurchase the Facilities. The rent to be paid by PNM over the term of the Leases will be a function of the interest rates payable on the public debt; among other things. The rent will be subject to adjustment in the event the 99th Congress enacts certain legislation affecting tax benefits. The transactions described in the foregoing Findings and in the PNM's Petition, testimony and exhibits are hereinafter referred to as the "Lease Transactions."

7. The evidence shows that the present value cost of the Facilities will be lower under the Lease Transactions than under PNM ownership, both under traditional ratemaking and under Inventory ratemaking, pursuant to Case No. 1804. PNM presently estimates a \$147 million savings in present worth of revenue requirements under traditional ratemaking and \$53 million of



present worth savings under inventory ratemaking, if all of its interest in Unit 1 and related common facilities sold.

8. The proceeds to PNM from the Lease Transactions will be used for one or more of the following purposes: the acquisition of additional property; the construction, completion, extension or improvement of the PNM's facilities; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; the reimbursement of monies actually expended for such purposes from income or from any other monies in the PNM's treasury not secured by or obtained from this issue, assumption or guarantee of securities within five years prior to the filing of the Petition herein; for any of the aforesaid purposes. The proceeds may be invested temporarily pending application to the foregoing purposes. The purposes of the lease transactions are permitted by the Public Utility Act, Section 62-3-1, et seq., NMSA 1978 (Repl.Pamp. 1984) as amended.

9. The aggregate amount of securities of PNM outstanding and proposed to be outstanding after the consummation of the lease transactions will not exceed the fair value of the properties and business of PNM.

10. For purposes of this Order and for future accounting treatment the common facilities at the Arizona Nuclear Power Project shall be allocated equally among the three units of the project.

11. It is inappropriate at this time to determine the ratemaking treatment for this Lease Transaction or the effects

thereon on the Commission's decision in Case No. 1804. However, the Commission should retain authority over such ratemaking treatment and authority to disallow any or all of the lease expenses and transaction costs on a used-and-useful basis or on the basis of imprudency in the cost of the Facilities.

12. It is the policy of the Commission that, in approving the Lease Transaction, ratepayers should not be responsible for costs from casualty losses or tax indemnification costs in excess of the benefits ratepayers realize from the transaction.

13. It is the policy of the Commission that PNM's ratepayers should not be responsible for decommissioning costs associated with Palo Verde Nuclear Generating Station Unit 1 associated with that portion of the life of such unit during which it is not owned or leased by PNM.

14. The lease transactions are not unlawful or inconsistent with the public interest.

15. Due and timely notice of this proceeding was published in a newspaper of general circulation in the county in which PNM's principal office in New Mexico is located.

16. The Lease Transactions are not exempt within the meaning of Section 62-6-8, NMSA 1978 (Repl.Pamp. 1984).

17. The Lease Transactions as described in the Petition, testimony and exhibits of PNM should be approved on the terms and conditions set forth in this Order.

Based on the foregoing, the Hearing Examiner recommends that the Commission C O N C L U D E as follows:

1. The Commission has jurisdiction over the parties to this proceeding and the subject matter herein.

2. Due and timely notice of this proceeding has been given.

3. The Lease Transactions are not unlawful or inconsistent with the public interest.

4. The purpose of the Lease Transactions are permitted under Section 62-6-6, NMSA 1978 (Repl.Pamp. 1984).

5. The prior approval by the Commission of the lease transactions is required under Section 62-6-6, NMSA 1978 (Repl.Pamp. 1984).

6. The Lease Transactions as described in the Petition, testimony and exhibits presented in this proceeding should be approved on the terms and conditions set forth in this Order.

Based on the foregoing, the Hearing Examiner recommends that the Commission O R D E R as follows:

A. To the full extent that the approval and authorization of the Commission are required by the laws of the State of New Mexico, the Commission hereby approves the Petition herein and authorizes PNM to undertake and consummate the Lease Transactions substantially in accordance with the structure and business terms reflected in the Petition, testimony and exhibits of PNM, and to take all such action as may be necessary or appropriate in connection therewith.

B. PNM is hereby granted authority to sell all or a portion of its 10.2 percent undivided ownership interest in Unit 1, and up to all or a proportionate share of one-third of its



10.2 percent undivided ownership interest in common facilities, of the Arizona Nuclear Power Project pursuant to Section 62-6-12, NMSA 1978 (Repl.Pamp. 1984).

C. The PNM is hereby granted authority to exercise its options to renew the Leases or any of the Leases and to repurchase all or any portion of the facilities in accordance with the terms of the Leases at the fair market value of the Facilities at the time of such renewal or repurchase.

