



10 CFR 50.80
10 CFR 50.81
10 CFR 72.50

**Palo Verde
Nuclear Generating Station**
5871 S. Wintersburg Road
Tonopah, AZ 85354

102-08277-TNW/MSC
May 19, 2021

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

**SUBJECT: Palo Verde Nuclear Generating Station, Units 1 and 2
Docket Nos. STN 50-528, 50-529 and Independent Spent Fuel
Storage Installation Docket No. 72-44
Renewed Operating License Nos. NPF-41, NPF-51
Application for Order Approving Transfers of Control of
Licenses for Minority Interests Subject to Expiring Leases**

In accordance with Section 184 of the Atomic Energy Act, 10 CFR 50.80, and 10 CFR 72.50, Arizona Public Service Company ("APS"), on behalf of the Salt River Project Agricultural Improvement and Power District ("SRP") and Public Service Company of New Mexico ("PNM") (together, "Applicants"), respectfully requests that the U.S. Nuclear Regulatory Commission ("NRC") consent to the transfers from PNM to SRP (the "Transfers") of a 7.9333330% share of the undivided interests in Palo Verde Nuclear Generating Station ("PVNGS") Unit 1 (the "Unit 1 Interests"), and of a 0.7933333% share of the undivided interests in PVNGS Unit 2 (the "Unit 2 Interest").¹ The information provided herein and in the attached is provided by SRP and PNM.

PNM and SRP are both PVNGS NRC licensees. Because the transaction only concerns a partial transfer of PNM's total interest in PVNGS, both PNM and SRP will retain their status as NRC licensees post-Transfers. The Transfers will change only the allocation between SRP and PNM of the percentage interests in Unit 1 and Unit 2.

¹ The other owners of PVNGS are not participants to this license transfer application as their interests in PVNGS are remaining the same.

Description of Transfers

PNM currently has a 10.2% interest in PVNGS Units 1, 2, and 3. While most of this interest is directly owned by PNM, the remainder—specifically the Unit 1 Interests and Unit 2 Interest—is leased from financial institutions pursuant to sale-leaseback transactions PNM executed in 1985 and 1986 with investment and banking firms. As the lessee, PNM retained all of the leasehold and control rights and responsibility associated therewith. The NRC consented to these sale-leaseback transactions.² Under the terms of these past transactions, the Unit 1 Interests and the Unit 2 Interest are currently held in trust and leased to PNM pursuant to the NRC’s prior orders, license amendments, and creditor regulations, 10 CFR 50.81. The sale-leaseback transactions were structured so that although the investment and banking firms own the Unit 1 Interests and the Unit 2 Interest, none has direct or indirect controlling interest in PVNGS. Instead, under the leases, PNM retains leasehold and control rights and responsibility under the NRC licenses for these interests.

PNM entered into a total of 11 sale-leaseback transactions refinancing portions of its interests in PVNGS Units 1 and 2. Six leases have since expired, leaving five remaining. This Application concerns those remaining five leases, which are approaching their expiration dates and cannot be renewed, with four leases expiring in 2023 and one in 2024.³ The financial institutions have agreed to sell and transfer their interests to SRP starting from 2021 and SRP has agreed to purchase these interests, provided SRP and PNM have secured the requisite approval from the NRC for SRP ownership of the incremental interests once the leases expire.

The chart below summarizes the effective change in PNM and SRP interests in PVNGS following the Transfers and expiration of the leases:

Summary of Transfers of Control Upon Expiration of Leases

PVNGS UNIT	Interest Transferred from PNM to SRP	SRP		PNM		PNM/SRP Total
		<i>Before</i>	<i>After</i>	<i>Before</i>	<i>After</i>	
1	7.9333330%	17.49%	25.423333%	10.2%	2.266667%	27.69%
2	0.7933333%	17.49%	18.283333%	10.2%	9.406667%	27.69%
3	0%	17.49%	17.49%	10.2%	10.2%	27.69%

² Letter from H.R. Denton to E. E. Van Brunt, “Issuance of Amendment No. 11 to Facility Operating License No. NPF-41 for Palo Verde, Unit 1 and Amendment No. 6 to Facility Operating License No. NPF-51 for Palo Verde, Unit 2” (Dec. 11, 1986) (ADAMS Accession No. ML021680489).

³ Four leases related to the Unit 1 Interests are respectively held by Daimler Capital Services LLC, Citicorp Buffalo Basin, Inc., and Chase Manhattan Realty Leasing Corporation (which has two leases) (all the Unit 1 Interests leases expiring January 15, 2023). One lease pertaining to the Unit 2 Interest is held by Chase Manhattan Realty Leasing Corporation (expiring January 15, 2024).

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Although the ownership interests in PVNGS will change, significant actions involving operation of the Palo Verde units require unanimity of all owners of PVNGS. Currently, no entity owns 50% or more of the voting interests. The same is true following the transfer of the leased interests. Accordingly, after the effective date of the transactions, there will be no change in the control of operation of PVNGS; APS will continue to make all technical decisions that do not require approval from all owners of PVNGS.

Request for Approval of Transfer of Control

The transfer of beneficial interests to SRP from the current financial institutions (owners of the lessor trusts that lease these interests to PNM) in 2021 does not require a license transfer approval, but rather the license condition in Section 2.B.(6)(a) of each license requires prior notice to the NRC regarding the change in ownership. Such Notice is hereby provided.

However, SRP is acquiring the beneficial interests now held in trust so that it will obtain ultimate ownership of these interests under the terms of the lease documents when the leases expire in 2023 and 2024, and the interests transfer to SRP. These transfers of control at the end of the leases require NRC consent. Thus, SRP requests NRC approval for the Transfers of the associated interests at the end of the term of each of the respective leases. SRP will be making a substantial payment to the lessors to acquire the beneficial interests in the lessor trusts. As such, SRP requires NRC approval in 2021 in order to confirm the efficacy of it acquiring the beneficial interests in advance of the actual lease termination dates.

The Applicants therefore request that NRC consent to the Transfers of control of the licenses for these leased interests. Information supporting this request for consent is included in the attached "Application for Order Approving Transfers of Control of Minority Interests Subject to Expiring Leases" ("Application"), which is provided as Enclosure 1.

SRP is a community-based not-for-profit water and energy company that provides reliable, affordable water and power to more than 2 million people living in central Arizona. SRP has provided these essential resources for more than a century to meet the needs of customers and help the region grow. SRP is a political subdivision of the State of Arizona.

SRP is an existing NRC licensee for PVNGS Units 1, 2 and 3, and it is named on the NRC licenses for its current ownership of a 17.49% share of the undivided ownership interests in each of the three units.

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PNM also is an existing licensee for PVNGS Units 1, 2 and 3.⁴ It is named on the licenses due to its interests in the Units, which is based in part upon its undivided ownership interests in each of the three units and based in part upon its leasehold interests pursuant to leases for the Unit 1 Interests and the Unit 2 Interest. The ownership of these interests is held in trust by the lessors. PNM will remain a licensee for its undivided ownership interests in the Units following the transfer of its leased interests to SRP upon expiration of the term of each of the leases.

SRP will remain on the licenses due to its existing ownership interests as well as the interests that will no longer be subject to leases at the end of the lease terms. The ownership percentages of the PVNGS co-owners are not reflected in the licenses. Thus, no license amendment is required. A license amendment may be processed in the future to delete the PNM sale and leaseback license conditions, which will no longer be relevant following the expiration of the PNM leases.

The information in the attached Application demonstrates: (1) SRP will continue to have the requisite managerial, technical, and financial qualifications to continue its role as a PVNGS licensee; (2) SRP and PNM will continue to provide reasonable assurance of funding for decommissioning PVNGS; (3) the terms of the PVNGS licenses will not be affected; and (4) SRP is not subject to any foreign ownership, control or domination ("FOCD").

The Applicants respectfully request that the NRC review and complete action expeditiously on the enclosed Application and consent to the proposed Transfers. Applicants are prepared to work closely with the NRC Staff to facilitate the review of the Application. Applicants request that the NRC issue an Order by October 30, 2021, authorizing the Transfers described in the Application to take place, at any time from the date of issuance until March 1, 2024 (after the expiration of the last lease).

