



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO AMENDMENT NO. 91 TO FACILITY OPERATING LICENSE NO. NPF-51,
AND AMENDMENT NO. 74 TO FACILITY OPERATING LICENSE NO. NPF-74
ARIZONA PUBLIC SERVICE COMPANY, ET AL.
PALO VERDE NUCLEAR GENERATING STATION, UNIT NOS. 2 AND 3
DOCKET NOS. STN 50-529 AND STN 50-530

1.0 INTRODUCTION

By application dated October 3, 1995, the Arizona Public Service Company (APS or the licensee) requested changes to the Facility Operating License Nos. NPF-51, and NPF-74, respectively for the Palo Verde Nuclear Generating Station, Units 2 and 3. The Arizona Public Service Company submitted this request on behalf of itself, the Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company (El Paso), Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority. The proposed changes would delete provisions added by previous amendments as a result of previous sale and leaseback arrangements entered into by El Paso Electric Company.

2.0 BACKGROUND

Arizona Public Service Company was issued full-power operating licenses on June 1, 1985, April 26, 1986, and November 8, 1987, for PVNGS Units 1, 2, and 3 respectively. El Paso along with six other participants share the costs of operating and maintaining the units. In letters dated August 15, 1986, and December 2, 1987, for Units 2 and 3 respectively, the Nuclear Regulatory Commission approved the requests for El Paso to sell and leaseback all or part of El Paso's ownership interest in the Palo Verde Nuclear Generating Station, Units 2 and 3. Subsequently, El Paso sold and leased back 100 percent of its interest (15.8 percent) in Unit 2 and 39.5 percent of its percentage interest (15.8 percent) in Unit 3 and a proportionate share of its interest in the Palo Verde common facilities, respectively. On January 8, 1992, El Paso filed for protection under Chapter 11 of the U.S. Bankruptcy Code. During the course of the bankruptcy proceeding, El Paso has continued to make all its required operation and maintenance payments scheduled for Palo Verde.

In a letter dated January 13, 1994, APS as Operating agent, joined by El Paso, submitted an application to the NRC requesting approval for the indirect transfer of control of El Paso's interest in Palo Verde Units 1, 2 and 3, that would occur as a result of a merger between Central and South West Corporation (CSW) and El Paso. The same letter also requests deletion of provisions for El Paso's existing sale-leaseback arrangements for Palo Verde Units 2 and 3 from the license. The Commission issued a notice of proposed no significant hazards consideration determination and a notice of consideration of proposed transfer of control of ownership of license and opportunity for public comment on antitrust issues, which were published in the Federal Register on March 2, 1995 (60 FR 10001), and March 14, 1994 (60 FR 11813), respectively. The NRC was notified in a letter dated July 6, 1995, that the merger agreement between El Paso and CSW was terminated by Order of the United States Bankruptcy Court for the Western District of Texas, Austin Division (Case No. 92-10148-FM); the January 13, 1994, application was therefore withdrawn.

In a letter dated October 3, 1995, El Paso Electric Company requested the NRC to rescind its earlier approval of the sale-leaseback of 100 percent of El Paso's 15.8 percent share of Palo Verde Unit 2 and a proportionate share of its interest in the Palo Verde common facilities and 39.5 percent of El Paso's 15.8 percent share of Palo Verde Unit 3 and a proportionate share of its interest in the Palo Verde common facilities. El Paso would re-obtain full ownership rights and continue to receive electric output from Palo Verde at its proportionate share. El Paso would continue to pay its proportionate share of operating, maintenance, and decommissioning costs for Palo Verde.

3.0 EVALUATION

3.1 Financial Qualifications

The NRC previously approved sale and leaseback arrangements for parts of El Paso's share of Palo Verde, 15.8 percent for Unit 2 and 15.8 percent for Unit 3, and a proportionate share of its interest in the Palo Verde common facilities for each Unit, and issued license amendments reflecting these arrangements, on August 15, 1986 and December 2, 1987, respectively. The NRC has also approved several other similar arrangements for other power reactor licensees. The NRC evaluated sale and leaseback arrangements generically in SECY-85-367 (November 20, 1985) and concluded that such arrangements did not present any public health and safety concerns provided that investors remained passive investors by obtaining no authority or control over plant operation and that the licensee/lessee remained responsible for meeting its proportionate share of all taxes, insurance premiums, operating and maintenance costs, and decommissioning costs. Because the NRC views such sale and leaseback arrangements as methods of plant financing rather than transfers of control of a licensed facility, rescission of approval of El Paso's sale and leaseback arrangements would not alter El Paso's responsibility for its proportionate share of the costs arising from Palo Verde's operation.

Additionally, upon emergence from bankruptcy, the El Paso Electric Company will continue to operate as an "electric utility" as defined in 10 CFR 50.2. Because 10 CFR 50.33(f) exempts an "electric utility" from further financial qualifications review at the operating license stage (i.e., after initial construction has been completed), no further financial qualifications review of El Paso is required. Therefore, the staff concludes that rescission of previous NRC approval of El Paso's sale and leaseback arrangements will not adversely affect protection of public health and safety.

3.2 Antitrust Consideration

Pursuant to Section 105 of the Atomic Energy Act of 1954, as amended, as well as the Commission's regulations, the staff reviews changes in ownership in nuclear facilities since the construction permit review to determine if the activities of the new owner tend to create or maintain a situation inconsistent with the antitrust laws. When changes in ownership or operator have occurred subsequent to the issuance of the operating license, the staff has applied the standard of antitrust review prescribed in Section 105c(2) to determine if any changes in the licensee's activities are significant in an antitrust or competitive context.

El Paso seeks to rescind the sale and leaseback agreements to a group of passive investors that was approved by the staff in 1986 and 1987. Although El Paso's ownership interest in Palo Verde, 15.8 percent in Unit 2 and 15.8 percent in Unit 3, and a proportionate share of its interest in the Palo Verde common facilities for each Unit, was transferred to different owners several years ago, the new owners were investors seeking primarily tax advantages of ownership and did not become involved in operating decisions or affect the production or distribution of power or energy produced by Palo Verde. Based upon this passive investment relationship, the staff concluded that these new owners would not have the ability to control marketing decisions associated with plant ownership and did not conduct a formal antitrust review of the change in ownership.

In its amendment request, APS indicated that, "El Paso will be in the same position it had been after it had been licensed by the NRC to possess its interests in Units 2 and 3." El Paso is currently involved in Chapter 11 bankruptcy proceedings and therefore is not in the same (financial) position as it was in the late 1980's; however, the staff recognizes that the re-acquisition of fee title interests in the Palo Verde units in which El Paso now holds a leasehold interest will not change the manner in which power and energy is marketed from Palo Verde and therefore no formal antitrust review of the "change" in ownership is required.

3.3 CONCLUSION

Based on the considerations discussed above and due to the proposed amendments reflecting only a change in the structure of the financing of El Paso's interest in Palo Verde, the staff approves the proposed amendments to Facility Operating License Nos. NPF-51, and NPF-74, respectively for the Palo Verde Nuclear Generating Station, Units 2 and 3.

4.0 STATE CONSULTATION

In accordance with the Commission's regulations, the Arizona State official was notified of the proposed issuance of the amendments. The State official had no comments.

5.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an Environmental Assessment and Finding of No Significant Impact has been prepared and published in the Federal Register on November 24, 1995 (60 FR 58112). Accordingly, based upon the Environmental Assessment, the Commission has determined that the issuance of this amendment will not have a significant effect on the quality of the human environment.

6.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

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