D. PNM is hereby granted the authority, pursuant to Section 62-6-6, NMSA 1978 (Repl.Pamp. 1984), to issue, assume and guarantee securities in order to consummate, and to perform its obligations and exercise its options under, the Lease Transactions, including, but not limited to, (a) early placement of public debt, secured by the direct obligation of PNM, (b) issuance, assumption or guarantee of securities necessary for any private interim financing, (c) financing of up to \$25,000,000 of additional capital improvements as required or permitted by the terms of the Leases within 10 years from the date of this Order, the costs of which will be reflected in an adjustment to lease rentals, as indicated in the testimony and exhibits of PNM, (d) issuance of securities necessary for any reoptimization or releveraging of debt following any adjustment of rental payments; and (e) assumption of debt by PNM in connection with any requirement under the Leases that the Company pay Casualty Value, Special Casualty Value, Special Loss Value or Termination Value, (f) adjustment of rents from time to time as required by the



Leases, and (g) execution of supplements to the Leases as required or permitted by the Leases.

E. PNM is hereby authorized to enter into the Leases, pursuant to a stipulation entered into a Commission Case No. 1602 requiring Commission approval of certain leases.

F. The Commission hereby acknowledges that, by virtue of Section 62-3-4.1.A., NMSA 1978, the Lease Transactions shall not cause any of the Equity Investors or the Lessors to be deemed to be a "public utility" subject to the jurisdiction, control or regulation of the Commission.

G. The terms of the Leases and other documents to be entered into a connection with the Lease Transactions are hereby approved, as such terms are outlined in the Petition, testimony and exhibits of PNM, except however the weighted annual lease payment factor shall not exceed 11.7%.

H. The terms of the Leases and other documents to be entered into in connection with the Lease Transactions are hereby approved, pursuant to Section 62-3-4.1.B., NMSA 1978, for the purpose of enabling each of the Equity Investors and the Lessors to qualify for an exemption by the United States Securities and Exchange Commission from the Public Utility Holding Company Act of 1935, as amended (Chapter 2C of Title 15 of the United States Code).

I. For purposes of this Order and for future accounting treatment the common facilities at the Arizona Nuclear



Power Project shall be allocated equally among the three units of the project.

J. The Certificate of Convenience and Necessity issued in Commission Case No. 1216 is hereby modified to reflect the approval of the sale and leaseback transactions granted herein.

K. PNM is hereby authorized from time to time to use and apply the proceeds received from the Lease Transactions for one or more of the following purposes; the acquisition of additional property; the construction, completion, extension or improvement of PNM's facilities; the improvement or maintenance of its service; the discharge or lawful refunding of its obligations; the reimbursement of monies actually expended for such purposes from income or from any other monies in PNM's treasury not secured by or obtained from the issue, assumption or guarantee of securities within five years prior to the filing of the Petition herein; for any of the aforesaid purposes. The proceeds may be invested temporarily pending application to the foregoing purposes.

L. PNM has indicated that a wholly-owned subsidiary of PNM may participate in the Lease Transactions as an Equity Investor.

Such a development adds a certain degree of complexity to this transaction including the possible formation of a public utility holding company by PNM to more clearly isolate utility costs from non-utility costs. Approval of the Lease Transaction does not include participation by a wholly-owned subsidiary of

PNM which would be classified as a Class I transaction. If PNM desires to enter into a transaction involving a wholly-owned subsidiary of PNM, it must apply to the Commission for approval of such participation and/or approval of the formation of a public utility holding company.

M. Except as expressly determined herein, nothing contained herein shall be considered as a determination by the Commission of the value of any of PNM's properties or the justness or reasonableness of any cost or expense incurred by PNM.

Further, the Commission is not determining the appropriate ratemaking treatment for this Lease Transaction or the effects thereon on the Commission's decision in Case No. 1804. PNM must present a plan for such ratemaking treatment as soon as possible to the Commission.

N. Nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, has verified the accuracy, completeness or fairness of any factual information contained in any offering circular, registration statement, prospectus, or any other document prepared or delivered in connection with the Lease Transactions, or the accuracy, completeness or fairness of any statements made in connection with the Lease Transactions. Accordingly, nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, has expressed or expresses an opinion as to



()

whether any statement made or document delivered in connection with the Lease Transactions contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

O. Nothing contained herein shall be construed to mean or to imply that the State of New Mexico, or any officer, agent or employee thereof, shall have any responsibility for the application or disposal by PNM, or its officers, agents or employees, of any of the proceeds derived from the Lease Transactions.

P. PNM shall, within sixty days following the closing of the Lease Transactions, file with this Commission a report, verified by an officer of PNM before a notary public, stating the consummation, the amount of proceeds, the expenses actually incurred by PNM, and the terms and conditions thereof.

Q. Within ten days following the closing of the Lease Transactions, PNM shall file with the Commission true and correct copies of all documents executed in connection with the Lease Transactions, all filings with any governmental authority required to consummate the Lease Transactions, and any order or other official action taken by any other governmental authority which is required to consummate the lease transactions.