The Applicants recognize that NRC's recent practice has been to limit an applicant's time for action on approvals to one year, unless extended for good cause shown. The NRC uses this limitation to avoid requests for approval for speculative transactions and because of the time dependence of information relied on in the agency's basis for granting the approval. In this case neither concern is present.

⁴ On December 2, 2020, APS, on behalf of PNM and Avangrid, Inc., submitted a license transfer application seeking consent for the indirect transfer of control of PNM and its NRC licenses for PVNGS as part of a planned merger between PNM and Avangrid. Letter from T. Weber, Arizona Public Service Co., to NRC Document Control Desk, "Application for Order Approving Indirect Transfers of Control of Licenses" (Dec. 2, 2020) (ML20337A344). The planned transactions covered by this Application are independent from the PNM-Avangrid merger for which consent is sought in the December 2, 2020 license transfer application.

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As explained more fully in the enclosed Application, SRP is acquiring the Unit 1 interests and Unit 2 interest from certain banks and institutional investors but retains leasehold and control rights. As a first step, SRP had entered in Beneficial Interest Sale Agreements (ISAs) with these banks and institutional investors whereby SRP will become the owner of the leased interests. At the expiration of the leases, SRP then will acquire the leasehold and control rights currently held by PNM.

The closing of the transactions contemplated by the ISAs in 2021 is conditioned upon the Applicants' receipt of NRC consent for the transfer of control of the Unit 1 and Unit 2 interests at the expiration of the leases. SRP's right to acquire the Unit 1 Interests and the Unit 2 Interest at lease end attaches as soon as it acquires the lessors' interests in 2021. SRP cannot take the risk of closing the initial transactions under the ISAs without having NRC-approval for ownership at lease ends because doing so puts SRP at risk of being an unlicensed owner at the end of the term of the leases. Additionally, both PNM and SRP are, and will remain, qualified for their respective financial and decommissioning obligations by their status as "electric utilities" as defined in 10 CFR 50.2. The time period requested coincides with expiration of the leases and provides for an orderly, predictable unwinding of the subject leases.

In summary, the proposed Transfers will not be inimical to the common defense and security or result in any undue risk to public health and safety, and the Transfers will be consistent with the requirements of the Atomic Energy Act and the NRC regulations.⁵ A public pre-submittal call was held with the NRC staff regarding this application on May 13, 2021.

As a courtesy, a copy of this submittal has been sent to the State of Arizona.

If the NRC has any questions about the proposed transaction described in this letter and in the Application or wishes to obtain any additional information about the proposed Transfers, please contact Matthew S. Cox, Licensing Section Leader, at (623) 393-5753.

⁵ APS separately leases interests in PVNGS Unit 2 from three financial institutions. The term of the leases expires in December 31, 2033. This submittal does not address the APS Unit 2 leases.

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Service upon the Applicants of any notices, comments, hearing requests, intervention petitions, or other pleadings should be made to:

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In addition, please place the above individuals on the NRC correspondence distribution for all correspondence related to the Application.

This correspondence contains no new regulatory commitments of APS, PNM or SRP.

Sincerely,

Weber, Thomas
N(Z00499)

Digitally signed by Weber, Thomas
N(Z00499)
DN: cn=Weber, Thomas N(Z00499)
Reason: I am approving this
document
Date: 2021.05.19 13:21:06 -07'00'

Thomas N. Weber
Director, Nuclear Regulatory Affairs

Enclosure 1 - Application for Order Approving Transfers of Control of Licenses for
Minority Interests Subject to Expiring Leases

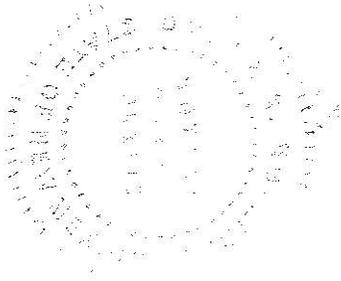
cc:

S. A. Morris	NRC Region IV Regional Administrator
S. P. Lingam	NRC NRR Project Manager for PVNGS
C. A. Peabody	NRC Senior Resident Inspector for PVNGS
B. D. Goretzki	Arizona Department of Health Services – Bureau of Radiation Control

STATE OF NEW MEXICO)
) SS.
COUNTY OF BERNALILLO)

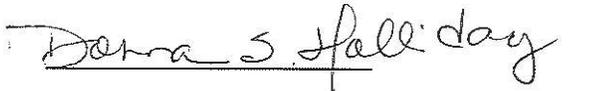
Patricia K. Collawn, being duly sworn according to law deposes and says:

I am Chairman, President and Chief Executive Officer of Public Service Company of New Mexico (PNM), and as such, I am familiar with the contents of this correspondence and the attachments thereto concerning the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, and the matters set forth therein regarding PNM and its affiliated companies are true and correct to the best of my knowledge, information and belief.




Patricia K. Collawn

Subscribed and Sworn to before me
this 14th day of May, 2021


Notary Public of the County of Bernalillo

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

Mike Hummel, being duly sworn according to law deposes and says:

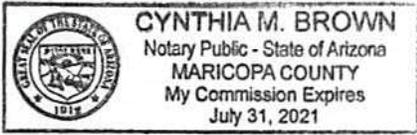
I am General Manager and Chief Executive Officer of Salt River Project Agricultural Improvement and Power District ("SRP"), and as such, I am familiar with the contents of this correspondence and the attachments thereto concerning the Palo Verde Nuclear Generating Station, Units 1 and 2, and the matters set forth therein regarding SRP are true and correct to the best of my knowledge, information and belief.


Mike Hummel

Subscribed and Sworn to before me
this 14th day of May, 2021



Notary Public of the County of Maricopa



ENCLOSURE 1

APPLICATION FOR ORDER APPROVING TRANSFERS OF CONTROL OF LICENSES FOR MINORITY INTERESTS SUBJECT TO EXPIRING LEASES

**Palo Verde Nuclear Generating Station Units 1 and 2
Docket Nos. STN 50-528 and 50-529
Renewed Operating License Nos. NPF-41, NPF-51
Independent Spent Fuel Storage Installation
Docket No. 72-44**

ENCLOSURE 1

Application for Order Approving Transfers of Control of Licenses for Minority Interests Subject to Expiring Leases

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1. Introduction

In accordance with Section 184 of the Atomic Energy Act, 10 CFR 50.80, and 10 CFR 72.50, Arizona Public Service Company (“APS”), on behalf of the Salt River Project Agricultural Improvement and Power District (“SRP”) and Public Service Company of New Mexico (“PNM”) (together, “Applicants”), respectfully requests that the U.S. Nuclear Regulatory Commission (“NRC”) consent to the transfers from PNM to SRP (the “Transfers”) of a 7.9333330% share of the undivided interests in Palo Verde Nuclear Generating Station (“PVNGS”) Unit 1 (the “Unit 1 Interests”), and of a 0.7933333% share of the undivided interests in PVNGS Unit 2 (the “Unit 2 Interest”).¹ The information provided herein and in the attached is provided by SRP and PNM.

PNM and SRP are both PVNGS NRC licensees. Because the transaction only concerns a partial transfer of PNM’s total interest in PVNGS, both PNM and SRP will retain their status as NRC licensees post-Transfers. The Transfers will change only the allocation between SRP and PNM of the percentage interest in Unit 1 and Unit 2.

PNM currently holds a 10.2% undivided interests in PVNGS Units 1, 2, and 3. While most of this interest is directly held by PNM, the remainder—specifically the Unit 1 Interests and the Unit 2 Interest—is leased from financial institutions pursuant to sale-leaseback transactions PNM executed in 1985 and 1986 with investment and banking firms. As the lessee, PNM retained all of the leasehold and control rights and

¹ The other owners of PVNGS are not participants to this license transfer application as their interests in PVNGS are remaining the same.

responsibility associated therewith. The NRC consented to these sale-leaseback transactions.² Under the terms of these past transactions, the Unit 1 Interests and the Unit 2 Interest are currently held in trust and leased to PNM pursuant to the NRC's prior orders, licensed amendments, and creditor regulations, 10 CFR 50.81. The sale-leaseback transactions were structured so that, although the investment and banking firms own the Unit 1 Interests and Unit 2 Interest, none has a direct or indirect controlling interest in PVNGS. Instead, under the terms of the leases, PNM retains leasehold and control rights and responsibility under the NRC licenses for these interests.

