

UNITED STATES NUCLEAR REGULATORY COMMISSION

ARIZONA PUBLIC SERVICE COMPANY, ET AL

DOCKET NO. STN 50-528

NOTICE OF CONSIDERATION OF ISSUANCE OF
AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED
NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND
OPPORTUNITY FOR HEARING

The Nuclear Regulatory Commission is considering an application dated February 5, 1986, filed by the Arizona Public Service Company (APS), as Project Manager and Operating Agent of Palo Verde Nuclear Generating Station (PVNGS) Units 1, 2 and 3, on behalf of Public Service Company of New Mexico (PNM), a licensee under Facility Operating License No. NPF-41 for PVNGS Unit 1. APS requests that the Commission amend the PVNGS Unit 1 license to allow (i) the transfer by PNM to equity investors of a portion of its fee interest in PVNGS Unit 1 and (ii) the simultaneous transfer by the equity investors back to PNM of a long term (approximately 28½ years) possessory leasehold interest of this share under the terms described in this application. Under the proposed transaction, it is represented that PNM will remain in possession of its present interests in PVNGS under a leasehold rather than by virtue of ownership.

Under Facility Operating License NPF-41, issued June 1, 1985, PNM, APS, and other named utilities are licensed to possess PVNGS Unit 1, and

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APS is licensed to use and operate the facility. PVNGS Unit 1 is part of a three unit PVNGS project jointly owned by those utilities. Under an Arizona Nuclear Power Project (ANPP) Participation Agreement, each owner of the PVNGS project is obligated to pay a share, equal to its ownership interest, of all costs of construction, maintenance, operation, capital improvements, and decommissioning of each of the PVNGS units, and entitled to share equal to its ownership interests in the electrical output of the units. APS is authorized to act as agent for the other licensees of PVNGS Unit 1, and has exclusive responsibility and control over the physical construction, maintenance and operation of the facility.

On October 18, 1985, APS filed an application regarding a sale and leaseback transaction by PNM of a portion of PNM's ownership interests in PVNGS Unit 1. See 50 F. R. 45955 (1985). By Order of December 12, 1985, the Commission approved the proposed sale and leaseback transactions and authorized the amendment of the PVNGS Unit 1 license subject to certain conditions. On December 26, 1985, the PVNGS license was amended, conditioned pursuant to the Commission's order. See 51 F. R. 1883 (1986). This amendment added a new paragraph, 2.B(b), to the license, which stated:

"Pursuant to an Order of the Nuclear Regulatory Commission dated December 12, 1985, the Public Service Company of New Mexico (PNM) to transfer and PNM has transferred a portion of its ownership share in Palo Verde Unit 1 to certain institutional investors on December 31, 1985, and at the same time has leased back from such purchasers the same interest in the Palo Verde Unit 1 facility. The term of the lease is to January 15, 2015, subject to a right of renewal. The sale and leaseback transaction is subject to the representations and conditions set forth in the above application and the Commission's Order of December 12, 1985, consenting to such transaction. Specifi-

cally, the lessor and anyone else who may acquire an interest under this transaction are prohibited from exercising directly or indirectly any control over the licensees of the Palo Verde Nuclear Generating Station, Unit 1. For purposes of this condition, the limitations in 10 C.F.R. 50.81 "Creditor Regulations" as now in effect and as they may be subsequently amended are fully applicable to the lessor and any successor in interest to that lessor as long as the license for Palo Verde Unit 1 remains in effect; this financial transaction shall have no effect on the license for the Palo Verde Nuclear Facility throughout the term of the license.

Further, the licensees are also required to notify the NRC in writing prior to any change in: (i) the terms or conditions of any lease agreements executed as part of this transaction; (ii) the ANPP Participation Agreement, (iii) the existing insurance for the Palo Verde Nuclear Facility, Unit 1 and (iv) any action by the lessor or others that may have an adverse effect on the safe operation of the facility."

On December 31, 1985, as permitted by this License Amendment, PNM sold to and leased back from equity investors approximately 7.367% of its 10.2% interest in PVNGS Unit 1.

In the instant application, APS requests an amendment to the PVNGS Unit 1 license which allows PNM to sell and leaseback its remaining interest in PVNGS Unit 1 by adding a provision at the end of paragraph 2.B(b) which would allow PNM to enter into additional sale and leaseback transactions on or before August 31, 1986. APS presently contemplates that sale and leaseback of a \$75 million portion of the remaining Unit 1 interest will be consummated with a third-party equity investor not affiliated with PNM and a \$50 million portion with an affiliate of PNM. PNM represents that these transactions will have essentially the same terms and conditions as the sale and leaseback transactions entered into on December 31, 1985, under which the equity investors have no right of possession in, absent a further license amendment, or control over PVNGS Unit 1. Those rights

remained solely in PNM, as a lessee rather than an owner, and the other present licensees of PVNGS Unit 1, and APS continued to be the sole licensee authorized to use and operate PVNGS Unit 1. Throughout the term of the leaseholds PNM has the full and exclusive authority and responsibility to exercise and perform all of the rights and duties of a Participant in PVNGS under the ANPP Participation Agreement. PNM also retains responsibility for the payment of its share of the operating and maintenance expenses and costs of capital improvements during the term of the leaseholds and thereafter, in the absence of other Commission action, for 10.2% of the costs of decommissioning associated with PVNGS Unit 1.

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

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

involve a significant reduction in a margin of safety.

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

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

Comments should be addressed to Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday.

Further, although no determination has been made to hold hearings on the subject application, by April 9, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the

subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in any hearings which may be held. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 C.F.R. Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date and it is determined that a hearing be held, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 C.F.R. 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should identify the specific aspect(s) of the subject matter of the proceeding as to which

petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

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

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

If the final determination is that the amendment request involves no

significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

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

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

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

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

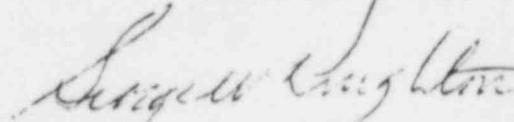
Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request,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

For further details with respect to this action, see the application

dated February 5, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the local public document room at the Phoenix Public Library, 12 E. McDowell Road, Phoenix, AZ 85004.

Dated at Bethesda, Maryland, this 4th day of March, 1986.

FOR THE NUCLEAR REGULATORY COMMISSION



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