R. PNM shall, within six months from the date of this Order, file with this Commission a report, verified by an officer of PNM before a notary public, reflecting the application made by



the Company of the proceeds of the Lease Transactions to the purposes herein authorized, and the amounts applied to each such purpose; and PNM shall file like reports at intervals of not more than six months thereafter, until PNM has accounted for the application of the entire proceeds of the Lease Transactions.

S. The Commission retains full ratemaking authority over the Lease Transaction and the effects thereon on the Commission's decision in Case No. 1804.

T. The Commission retains full authority to disallow any or all of the lease expenses relating to the Lease Transaction and authority to disallow any or all of the lease expenses and transaction costs in a ratemaking setting on a used-and-useful basis or on the basis of imprudency in the cost of the Facilities.

U. This Order is effective immediately.

V. Copies of this Order shall be mailed to PNM, its attorney and the parties to this proceeding.

I S S U E D at Santa Fe, New Mexico this 22nd day of November, 1985.

NEW MEXICO PUBLIC SERVICE COMMISSION


MICHAEL BARLOW
Hearing Examiner



BEFORE THE NEW MEXICO PUBLIC SERVICE COMMISSION

THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR AUTHORIZATIONS RELATING TO THE PROPOSED SALE AND LEASEBACK OF AN UNDIVIDED OWNERSHIP INTEREST IN UNIT 1 AND CERTAIN COMMON FACILITIES AT PALO VERDE NUCLEAR GENERATING STATION,

PUBLIC SERVICE COMPANY OF NEW MEXICO,

PETITIONER.

DEC 02 1985

CASE NO. 1995

ORDER ADOPTING ERRATA NOTICE

THIS MATTER having come before the Commission on November 30, 1985, and the Commission having considered the record in this case and being fully advised in the premises:

The Commission hereby finds, concludes and orders that the following be and hereby is adopted as an errata notice, nunc pro tunc, to the Commission Order in the captioned matter issued on November 27, 1985 (the "Order"):

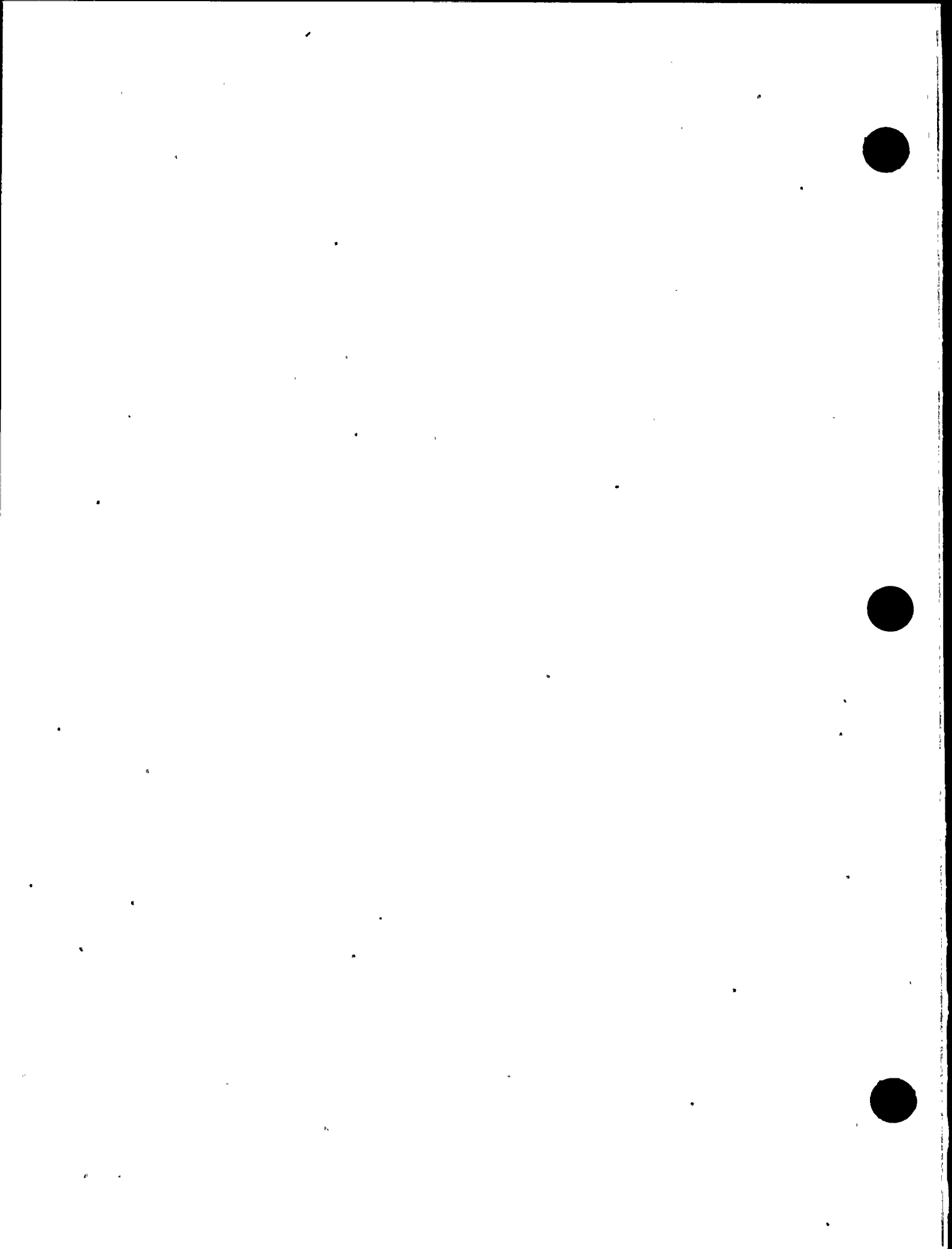
Paragraph 1 of the Commission's Findings and Conclusions, on page 1 of the Order, is corrected by deletion of the phrase "or of the Opinion which the Commission will be issuing in the immediate future".