PNM entered into a total of 11 sale-leaseback transactions relating to both PVNGS Units 1 and 2. Six have since expired, leaving five remaining. This Application concerns those five remaining leases, which are approaching their expiration dates and cannot be renewed, with four leases expiring in 2023 and one in 2024.³ The financial institutions have agreed to sell and transfer their interests to SRP starting from 2021 and SRP has agreed to purchase these interests, provided SRP and PNM have secured the requisite approval from the NRC for SRP's ownership of the incremental interests once the leases expire.

² Letter from H.R. Denton to E. E. Van Brunt, "Issuance of Amendment No. 11 to Facility Operating License No. NPF-41 for Palo Verde, Unit 1 and Amendment No. 6 to Facility Operating License No. NPF-51 for Palo Verde, Unit 2" (Dec. 11, 1986) (ADAMS Accession No. ML021680489).

³ Four leases related to the Unit 1 Interests are respectively held by Daimler Capital Services LLC, Citicorp Buffalo Basin, Inc., and Chase Manhattan Realty Leasing Corporation (which has two leases) (all the Unit 1 Interests leases expiring January 15, 2023). One lease pertaining to the Unit 2 Interest is held by Chase Manhattan Realty Leasing Corporation (expiring January 15, 2024).

The transaction has been structured so that SRP steps into the shoes of the lessor investment and banking firms starting from 2021.⁴ As a result, SRP will be a non-controlling lessor of the Unit 1 Interests and the Unit 2 Interest until the lease terms end, no different than the banking or investment firms are currently. Then, upon the expiration of the five leases at the end of their terms in 2023 and 2024, the respective Unit 1 Interests and Unit 2 Interest held under those leases will transfer entirely to SRP. The leasehold and control rights associated with the Unit 1 Interests and the Unit 2 Interest will likewise flow directly from PNM to SRP without passing through the banking and investment firms (not even for an instant). The chart below summarizes the effective change in PNM and SRP interests in PVNGS following the Transfers and expiration of the leases:

PVNGS UNIT	Interest Transferred from PNM to SRP	SRP		PNM		PNM/SRP Total
		Before	After	Before	After	
1	7.9333330%	17.49%	25.423333%	10.2%	2.266667%	27.69%
2	0.7933333%	17.49%	18.2833333%	10.2%	9.4066667	27.69%
3	0%	17.49%	17.49%	10.2%	10.2%	27.69%

Although the ownership interests in PVNGS will change, significant actions involving operation of the Palo Verde units require unanimity of all owners of PVNGS. Currently, no entity owns 50% or more of the voting interests. The same is true following the transfer of the leased interests. Accordingly, after the effective date of the transactions, there will be no change in the control of the operation of PVNGS; APS will

⁴ The initial closing on the lessors' interests is expected to occur in 2021, following receipt of all required regulatory approvals, including this request to the NRC.

continue to make all technical decisions that do not require approval from all owners of PVNGS.

The transfer of beneficial interests to SRP from the current financial institutions (owners of the lessor trusts that lease these interests to PNM) in 2021 does not require a license transfer approval, but rather the license condition in Section 2.B.(6)(a) of each license requires prior notice to the NRC regarding the change in ownership. Such Notice is hereby provided.

However, SRP is acquiring the beneficial interests now held in trust so that it will obtain ultimate ownership of these interests when the leases expire in 2023 and 2024, and the interests transfer to SRP. These transfers of control at the end of the leases require NRC consent. Thus, SRP requests NRC approval for the Transfers of the associated interests at the end of the term of each of the respective leases. SRP will be making a substantial payment to the lessors to acquire the beneficial interests in the lessor trusts. As such, SRP requires NRC approval in 2021 in order to confirm the efficacy of it acquiring the beneficial interests in advance of the actual lease termination dates.

These transactions are each part of an integrated whole, fully resolving the disposition of the Unit 1 Interests and the Unit 2 Interest at the conclusion of the PNM leases. Accordingly, NRC consent for the license transfers is necessary before the parties can complete their initial closing, which is expected to occur in 2021. The term of each of the leases for the Unit 1 Interests expires on January 15, 2023, and the term

of the lease for the Unit 2 Interest expires on January 15, 2024.⁵ The Applicants therefore request that NRC consent to the transfers of control of the licenses for these leased interests. Information supporting this request for consent is provided in this Application.

SRP is a community-based not-for-profit water and energy company that provides reliable, affordable water and power to more than 2 million people living in central Arizona. SRP has provided these essential resources for more than a century to meet the needs of customers and help the region grow. SRP is a political subdivision of the State of Arizona.

SRP is an existing NRC licensee for PVNGS Units 1, 2 and 3, and it is named on the NRC licenses for its current ownership of a 17.49% share of the undivided ownership interests in each of the three units.

PNM also is an existing licensee for PVNGS Units 1, 2 and 3.⁶ It is named on the licenses due to its ownership interests in the Units, which is based in part upon its undivided ownership interests in each of the three units and based in part upon its leasehold interests pursuant to leases for the Unit 1 Interests and the Unit 2 Interest.

⁵ Because the lease termination dates occur on a weekend or holiday, by agreement among the parties, the actual transfers are expected to occur as of 12:00 a.m. on January 13, 2023 for the Unit 1 Interests and as of 12:00 a.m. on January 12, 2024 for the Unit 2 Interest.

⁶ On December 2, 2020, APS, on behalf of PNM and Avangrid, Inc., submitted a license transfer application seeking consent for the indirect transfer of control of PNM and its NRC licenses for PVNGS as part of a planned merger between PNM and Avangrid. Letter from T. Weber, Arizona Public Service Co., to NRC Document Control Desk, "Application for Order Approving Indirect Transfers of Control of Licenses" (Dec. 2, 2020) (ML20337A344). The planned transactions covered by this Application are independent from the PNM-Avangrid merger for which consent is sought in the December 2, 2020 license transfer application.

The ownership of these interests is held in trust by the lessors. PNM will remain a licensee for its undivided ownership interests in the Units following the transfer of its leased interests to SRP upon expiration of the term of each of the leases.

SRP will remain on the licenses due to its existing ownership interests as well as the interests that will no longer be subject to leases at the end of the lease terms. The ownership percentages of the PVNGS co-owners are not reflected in the licenses. Thus, no license amendment is required. A license amendment may be processed in the future to delete the PNM sale and leaseback license conditions, which will no longer be relevant following the expiration of the PNM leases.⁷

2. Statement of Purpose of Transfers and Nature of the Transaction Making the Transfers Necessary or Desirable

The proposed transaction is necessary and desirable because PNM has determined that it does not want to acquire the ownership interests associated with the leased interests at the end of the terms of the leases. The financial institutions also do not desire to take over PNM's current NRC-licensed responsibilities related to the Unit 1 Interests or Unit 2 Interest. SRP is an existing co-owner and licensee for PVNGS, and it is willing to acquire these interests, which support its goal to significantly and steadily reduce greenhouse gas emissions while maintaining a sustainable, reliable and affordable supply of power and water.

⁷ APS separately leases interest in PVNGS Unit 2 from three financial institutions. The term of the leases expires on December 31, 2033. This Application does not address the APS Unit 2 leases.

SRP has entered into Beneficial Interest Sales Agreements (“ISAs”) pursuant to which it will acquire the beneficial interests held in trust that are associated with the leases for the Unit 1 Interests and Unit 2 Interest. SRP will not acquire these interests until regulatory approvals are obtained, including NRC’s consent to the transfer of control of the licenses associated with the corresponding interests upon expiration of the leases and approval from the New Mexico Public Regulation Commission. NRC approval of the Transfers now and closing of the ISAs in 2021 removes uncertainty regarding the licensed ownership of the Unit 1 Interests and Unit 2 Interest in PVNGS upon expiration of the leases.

SRP also has entered into an Asset Purchase and Sale Agreement with PNM. Pursuant to this agreement, PNM will transfer interests in nuclear fuel, inventory, switchyard facilities, and transmission assets that support SRP’s acquisition of the Unit 1 Interests and Unit 2 Interest. PNM will also transfer certain common facility assets associated with these interests that are not subject to the lease arrangements.

The information in this Application demonstrates: (1) SRP will continue to have the requisite managerial, technical, and financial qualifications to continue its role as a PVNGS licensee; (2) SRP and PNM will continue to provide reasonable assurance of funding for decommissioning PVNGS; (3) the terms of the PVNGS licenses will not be affected; and (4) SRP is not subject to any foreign ownership, control or domination (“FOCD”). In summary, the proposed Transfers will not be inimical to the common defense and security or result in any undue risk to public health and safety, and the

Transfers will be consistent with the requirements of the Atomic Energy Act and the NRC regulations.

3. General Corporate Information Regarding SRP

a. General Corporate Information and Description of Business

In accordance with the requirements of 10 CFR 50.33(d)(3), general corporate information regarding SRP is provided in Attachment 1.

b. No Foreign Ownership, Control or Domination

SRP is controlled by eligible voters within its district, the overwhelming majority of whom are citizens of the State of Arizona. Moreover, SRP is a political subdivision of the State of Arizona. As such, SRP is clearly under U.S. control. It is not subject to any foreign ownership, control or domination. All of the members of its Board, its Officers and its Executive managers are U.S. citizens.

c. No Agency

As the licensed entity with possession and responsibility for operating PVNGS, APS will continue to act for itself and the other PVNGS co-owners. Neither APS nor SRP is acting as the agent or representative of any other person in the proposed transfers of the licenses.

4. Technical Qualifications

APS will continue to be the entity licensed to operate PVNGS, and its technical qualifications will be entirely unaffected by the proposed license transfers.

5. Financial Qualifications

Under 10 CFR 50.80(b)(1)(i), an application for a license transfer must contain all the requested information related to financial qualifications as required by 10 CFR 50.33. Thus, Applicants provide the following financial information.

a. Financial Qualifications under 10 CFR 50.33(f)

An “electric utility” as defined in 10 CFR 50.2 is exempted from the requirement to submit financial qualifications information under 10 CFR 50.33(f). An “electric utility” is “any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.” The transferee, SRP, is an “electric utility” as defined in 10 CFR 50.2, because it recovers the cost of electricity through rates established by its Board, and it will continue to do so following the proposed license transfers. As such, the presumption that SRP is financially qualified remains unchanged, and SRP continues to be exempt from the financial qualifications information requirements pursuant to 10 CFR 50.33(f) and in accordance with Section III.1.b of NUREG-1577, Rev. 1. Given this presumption of financial qualification, the NRC should conclude that there is reasonable assurance that SRP will meet its obligations to provide funding for the Unit 1 Interests and Unit 2 Interest in PVNGS.

b. Financial Assurance for Decommissioning

PNM has collected funds from its ratepayers for decommissioning its original 10.2% interests in PVNGS Units 1 and 2 (including license termination costs contemplated by 10 CFR 50.75). These funds are held in PNM’s nuclear

decommissioning trust funds (“NDTs”) for these units. PNM intends to continue to maintain its current NDTs for the full 10.2% interests in PVNGS Units 1, 2 and 3 for which it has been historically responsible. Along with retaining the NDTs, PNM is still retaining its 10.2% share of liability and regulatory responsibility for the decommissioning costs for PVNGS Units 1, 2 and 3, including costs for decommissioning the Unit 1 Interests and the Unit 2 Interest.

Because decommissioning funding and responsibility is not changing between PNM and SRP despite the change in ownership, SRP and PNM have agreed to execute a Decommissioning Agreement, which documents PNM’s obligations to SRP regarding paying the costs of decommissioning associated with the Unit 1 Interests and Unit 2 Interest, including certain spent fuel management costs during decommissioning and certain costs of decommissioning the PVNGS independent spent fuel storage installation once all spent fuel has been removed from the PVNGS site. A copy of this agreement in a form agreed to by PNM and SRP is provided as Attachment 2.

Section 3.1 of the Decommissioning Agreement specifically makes clear that PNM “will retain all liability for paying the Decommissioning Costs associated with the Unit 1 Interests and Unit 2 Interest,” including PVNGS, any common facilities, the ISFSI, and NRC-Licensed Site, regardless of the change in ownership.

PNM’s and SRP’s NDT balances as of December 31, 2020, were reported in APS’s biennial “Consolidated Decommissioning Funding Status Report - 2020” dated March 26, 2021 (ADAMS Accession No. ML21085A877). That report demonstrates that both PNM and SRP satisfy the “prepayment” method of providing reasonable assurance

of decommissioning funding as set forth in 10 CFR 50.75(e)(1)(i) and 10 CFR 72.30(e)(1) for their ownership interests in PVNGS. No material changes have occurred to the balances of the PNM and SRP NDTs since that report. In addition, PNM's and SRP's ongoing compliance with the decommissioning funding assurance requirements will continue to be subject to NRC review.

6. Restricted Data

This Application does not contain any Restricted Data or other classified National Security Information, and it is not expected that any such information will become involved in the licensed activities of SRP. However, in the event that such information does become involved, and in accordance with Section 145(a) of the Atomic Energy Act and 10 CFR 50.37, "Agreement Limiting Access to Classified Information," SRP agrees that it will appropriately safeguard such information and will not permit any individual to have access to such information until the individual has been appropriately approved for such access under the provisions of 10 CFR Part 25, "Access Authorization," and/or Part 95, "Facility Security Clearance and Safeguarding of National Security Information and Restricted Data."

7. Other Nuclear Regulatory Issues

a. Price-Anderson Indemnity and Nuclear Insurance

The NRC's Price-Anderson indemnity agreement for PVNGS includes SRP. The licensees for PVNGS will continue to maintain offsite nuclear liability coverage and onsite property damage insurance coverage, in accordance with the requirements of

10 CFR 50.54(w) and 10 CFR 140.11. The annual filings required by 10 CFR 50.54(w)(3) and 10 CFR 140.21 will continue to be made.

b. Standard Contract for Disposal of Spent Nuclear Fuel

APS maintains and will continue to maintain the “Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Waste” with the Department of Energy (“DOE”), Contract No. DE-CR01-84RW00005, for the disposal of spent nuclear fuel to be performed by the DOE (“Standard Contract”), including all rights and obligations under that contract for all of the PVNGS owners. PNM will remain responsible for paying the costs of managing spent nuclear fuel associated with its ownership of the Unit 1 Interests and Unit 2 Interest prior to the proposed Transfers. SRP will assume responsibility for paying the costs of managing spent nuclear fuel associated with its ownership of the Unit 1 Interests and Unit 2 Interest following the proposed Transfers.

c. Exclusion Area Control

The proposed license transfers have no impact upon the authority of APS with respect to the PVNGS exclusion area. APS will continue to have the required authority, continue to meet its obligations, and continue to comply with all requirements relating to its exclusion area, entirely unaffected by the proposed license transfers.

d. QA Program

The QA Program for PVNGS will not be affected by the proposed transfers of control of licenses. No changes to the QA Program are expected in connection with the proposed Transfers, and any changes that do occur in the ordinary course of business will be made in accordance with 10 CFR 50.54(a).

e. Continuation of the Current Licensing Basis

The proposed Transfers will have no impact on the licensing basis for PVNGS.

8. Requested Review Schedule and Other Required Approvals

The Applicants respectfully request that the NRC review and complete action expeditiously on the enclosed Application. The Applicants are prepared to work closely with the NRC Staff to facilitate the review of the Application. The Applicants request that the NRC issue an Order by October 30, 2021 authorizing the Transfers to take place at any time from the date of issuance until March 1, 2024 (after the expiration of the last lease). The Applicants recognize that NRC's recent practice has been to limit an applicant's time for action on approvals to one year, unless extended for good cause shown. The NRC uses this limitation to avoid requests for approval for speculative transactions and because of the time dependence of information relied on in the agency's basis for granting the approval. In this case, neither concern is present. The closing of the transactions contemplated by the ISAs in 2021 is conditioned upon the Applicants' receipt of NRC consent for the transfer of control of the Unit 1 and Unit 2 interests at the expiration of the leases. SRP's right to acquire the Unit 1 Interests and Unit 2 Interest at lease end attaches as soon as it acquires the lessors' interests. SRP cannot take the risk of closing the initial transactions under the ISAs without having NRC-approval for ownership at lease ends because doing so puts SRP at risk of being an unlicensed owner at the end of the term of the leases. Additionally, both PNM and SRP are, and will remain, qualified for their respective financial and decommissioning obligations by their status as "electric utilities" as defined in 10 CFR 50.2. The time

period requested coincides with expiration of the leases and provides for an orderly, predictable unwinding of the subject leases. The proposed transaction requires regulatory filings with the New Mexico Public Regulation Commission. The parties to the proposed transaction are seeking to obtain these regulatory approvals as soon as possible so that they can consummate the proposed initial closing of the transaction as early as possible in 2021. The Applicants will keep the NRC apprised of any changes to the New Mexico Public Regulation Commission's review schedule.