ISSUED at Santa Fe, New Mexico this 30th day of November, 1985.

NEW MEXICO PUBLIC SERVICE COMMISSION

Suedeen G. Kelly
SUEDEEN G. KELLY, CHAIRMAN

Marilyn C. O'Leary
MARILYN C. O'LEARY, COMMISSIONER




PUBLIC SERVICE COMPANY OF NEW MEXICO

CERTIFICATE

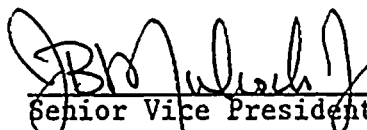
The undersigned, A. J. Robison and J. B. Mulcock, Jr., respectively, the Senior Vice President and Chief Financial Officer and the Senior Vice President, Corporate Affairs and Secretary of Public Service Company of New Mexico, a New Mexico corporation (hereinafter called the "Company"), do hereby certify:

That no order amending, modifying, suspending, revoking, cancelling or annulling the Order of the New Mexico Public Service Commission (hereinafter called the "Commission") dated November 27, 1985, in Case No. 1995, a certified copy of which is attached as Exhibit A hereto, is in effect, and no proceedings for such purpose are pending before, or to the knowledge of the Company, threatened by, the Commission.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 31st day of December, 1985.



Senior Vice President and
Chief Financial Officer



Senior Vice President, Corporate Affairs and
Secretary



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X
In the matter of :
ARIZONA PUBLIC SERVICE :
COMPANY, et al., : DOCKET NO. STN 50-529
(Palo Verde Nuclear :
Generating Station, Unit 2) :
-----X

APPLICATION IN RESPECT OF SALE AND
LEASEBACK TRANSACTIONS BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

EXHIBIT B

ORDER OF THE FEDERAL ENERGY
REGULATORY COMMISSION WITH RESPECT TO
PVNGS UNIT 1



UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ELECTRIC RATES: Lease: Jurisdiction.

Before Commissioners: Raymond J. O'Connor, Chairman;
A. G. Scusa, Charles G. Stalon,
Charles A. Trabandt and C. M. Naeve.

Public Service Company) Docket No. EL86-5-000
of New Mexico)

ORDER DISCLAIMING JURISDICTION

(Issued December 5, 1985)

On October 18, 1985, Public Service Company of New Mexico (PNM) filed a petition with the Commission requesting a disclaimer of jurisdiction with regard to a proposed sale and lease-back by PNM of its ownership interest in certain facilities.

More specifically, PNM requests a disclaimer of Commission jurisdiction, under section 203 of the Federal Power Act (FPA), over the sale of facilities claimed by PNM to be non-jurisdictional generating facilities. PNM also seeks a Commission order: (1) disclaiming jurisdiction over the proposed investors in, and lessors of, the PNM facilities which will be purchased and leased back solely for investment purposes, and which will continue to be controlled by PNM; and (2) determining that the investors and lessors will not, as a result of ownership of the facilities, or the lease-back of the facilities to PNM, become "public utilities" pursuant to section 201(e) of the FPA.

PNM's petition indicates that it now owns a 10.2% undivided interest in the Palo Verde Nuclear Generating Station (PVNGS), which consists of three 1,270 MW units. ^{1/} Only Unit No. 1 is now operational. Unit No. 2 is scheduled for firm power operation in the second quarter of 1986, and Unit No. 3 is scheduled for firm power operation in the second quarter of 1987.

^{1/} Other participants in PVNGS include: Arizona Public Service Company (29.1%); Salt River Project Agricultural Improvement and Power District (23.19%); and El Paso Electric Company (15.9%). The Department of Water and Power of the City of Los Angeles, California, will acquire a 5.7% interest from Salt River on the "Date of Firm Operation."



PNM is proposing to sell and lease back its 10.2% interest in Palo Verde Unit No. 1 and as much as one-third of its undivided 10.2% interest in the common facilities of PVNGS.^{2/} According to the petition, the facilities proposed to be sold and leased back are exclusively nuclear generation and ancillary facilities and do not include any transformation or transmission equipment or facilities.

Notice of PNM's petition was published in the Federal Register, with comments due on or before November 4, 1985. No responses have been received by the Commission.

Proposed Transaction:

According to the information provided by PNM, Unit No. 1 was synchronized with PNM's main transmission grid on June 10, 1985. PNM has determined that certain benefits to it and its ratepayers can be achieved by the sale and lease-back of Unit No. 1. These benefits will be discussed below.

PNM proposes to sell only generation or generation-associated facilities. The facilities would be purchased by owner trustees who would be acting on behalf of institutional investors. The institutional investors would hold title to their shares of the purchased facility. The owner trustees would act for the investors and lease the facilities back to PNM under separate lease agreements on behalf of each institutional investor.

The facilities are to be sold to the lessors at a fair market price that is expected to result in no book gain or loss to PNM. If all of PNM's interest in Unit No. 1 and the related common facilities is sold, as proposed, the purchase price would be approximately \$400,000,000.

The lessors, acting for the equity investors, would lease the property back to PNM pursuant to a "net lease" under which PNM would pay all taxes, insurance, operating and maintenance costs, and all other similar costs associated with the facilities. In addition, PNM would make semiannual lease payments to the lessors

^{2/} The common facility systems are composed primarily of engineering safeguard systems such as cooling towers, radioactive waste treatment systems, emergency diesel-generator systems, communication systems, surveillance systems, and water treatment facilities.



Each would repay and provide a return on the equity investors' capital investment and pay the principal and interest on the debt obligations issued to finance the purchase.

The lessors would borrow approximately 70-80% of the purchase price from a funding corporation formed for that purpose. The funding corporation would borrow the debt portion of the purchase price by issuing public debt that would be non-recourse to the lessors and the equity investors. The public debt must be issued on terms acceptable to PNM and would be indirectly secured by a security interest in the facilities and payable from the rentals due from PNM under the leases.

The basic lease term is anticipated to be 28.5 years with an option, but not an obligation, to renew each lease for a renewal term of approximately 2.5 years at a rental equal to 50% of the original rent. PNM will have an additional option to continue renewing the lease at fair market rentals for the remaining life of the facilities or to exercise an option to purchase the facilities at fair market value at the end of the basic lease term or any renewal period.

Any addition, betterment, or enlargement of the facilities, replacement of units of property within the facilities (capital improvements) will be PNM's obligation under the leases. Such costs, through 1995, are estimated to be \$55,000,000, but the total capital improvements during the term of the leases are expected to be limited to approximately \$200,000,000. PNM may, but is not obligated to, request the lessors to provide supplemental financing for the capital improvements. Concurrent with any supplemental financing, the lease payments would be adjusted to support the amortization of the additional debt and to preserve the equity investors' net economic return.

PNM also states that the lessors and PNM would enter into support agreements which would provide the equity investors with such rights as may be necessary for them to realize the residual value of their interests. More specifically, rights in real property would be granted to the lessors for the estimated economic life of the facilities to satisfy Internal Revenue Service requirements for a true lease classification. PNM would retain ownership of easements, rights-of-way, and other property referred to as "Section 1250 property." PNM also would retain ownership of the nuclear fuel and the electric transmission facilities associated with the generation. In the event of a total loss of the facilities, PNM would be required to pay to the lessors an amount equal to any deficiency between an agreed-upon "casualty value" and the proceeds of any insurance received by the lessors. Payment of this amount



for the benefit of the equity investors would allow repayment of outstanding debt plus interest, the recovery of any equity investment remaining, and the payment of taxes, if any, resulting from a recapture of tax benefits previously taken by the equity investors.

PNM's petition recognizes possible changes in the Internal Revenue Code which may affect the proposed sale and lease-back. PNM, however, believes that if the sale and lease-back transactions are consummated and the terms of the leases commence in 1985, the rent and casualty values in the leases will reflect and retain the benefits of depreciation at rates allowed under current tax laws. However, adjustments to rent and casualty values are likely to be required by amendments affecting the tax characteristics of the equity investors' investment. Adjustment may be required to protect the equity investors' net economic return in consequence of a reduction in the marginal Federal income tax rate. PNM states that it will negotiate the nature and extent of any such adjustments.

In the event that a lessor or equity investor becomes subject to regulation as a public utility, PNM would be required to repurchase the interest of the affected lessor or equity investor. The purpose of this provision is to ensure that the lessors and equity investors are subject only to normal financing risks and not operational risks or responsibilities.