9. Environmental Considerations

This Application is exempt from environmental review, because it falls within the categorical exclusion appearing at 10 CFR 51.22(c)(21), "Approvals of direct or indirect transfers of any license issued by NRC and any associated amendments required to reflect the approval of a direct or indirect transfer of an NRC license," for which neither an Environmental Assessment nor an Environmental Impact Statement is required.

10. Summary

In summary, the proposed license transfers will be consistent with the requirements of the Atomic Energy Act and NRC regulations. The ongoing operation of PVNGS will be unaffected by the proposed Transfers of control, so there will be no adverse impact on public health and safety. APS is technically qualified and will remain technically qualified without regard to the license transfers. The proposed Transfers also will not impact the financial status of either PNM or SRP, and both PNM and SRP will remain financially qualified. The Transfers of PNM's licenses for the Unit 1 Interests and Unit 2 Interest to SRP will not be inimical to the common defense and security and

will not involve foreign ownership, control or domination. The Applicants therefore request that the NRC consent to the license transfers in accordance with 10 CFR 50.80 and 72.50.

ATTACHMENT 1

GENERAL CORPORATE INFORMATION

REGARDING

SRP

Attachment 1

NAME:	Salt River Project Agricultural Improvement and Power District
STATE OF FORMATION:	Arizona
BUSINESS ADDRESS:	1500 N. Mill Ave., Tempe, AZ 85281
BOARD OF DIRECTORS:	Kevin J. Johnson Paul E. Rovey Mario J. Herrera Leslie C. Williams Stephen H. Williams Jack M. White Jr. Keith B. Woods Deborah S. Hendrickson Robert C. Arnett Mark V. Pace Anda G. McAfee Corey J. Hawkey Nicholas R. Brown Randy J. Miller
OFFICERS:	David Rousseau, President John Hoopes, Vice President John Felty, Corporate Secretary Brian Koch, Corporate Treasurer Mike Hummel, General Manager & Chief Executive Officer

ATTACHMENT 2

DECOMMISSIONING AGREEMENT

BY AND BETWEEN

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

and

PUBLIC SERVICE COMPANY OF NEW MEXICO

Dated as of [●], 2021

DECOMMISSIONING AGREEMENT

BY AND BETWEEN

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

and

PUBLIC SERVICE COMPANY OF NEW MEXICO

Dated as of [●], 2021

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DECOMMISSIONING AGREEMENT

THIS DECOMMISSIONING AGREEMENT dated as of [●], 2021 (“Agreement”), is entered into by and between SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an agricultural improvement district organized and existing under and by virtue of the laws of the State of Arizona (“SRP”), and PUBLIC SERVICE COMPANY OF NEW MEXICO, a corporation organized under the laws of the State of New Mexico (“PNM”). SRP and PNM are referred to individually herein from time to time as a “Party,” and collectively as the “Parties”.

RECITALS

WHEREAS, each of SRP and PNM is a party to the ANPP Participation Agreement (capitalized terms used herein without definition having the respective meanings specified below);

WHEREAS, PNM has maintained an ownership interest in the Arizona Nuclear Power Project and, through either ownership or entitlement pursuant to sale leaseback arrangements pursuant to which the ownership is held in trust, PNM has maintained a 10.2% Generation Entitlement Share (as that term is defined in the ANPP Participation Agreement), which involves electric generation from the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (“PVNGS”);

WHEREAS, PNM has entered into certain sale and leaseback transactions, each of which is separately documented (the “Lease Documents”), collectively through which PNM maintains part of its total 10.2% Generation Entitlement Share for Unit 1 and Unit 2;

WHEREAS, SRP has entered into Beneficial Interest Sales Agreements (“ISAs”) with the current owners of the beneficial ownership interests leased to PNM that are held in trust and governed by the Lease Documents (the “Leased Interests”), pursuant to which SRP acquired the beneficial ownership interests leased to PNM and held in trust, representing 7.9333330% of the undivided interests in Unit 1, including allocated associated common facilities to the extent leased pursuant to the Lease Documents applicable to such Unit, and 0.7933333% of the undivided interests in Unit 2, including allocated associated common facilities to the extent leased pursuant to the Lease Documents applicable to such Unit;

WHEREAS, prior to entering into the ISAs, SRP and PNM have entered into the APSA, pursuant to which SRP will acquire certain transmission and switchyard assets, as well as certain nuclear fuel, inventory, and common facility interests associated with PVNGS; in each case as more fully specified in the APSA;

WHEREAS, pursuant to the terms of the Lease Documents and the APSA, SRP will acquire direct ownership of the Unit 1 Interests upon the expiration of the terms of the applicable leases governed by the Lease Documents on Friday, January 13, 2023, and SRP will acquire direct ownership of the Unit 2 Interests upon the expiration of the terms of the applicable lease governed by the Lease Documents on Friday, January 12, 2024, in each case as more fully specified in the Lease Documents and the APSA;

WHEREAS, PNM maintains NDTs in which funds have been set aside to provide funding for 10.2% of the cost for the decommissioning of PVNGS, the PVNGS common facilities, the ISFSI, and the NRC-Licensed Site, to the extent attributable to the Unit 1 Interests and/or to the Unit 2 Interests; and

WHEREAS, in connection with negotiating the terms of the APSA, the Parties agreed that PNM would retain its NDTs and the liability for decommissioning 10.2% of PVNGS, the PVNGS common facilities, the ISFSI, and the NRC-Licensed Site, to the extent attributable to the Unit 1 Interests and/or to the Unit 2 Interests that are subject to the Lease Documents, the APSA and the ISAs;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, SRP and PNM agree as follows:

**ARTICLE 1
DEFINITIONS; INTERPRETATION; EFFECTIVENESS**

1.1 Definitions.

1.1.1 As used in this Agreement, the following terms have the meanings specified in this Section 1.1.1.

“Agreement” has the meaning defined in the Preamble.

“Atomic Energy Act” means the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.).

“ANPP” means the Arizona Nuclear Power Project which comprises the three PVNGS Units and associated common facilities and which is governed by the ANPP Participation Agreement.

“ANPP High Voltage Switchyard” means the Arizona Nuclear Power Project High Voltage Switchyard located on the NRC-Licensed Site as more fully specified in the ANPP High Voltage Switchyard Participation Agreement between SRP and PNM, among other ANPP participants, together with the Hassayampa Switchyard operated under a common bus arrangement with the on-site ANPP High Voltage Switchyard.

“ANPP Participation Agreement” means the Participation Agreement for ANPP, dated August 24, 1973, as amended, which is reflected in a Conformed Copy dated April 28, 2014 that includes Amendment Nos. 1-16.

“APSA” means the Asset Purchase and Sale Agreement, dated as of April 1, 2021, by and between SRP and PNM.

“Byproduct Material” means any radioactive material (except Special Nuclear Material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing

or utilizing Special Nuclear Material. Byproduct Material does not include Special Nuclear Material or Source Material.

“Commercially Reasonable Efforts” means efforts by a reasonable Person in the position of a Party which are designed to enable a Party to expeditiously satisfy a condition to, or otherwise assist in the consummation of, the transactions contemplated by, or to perform its obligations under, this Agreement and which do not require the performing Party to commence or participate in any litigation, offer or grant any accommodation, expend any funds or assume liabilities other than expenditures and liabilities which are customary and in nature for parties to the ANPP Participation Agreement in allocating responsibilities under the ANPP Participation Agreement.