Inasmuch as the proposed sale and lease-back is intended as only a financing transaction, the equity investors and lessors are to have no authority or responsibility for the operation and maintenance of the facilities. PNM would continue to be responsible for the operation and maintenance of the facilities in accordance with agreements with other Palo Verde-participants and would be required to return the plant in the same condition as originally leased (ordinary wear and tear excepted) upon termination of the leases. PNM would have the right to make virtually all decisions regarding construction, modifications, and operations as if PNM remained the owner. Arizona Public Service Company will continue to be the operator of PVNGS through agreements with PNM and other utility-owners of PVNGS.

PNM states that the primary advantages of the proposed sale and lease-back transaction are two-fold. First, the net present value of total capital costs would be reduced because the lessors would be able to finance a greater portion of the facilities with debt than PNM; in addition, accelerated depreciation for the facilities would provide greater current benefits to the equity investors than to PNM if PNM were to retain its ownership interest. Second, revenue requirements would be levelized over the life of



facilities under the proposed transaction. PNM states that the first full year of the leases, revenue requirements would be reduced by \$40,000,000. PNM expects that the proposed sale and lease-backs will produce at least \$140,000,000 of customer savings (in present worth) over the life of the facilities as compared to traditional ratemaking assumptions.

In requesting that the Commission find that the proposed transaction is not subject to jurisdiction under the FPA, PNM contends that such a disclaimer of jurisdiction is fully consistent with the applicable provisions of the FPA and Commission precedent, inasmuch as the facilities include only generation and generation-related equipment and the lessors and equity investors would receive no operational control or authority over any facilities. In addition, the Commission would retain ordinary regulatory authority over PNM, and the proposed financing mechanism would significantly reduce the present value of ratepayer revenue requirements associated with the facilities. According to the petition, none of the participants other than PNM is currently a public utility, and Commission jurisdiction over sales of electricity from the PVNGS would not be affected by the transaction.

Discussion

The basis for PNM's request for a disclaimer of jurisdiction that the facilities involved are related exclusively to the generation of electric energy. Section 201(b) of the FPA provides, in relevant part:

The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce. . . . The Commission shall have jurisdiction . . . over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction . . . over facilities used for generation of electric energy (emphasis added).

Section 201(e) defines a "public utility" as "any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter. . . ." 16 U.S.C. § 824(e) (1982). Section 203(a) of the FPA provides, in relevant part:

No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, . . . or by any means



whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person . . . without first having secured an order of the Commission authorizing it to do so. (emphasis added).

We agree that the facilities, as described by PNM, represent only generating facilities or ancillary facilities which are not subject to our jurisdiction under section 201(b) of the FPA and, therefore, are not jurisdictional facilities for purposes of Commission approval within the meaning of section 203 of the FPA.

Any jurisdiction that might attach with respect to the lessors or equity investors after the proposed transfer of facilities would be based upon a finding that they were public utilities under the FPA. Such a finding might be grounded on the acquisition of facilities associated with jurisdictional sales for resale. However, we conclude that such a finding here is not compelled by applicable Commission precedent.

The Commission in Pacific Power and Light Company, 3 FERC ¶ 61,119 (1978), disclaimed jurisdiction over parties to a proposed financing transaction similar to the present arrangement. That case involved a public utility which entered into an agreement to convey its interest in a generating unit to a construction company which, in turn, entered into a loan agreement with a number of banks to obtain financing. The construction company then conveyed the facility to a trust created to hold title to the facility for the benefit of the banks. The trust leased the facility back to the utility. The issue was whether the trust's or the banks' interests in the facilities constituted ownership as contemplated by section 201(e), thereby making those entities subject to the jurisdiction of the Commission as public utilities.

The Commission, in determining that neither the trust nor the banks were public utilities, said:

Although the Parties through their respective interests in the Trust hold either equitable or legal title to the Facility they will not operate the Facility. Applicant represents that it will have complete control over the operation of the Facility, and that the Parties will have no voice in or dominion over such operation. The Parties will play a passive role in the generating and sale of power from the Facility.



Secondly, none of the Parties are in the business of producing or selling electrical power and all have a principal business other than that of a public utility. The Parties are involved in the proposed transaction to obtain benefits from tax advantages accruing by virtue of the leverage lease arrangement.