“Decommission” and “Decommissioning” means:

(a) the dismantlement and removal of the structures, and any reduction or removal of radioactivity, at PVNGS and the NRC-Licensed Site to a level that permits the release of all or any specified portion of the NRC-Licensed Site consistent with the radiological criteria for license termination specified by the NRC in 10 C.F.R. § 20.1402 for unrestricted use;

(b) all other activities necessary for the retirement, dismantlement, decontamination or storage of PVNGS and the NRC-Licensed Site in compliance with all applicable Nuclear Laws and Environmental Laws, including the applicable requirements of the Atomic Energy Act and the NRC’s rules, regulations, orders and pronouncements thereunder;

(c) restoration of the NRC-Licensed Site in accordance with applicable Laws;

(d) all other activities necessary to complete the Remediation of all Environmental Liabilities at the NRC-Licensed Site;

(e) operation and maintenance of the ISFSI, management of Spent Nuclear Fuel, the packaging of the Greater Than Class C Waste generated during the Decommissioning of PVNGS, and the removal of all of the Spent Nuclear Fuel and HLW from the ISFSI and the PVNGS Site; and

(f) any planning and administration activities incidental thereto;

provided however that “Decommission” and “Decommissioning” do not include Delayed O&M Environmental Activities, Delayed O&M Spent Fuel Activities, or dismantlement and removal of the ANPP High Voltage Switchyard, or other activities for the retirement, dismantlement, decontamination, or storage of the ANPP High Voltage Switchyard.

“Decommissioning Cost Study” means a site-specific decommissioning cost study for the Palo Verde Nuclear Generating Station, prepared on behalf of the Operating Agent and used as the basis for the most current decommissioning cost estimate submitted to the NRC.

“Decommissioning Costs” means the costs and expenditures incurred for goods and services (including any planning and administrative activities incidental thereto) provided in connection with the Decommissioning of PVNGS and the NRC-Licensed Site, including costs

Attachment 2

incurred for the operation and maintenance of the ISFSI, management of Spent Nuclear Fuel, and the removal of all of the Spent Nuclear Fuel and HLW from the ISFSI and the NRC-Licensed Site, and Decommissioning of the ISFSI, except as otherwise provided for in this Agreement. Decommissioning Costs includes all costs identified in the most recent Decommissioning Cost Study prior to the Second Closing and Final Closing, with respect Unit 1 and Unit 2, respectively, except as otherwise specifically provided for in this Agreement.

“Delayed O&M Costs” means the costs and expenditures that would have been paid or accrued prior to Decommissioning for goods and services in connection with Delayed O&M Environmental Activities and Delayed O&M Spent Fuel Activities.

“Delayed O&M Environmental Activities” means the activities related to the Remediation of (a) any Environmental Liability at the NRC-Licensed Site that first presented itself and arose during the Interim Period and for which Remediation was delayed by the parties to the ANPP Participation Agreement until after the permanent cessation of operations of the PVNGS (rather than completing Remediation for such Environmental Liability at the time it occurred); or (b) previously unidentified Environmental Liabilities discovered during Decommissioning to have occurred during the Interim Period.

“Delayed O&M Spent Fuel Activities” means any activities for management of Spent Nuclear Fuel, including activities relating to the ISFSI at PVNGS, that would have been necessary during the normal operation of PVNGS on an on-going basis if DOE were performing its obligations under the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste, including loading fuel into DOE shipping containers that has been delayed until such time as DOE is ready to accept shipments and the costs of which should have been paid or accrued on an on-going basis, but were delayed by the parties to the ANPP Participation Agreement until after the permanent cessation of operations of the PVNGS.

“Department of Energy” or “DOE” means the United States Department of Energy and any successor agency thereto.

“Environment” means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

“Environmental Laws” means all Laws, other than Nuclear Laws, relating to pollution, the protection, restoration or Remediation of or prevention of harm to the Environment, or the protection of human health and safety from the presence of Hazardous Substances, including Laws relating to Releases of Hazardous Substances (including Releases to the Environment) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances, and Laws regarding the treatment, storage, handling, transportation, and disposal of solid waste. “Environmental Laws” include the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic

Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) only as it relates to Hazardous Substances, and the Arizona Laws governing hazardous materials and solid waste.

“Environmental Liabilities” means any Liability relating to (a) the disposal, storage, transportation, Release, recycling, or the arrangement for such activities of Hazardous Substances from PVNGS; (b) the presence of Hazardous Substances in, on or under PVNGS, regardless of how the Hazardous Substances came to rest at, on or under PVNGS; (c) any liabilities for Remediation of Nuclear Material, including liabilities arising during the Interim Period that are deferred until after the end of the Interim Period; and (d) the failure of PVNGS to be in compliance with any Environmental Laws.

“FERC” means the United States Federal Energy Regulatory Commission or any successor agency thereto.

“Fuel Payment Amount” has the meaning as defined in the APSA. The Parties agree that, when this amount is calculated pursuant to the APSA, the amounts will be set forth in a Schedule 1.1(a) to this Agreement.

“Fuel Supply Costs” has the meaning as defined in the APSA. The Parties agree that, when this amount is calculated pursuant to the APSA, the amounts will be set forth in a Schedule 1.1(b) to this Agreement.

“Final Closing” has the meaning as defined in the APSA and is anticipated to take place on January 12, 2024.

“Generation Entitlement Share” has the meaning set forth in the ANPP Participation Agreement, Section 3.29A, provided that, for the purposes of this Agreement, the percentages listed in the ANPP Participation Agreement for each Parties’ Generation Entitlement Share shall be as modified by the APSA, this Agreement, and any related agreements between the Parties.

“Governmental Authority” means any federal, national, supranational, state, provincial, local, or similar government, governmental, regulatory, or administrative authority, branch, agency or commission, or any court, tribunal, or arbitral or judicial body (including any grand jury) and any quasi-governmental or nongovernmental body administering, regulating, or having general oversight over the Seller. Any of the foregoing (each a “Body”) that is a putative Governmental Authority shall nonetheless be excluded from the definition of Governmental Authority in circumstances in which such Body is acting in its capacity as a contracting party to a contract.

“Governmental Order” means any order, writ, judgment, injunction, decree, subpoena, stipulation, determination, or award entered by or with any Governmental Authority. “Governmental Order” does not, however, include any action by a Governmental Authority acting in its capacity as a contracting party to a contract.

“Greater Than Class C Waste” means radioactive waste that contains radionuclide concentrations exceeding the values in Table 1 or Table 2 of 10 C.F.R. § 61.55, and therefore is

currently not generally acceptable for disposal at existing (near surface) low level radioactive waste disposal facilities.

“Hazardous Substances” means any substance, material, chemical or waste, whether in solid, semisolid, liquid or gaseous form, (a) that is defined, listed, classified or regulated as a “hazardous waste,” “hazardous substance,” “toxic substance,” “pollutant” or “contaminant” under any Environmental Law; (b) the presence of which requires reporting, investigation, monitoring, maintenance, removal, abatement, mitigation or Remediation under any Environmental Law; or (c) that causes or threatens to cause a nuisance, trespass, or other tortious condition or poses a hazard to human health and safety or the Environment and including gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenyls, asbestos and asbestos-containing material, urea formaldehyde foam, lead-based paint, mold, radon, methane, 1,4 dioxane, and per- and polyfluoroalkyl substances; except that, in each case and notwithstanding any other provision of this Agreement, Hazardous Substances shall not include Nuclear Material.

“High Level Waste” or “HLW” means: (a) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (b) other highly radioactive material that the NRC, consistent with existing Law, determines by rule requires permanent isolation, including Greater Than Class C Waste.

“Independent Environmental Liabilities Classification” has the meaning set forth in Section 3.7.1.

“Independent Environmental Liabilities Expert” has the meaning set forth in Section 3.7.1.

“Independent Environmental Liabilities Expert Panel” has the meaning set forth in Section 3.7.1.

“Interim Period” means the period of time after the Second Closing under the APSA with respect to Unit 1 and after Final Closing under the APSA with respect to Unit 2 until permanent cessation of operations of PVNGS and the beginning of Decommissioning.

“ISA” has the meaning defined in the Recitals.

“ISFSI” means the dry spent fuel storage installation on the NRC-Licensed Site where the Spent Nuclear Fuel and HLW from PVNGS is located and stored, and the ancillary facilities related thereto, but excluding the Spent Nuclear Fuel and HLW stored thereon, and excluding the storage canisters that will be shipped together with the Spent Nuclear Fuel and the HLW when it is removed from the ISFSI and the NRC-Licensed Site.

“Law” or “Laws” means any statute, law, ordinance, regulation, rule, code, Governmental Order, constitution, treaty, common law, other requirement, or rule of law of any Governmental Authority, including Environmental Laws and Nuclear Laws.

“Lease Documents” has the meaning defined in the Recitals.

“Lease Participation Agreements” means

(i) the Participation Agreement dated as of December 16, 1985 among CHRYSLER FINANCIAL CORPORATION, as Owner Participant, FIRST PV FUNDING CORPORATION, as Loan Participant, THE FIRST NATIONAL BANK OF BOSTON, as Owner Trustee, CHEMICAL BANK, as Indenture Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, as Lessee, as amended (Unit 1) (a/k/a “Trust No. 1”);

(ii) the Participation Agreement dated as of December 16, 1985 among MFS LEASING CORP., as Owner Participant, FIRST PV FUNDING CORPORATION, as Loan Participant, THE FIRST NATIONAL BANK OF BOSTON, as Owner Trustee, CHEMICAL BANK, as Indenture Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, as Lessee, as amended (Unit 1) (a/k/a “Trust No. 3”);

(iii) the Participation Agreement dated as of July 31, 1986 among CHASE MANHATTAN REALTY LEASING CORPORATION, as Owner Participant, FIRST PV FUNDING CORPORATION, as Loan Participant, THE FIRST NATIONAL BANK OF BOSTON, as Owner Trustee, CHEMICAL BANK, as Indenture Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, as Lessee, as amended (Unit 1) (a/k/a “Trust No. 4”);

(iv) the Participation Agreement dated as of December 15, 1986 among CHASE MANHATTAN REALTY LEASING CORPORATION, as Owner Participant, FIRST PV FUNDING CORPORATION, as Loan Participant, THE FIRST NATIONAL BANK OF BOSTON, as Owner Trustee, CHEMICAL BANK, as Indenture Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, as Lessee (Unit 1) (a/k/a “Trust No. 11”); and

(v) the Participation Agreement dated as of December 15, 1986 among CHASE MANHATTAN REALTY LEASING CORPORATION, as Owner Participant, FIRST PV FUNDING CORPORATION, as Loan Participant, THE FIRST NATIONAL BANK OF BOSTON, as Owner Trustee, CHEMICAL BANK, as Indenture Trustee, and PUBLIC SERVICE COMPANY OF NEW MEXICO, as Lessee (Unit 2) (a/k/a “Trust No. 12”).

The beneficial ownership interests governed by these Participation Agreements are currently owned by Chase Manhattan Realty Leasing Corporation (Trust No. 4, Trust No. 11 and Trust No. 12), Daimler Capital Services LLC (Trust No. 1), and Citicorp Buffalo Basin, Inc (Trust No. 3). The currently serving trustee for each trust is U.S. Bank National Association.

“Leased Interest” has the meaning defined in the Recitals.

“Liability” or “Liabilities” means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), and in the case of the NRC Licenses, includes the NRC Commitments.

“Low Level Waste” means radioactive material that (a) is neither Spent Nuclear Fuel nor HLW; and (b) any other substance that the NRC, consistent with existing Law and in accordance with clause (a), classifies as low-level radioactive waste.

“NDTs” means the Unit 1 and Unit 2 qualified trust funds meeting the requirements of the U.S. Internal Revenue Code Section 468A and Treas. Reg. § 1.468A-5 and the Unit 1 and Unit 2 non-qualified trust funds that are maintained by PNM for purposes of Decommissioning PVNGS and the NRC-Licensed Site that are governed by the “Public Service Company of New Mexico Master Decommissioning Trust Agreement for the Palo Verde Nuclear Generating Station,” dated March 15, 1996, as amended.

“NMPRC” means the New Mexico Public Regulation Commission and any successor agency thereto.

“NRC” means the United States Nuclear Regulatory Commission and any successor agency thereto.

“NRC Commitments” means all written regulatory commitments made to the NRC.

“NRC Licenses” means the NRC Renewed Operating License Nos. NPF-41, NPF-51, NPF-74 for PVNGS and the NRC-Licensed Site, and all amendments thereto.

“NRC-Licensed Site” means all of the real property subject to the NRC Licenses. Any reference to the NRC-Licensed Site shall include, by definition, the surface and subsurface elements, including the soils and groundwater present at the NRC-Licensed Site and any references to items “at the NRC-Licensed Site” shall include all items “at, in, on, upon, over, across, under, and within” the NRC-Licensed Site.

“Nuclear Laws” means all Laws, other than Environmental Laws, relating to the regulation of nuclear power plants, Source Material, Byproduct Material and Special Nuclear Material; the regulation of Low Level Waste, HLW and Spent Nuclear Fuel; the transportation and storage of Nuclear Material; the regulation of Safeguards Information (as defined in 10 C.F.R. 2.4); the enrichment of uranium; the disposal and storage of Spent Nuclear Fuel; contracts for and payments into the Nuclear Waste Fund; and the antitrust Laws and the Federal Trade Commission Act (15 U.S.C. Sections 41-58), as applicable to specified activities or proposed activities of certain licensees of commercial nuclear reactors. Nuclear Laws include the Atomic Energy Act; the Price-Anderson Act; the Energy Reorganization Act of 1974 (42 U.S.C. Section 5801 et seq.); Convention on the Physical Protection of Nuclear Material Implementation Act of 1982 (Public Law 97 -351; 96 Stat. 1663); the Foreign Assistance Act of 1961 (22 U.S.C. Section 2429 et seq.); the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. Section 3201); the Low-Level Radioactive Waste Policy Act (42 U.S.C. Section 2021b et seq.); the Nuclear Waste Policy Act (42 U.S.C. Section 10101 et seq. as amended); the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Section 2021d, 471); the Energy Policy Act of 1992 (4 U.S.C. Section 13201 et seq.); the provisions of 10 C.F.R. Section 73.21, and any state or local Laws, other than Environmental Laws, analogous to the foregoing.

“Nuclear Material” means Source Material, Byproduct Material, Low Level Waste, HLW, and Special Nuclear Material, including Spent Nuclear Fuel.

Attachment 2

“Nuclear Waste Fund” means the separate fund established in the Treasury of the United States known as the “Nuclear Waste Fund” pursuant to 42 U.S.C. 10222.

“Operating Agent” means Arizona Public Service Company, the Operating Agent serving as such pursuant to the ANPP Participation Agreement.

“Party” or “Parties” has the meaning defined in the Preamble.

“Permits” means any federal, state or local permits, licenses, approvals, consents, registrations or authorizations required by any Governmental Authority in connection with the Decommissioning.

“Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, association, or Governmental Authority.

“PNM” means Public Service Company of New Mexico.

“PVNGS” has the meaning defined in the Recitals.

“Release” means any actual or threatened spill, leak, discharge, disposal of, pumping, pouring, emitting, emptying, injecting, escaping, leaching, migrating, dumping, depositing, or migration (including the abandonment or discarding of barrels, containers or other receptacles containing Hazardous Substances or Nuclear Materials) into the Environment or within any building, structure, facility or fixture; provided, however, that “Release” shall not include any release to the extent permissible under applicable Environmental Laws or the NRC Licenses.

“Remediation” means (a) any remedial action, remedy, response or removal action as those terms are defined in 42 U.S.C. § 9601; (b) any corrective action as that term has been construed pursuant to 42 U.S.C. § 6924; (c) any measures or actions required or undertaken to investigate, assess, evaluate, monitor, or otherwise delineate the presence or Release of any Hazardous Substances in or into the Environment or to prevent, clean up or minimize a Release or threatened release of Hazardous Substances; and (d) the clean-up, removal or disposal of Nuclear Material.

“Second Closing” has the meaning as defined in the APSA and is anticipated to take place on January 13, 2023.

“Source Material” means: (a) uranium or thorium or any combination thereof, in any physical or chemical form, or (b) ores which contain by weight one-twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Source Material does not include Special Nuclear Material or Byproduct Material.

“Special Nuclear Material” means (a) plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material that the NRC determines to be “Special Nuclear Material;” and (b) any material artificially enriched by any of the materials or isotopes described in clause (a). Special Nuclear Material includes the Spent Nuclear Fuel; provided, however, that Special Nuclear Material does not include Source Material.