The Commission found that it would be inconsistent with the intent of the FPA to label the banks or trustee as public utilities because they held mere equitable or legal title to facilities, and were clearly disassociated from the operation of the facilities and the sale of power. The lease arrangement was described as essentially a financing device which served to reduce the utility's cost of service and did not create in the trust or the banks the status of a "public utility." 3/

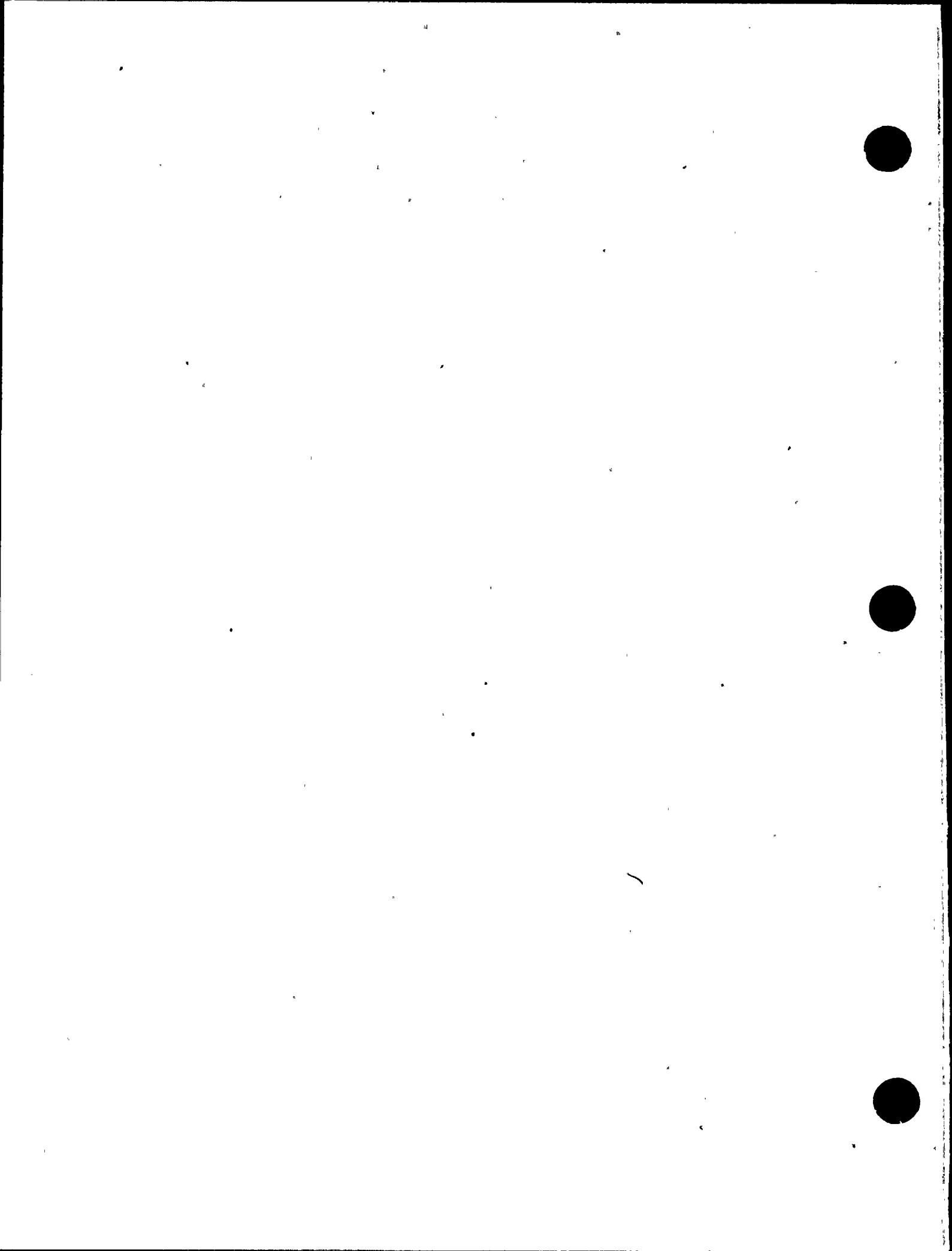
The same considerations are present in the instant proceeding; the sale and lease-back is merely a financing device reducing PNM's cost of service. Further, the lessors and the equity investors will not operate or control the facilities and they are not in the business of producing, selling, or transmitting electric power. Accordingly, we shall disclaim jurisdiction over the lessors and equity investors, as requested by PNM. We note, further, that this order makes no findings with respect to any jurisdictional rate or accounting issues applicable to PNM, except that, consistent with Pacific Power & Light Co., and the other orders cited herein, we shall require PNM to record any reacquisition of the plant on its books at original cost less depreciation.

The Commission orders:

(A) The sale of PNM's interest in the Palo Verde Nuclear Generating Unit No. 1 and related ancillary facilities as described in its application is not a jurisdictional transaction within the meaning of section 203 of the Federal Power Act.

(B) The lessors and equity investors, participating in the proposed sale and lease-back of facilities as set forth in PNM's application, will not become public utilities solely by virtue of such participation.

3/ The Commission recently applied the same rationale in United Illuminating Company, 29 FERC ¶ 61,270 (1984). See also Letter Orders issued in Carolina Power and Light Company, Docket No. E-8789 (July 14, 1974), and Chase Manhattan Service Corp., et al., Docket No. E-8870 (September 9, 1975).



(C). The foregoing disclaimer of jurisdiction is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost, or any other matter which is now pending or which may come before this Commission.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

-----X
In the matter of :
ARIZONA PUBLIC SERVICE :
COMPANY, et al., : DOCKET NO. STN 50-529
(Palo Verde Nuclear :
Generating Station, Unit 2) :
-----X

APPLICATION IN RESPECT OF SALE AND
LEASEBACK TRANSACTIONS BY
PUBLIC SERVICE COMPANY OF NEW MEXICO

EXHIBIT C

SUPPLEMENT TO GENERAL INFORMATION CONCERNING
PUBLIC SERVICE COMPANY OF NEW MEXICO



(d) (3) (i) State of incorporation and principal location:

PNM is an investor-owned corporation organized and existing under and by virtue of the laws of the State of New Mexico. Its principal offices are in Albuquerque, New Mexico. PNM provides electric services to (1) a large area of north central New Mexico, including the cities of Albuquerque, Belen, Bernalillo, Santa Fe and Las Vegas, (2) Deming in southwestern New Mexico and (3) Clayton in northeastern New Mexico. PNM also provides wholesale electric service to the City of Gallup, the City of Farmington, Plains Electric Generation & Transmission Cooperative, Inc., and Texas-New Mexico Power Company. PNM distributes natural gas through its Gas Company of New Mexico division to most of the major communities in New Mexico, including Albuquerque and Santa Fe.

(d) (3) (ii) Name of directors and principal officers:

Directors of Public Service Company of New Mexico

J.P. Bundrant

President and Chief Operating Officer,
Electric Operations
Public Service Company of New Mexico

A.B. Collins, Jr.

President
Reddy Communications, Inc.
Albuquerque, NM

J.D. Geist

Chairman and President
Public Service Company of New Mexico

C.E. Leyendecker

Chairman of the Board and
Chief Executive Officer
United New Mexico Bank at Mimbres Valley
Deming, NM

A.G. Ortega

Attorney at Law
Ortega & Snead, P.A.
Albuquerque, NM

R.R. Rehder

Professor of Management
Robert O. Anderson Graduate School of Management
University of New Mexico
Albuquerque, NM



R.B. Rountree
Senior Vice President
Public Service Company of New Mexico

R.H. Stephens
Stephens-Irish Agency, Inc.
Las Vegas, NM

E.R. Wood
President
Wood & Hill Corporation
Santa Fe, NM

H.L. Galles, Jr.
Director Emeritus
Chairman of the Board
Galles Chevrolet Company
Albuquerque, NM

Principal Officers of Public Service Company of New Mexico

PNM CORPORATE

J.D. Geist
Chairman and President

J.B. Mulcock, Jr.
Senior Vice President,
Corporate Affairs and Secretary

A.J. Robison
Senior Vice President
and Chief Financial Officer

R.B. Rountree
Senior Vice President

M.A. Clifton
Vice President,
Corporate Financial Planning

B.D. Lackey
Vice President and
Corporate Controller



J.K. Murphy
Vice President, Regulatory
and Business Policy

H.L. Hitchins, Jr.
Assistant Secretary and
Assistant Treasurer

M.J. Marzec
Assistant Treasurer

M. Mason-Plunkett
Assistant Secretary

O.S. Beach
Assistant Secretary

PNM ELECTRIC

J.P. Bundrant
President and Chief Operating Officer,
Electric Operations

C.D. Bedford
Senior Vice President,
Revenue Management

W.M. Eglinton
Senior Vice President,
Operations

J.L. Wilkins
Senior Vice President,
Power Supply

J.L. Godwin
Vice President,
Power Production and
Manager, San Juan Station

R.A. Lake
Vice President,
Procurement and Material Services



M.A. McDonald
Vice President,
Human Resources and
Support Services

R.F. Mershon
Vice President,
Regional Divisions

D.J. Morse
Vice President,
Albuquerque Division Operations

R.M. Wilson
Controller, Electric Operations
and Assistant Secretary

W.C. Wygant
Vice President,
Administration

GAS COMPANY OF NEW MEXICO

J.T. Ackerman
President and Chief Operating Officer,
Gas Operations

J.J. Ruiz
District Vice President

W.J. Real
Regional Vice President,
Central

T.D. Rister
District Vice President

D.L. Pickel
District Vice President,
Chief Engineer

G.D. Mische
District Vice President,
Permian



M.H. Lambert
Vice President,
Gas Supply

J.C. Wyman
Regional Vice President,
Western

D.W. McFearin
Vice President, Controller and
Assistant Secretary

D.J. Davis
Regional Vice President,
Eastern

E.R. Corliss
Vice President,
Pipeline Operations

T.H. Morse
Vice President, Engineering and
Operations

H.O. Pocock
Vice President, Human Resources
and Administrative Support

D.N. Kirkland
District Vice President,
San Juan

Each of the directors and principal officers of PNM is a citizen of the United States of America.