“Spent Nuclear Fuel” means nuclear fuel that has been used to the extent it can no longer effectively sustain a chain reaction, has been permanently withdrawn from the nuclear reactor following irradiation, and has not been chemically separated into its constituent elements by reprocessing and that is (i) located in the PVNGS spent fuel pools, (ii) located at the ISFSI; or (iii) any other location other than PVNGS but where the parties to the ANPP Participation Agreement retain responsibility for the costs of managing such Spent Nuclear Fuel.

“SRP” means the Salt River Project Agricultural Improvement and Power District.

“Termination Obligation” means obligations in respect of decommissioning and removing from service a PVNGS generating unit, as further defined in the ANPP Participation Agreement.

“Unit” means Unit 1 or Unit 2 as applicable.

“Unit 1” means the 1311 megawatt generating unit commonly known as Unit 1 at PVNGS. Unit 1 is the generating unit that is licensed to be operated by the Operating Agent pursuant to the Unit 1 License.

“Unit 1 Interests” means beneficial interests leased to PNM and held in trust (Trust No. 1, Trust No. 3, Trust No. 4 and Trust No. 11), collectively representing 7.9333330% of the undivided interests in Unit 1, including allocated associated common facilities to the extent leased pursuant to the Lease Documents applicable to Unit 1.

“Unit 2” means the 1314 megawatt generating unit commonly known as Unit 2 at PVNGS. Unit 2 is the generating unit that is licensed to be operated by the Operating Agent pursuant to the Unit 2 License.

“Unit 2 Interests” means beneficial interests leased to PNM and held in trust (Trust No. 12), representing 0.7933333% of the undivided interests in Unit 2, including allocated associated common facilities to the extent leased pursuant to the Lease Documents applicable to Unit 2.

1.2 Certain Interpretive Matters.

1.2.1 Unless otherwise required by the context in which any term appears:

(a) The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

(b) References to “Articles,” “Sections” or “Attachments” shall be to articles, sections or attachments of or to this Agreement, and references to “paragraphs” or “clauses” shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs.

(c) The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection, of this Agreement; and the

words “include,” “includes” or “including” shall mean “including, but not limited to” or “including, without limitation.” The word “threatened” refers to threats made in writing.

(d) All references to a particular entity shall include such entity’s permitted successors and permitted assigns unless otherwise specifically provided herein.

(e) All references herein to any Law or to any contract or other agreement shall be to such Law, contract or other agreement as amended, supplemented or modified from time to time unless otherwise specifically provided herein.

1.2.2 The table of contents and the titles or headings of the Articles and Sections hereof and Attachments hereto have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.2.3 This Agreement was negotiated and prepared by the Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.3 Effectiveness; Survival. This Agreement shall be effective as of the date hereof. The representations and warranties of the Parties set forth in this Agreement and the other provisions hereof shall be in effect and shall survive during the term of this Agreement.

**ARTICLE 2
REPRESENTATIONS AND WARRANTIES.**

2.1 SRP Representations and Warranties.

2.1.1 Organization; Qualification. SRP is an agricultural improvement district organized and validly existing under and by virtue of the laws of the State of Arizona. SRP has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. SRP is and at all times during the terms of this Agreement shall be qualified to conduct business in the State of Arizona.

2.1.2 Authority Relative to this Agreement. SRP has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement has been duly and validly authorized by all necessary corporate action required on the part of SRP and no other corporate proceedings on the part of SRP are necessary to authorize this Agreement or to perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by SRP, and assuming that this Agreement constitutes the valid and binding agreement of PNM, this Agreement constitutes the legal, valid and binding agreement of SRP, enforceable against SRP in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors’ rights and to general equity principles.

2.1.3 No Violation. Neither the execution and delivery of this Agreement by SRP, nor the performance by SRP of its obligations hereunder will (a) conflict with or result in any breach of any provision of the Order of the Maricopa County Board of Supervisors dated January 25, 1937, establishing SRP as a political subdivision of the State of Arizona; (b) require consent, notice or other action, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or the lapse of time or both, would constitute a default under, or give rise to any right of termination, cancellation, modification or acceleration, under any of the terms, conditions or provisions of any material contract or Permit to which SRP is a party or by which any of its assets may be bound; or (c) violate in any material respect any Laws applicable to SRP.

2.2 PNM Representations and Warranties. PNM represents and warrants to SRP as follows:

2.2.1 Organization; Qualification. PNM is a corporation validly existing and in good standing under the Laws of the State of New Mexico and has all requisite corporate power and authority to own, transfer, lease and operate its properties and to carry on its business as is now being conducted. PNM is duly licensed or qualified to do business and is in good standing in New Mexico and each other jurisdiction, if any, in which the operation of the business related to PVNGS as currently conducted makes licensing or qualification necessary.

2.2.2 Authority Relative to this Agreement. PNM has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement has been duly and validly authorized by all necessary corporate action required on the part of PNM and no other corporate proceedings on the part of PNM are necessary to authorize this Agreement or to perform its obligations hereunder. This Agreement has been duly and validly executed and delivered by PNM, and assuming that this Agreement constitutes the valid and binding agreement of SRP, this Agreement constitutes the legal, valid and binding agreement of PNM, enforceable against PNM in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

2.2.3 No Violation. Neither the execution and delivery of this Agreement by PNM, nor the performance by PNM of its obligations hereunder will (a) conflict with or result in any breach of any provision of the Articles of Incorporation or By-Laws of PNM; (b) require consent, notice or other action, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or the lapse of time or both, would constitute a default under, or give rise to any right of termination, cancellation, modification or acceleration, under any of the terms, conditions or provisions of any material contract or Permit to which PNM is a party or by which any of its assets may be bound, other than PNM's Required Regulatory Approvals (as defined in the APSA); or (c) violate in any material respect any Laws applicable to PNM.

2.2.4 Compliance with Permits, Laws. PNM has not received any written notification which remains unresolved that it is in violation of (a) any of the material Permits held by PNM that are used in, or necessary for its maintenance, ownership, use, or possession of,

PVNGS as presently conducted or as required by Law; or (b) any Law applicable to PVNGS or activities at PVNGS. PNM is in compliance in all material respects with all such Permits and Laws applicable to PVNGS or activities at PVNGS.

2.2.5 NDTs. (i) The NDTs are trusts, validly existing under the Laws of the Commonwealth of Pennsylvania with all requisite authority to conduct the trusts' affairs as they now do; (ii) the trusts are governed by the "Public Service Company of New Mexico Master Decommissioning Trust Agreement for the Palo Verde Nuclear Generating Station," dated March 15, 1996, as amended; and (iii) the NDTs are in compliance in all material respects with all applicable Laws of the NRC, FERC, the NMPRC, and any other Governmental Authority.

ARTICLE 3
PNM'S OBLIGATIONS AND RESPONSIBILITIES

3.1 Decommissioning Liabilities. Notwithstanding anything to the contrary in any other agreement, and without limiting PNM's obligations under the ANPP Participation Agreement regarding the obligation to pay Decommissioning Costs for its Generation Entitlement Share after the Second Closing and the Final Closing with respect to Unit 1 and Unit 2, PNM agrees that it will retain all liability for paying the Decommissioning Costs associated with the Unit 1 Interests and Unit 2 Interests, notwithstanding the fact that at the end of the lease terms, PNM will no longer possess the Generation Entitlement Share associated with the Unit 1 Interests and the Unit 2 Interests. This liability includes all Decommissioning Costs associated with the Decommissioning of PVNGS, the PVNGS common facilities, the ISFSI, and the NRC-Licensed Site, to the extent attributable to the Unit 1 Interests and/or to the Unit 2 Interests. SRP is not obligated under any circumstances to contribute to the NDTs or otherwise contribute to the payment for any Decommissioning Costs associated with the Unit 1 Interests or associated with the Unit 2 Interests.

3.2 Delayed O&M Costs for Delayed O&M Spent Fuel Activities. PNM and SRP agree that responsibility for Delayed O&M Costs for Delayed O&M Spent Fuel Activities for Spent Nuclear Fuel burned at and discharged from Unit 1 and Unit 2 shall continue to be the responsibility of PNM and SRP in proportion to the Generation Entitlement Shares of SRP and PNM as of the date of discharge of the Spent Nuclear Fuel and that amounts reimbursed by DOE for such costs and expenditures shall be allocated based on the Generation Entitlement Shares of SRP and PNM as of the date of discharge.

3.2.1 For purposes of allocating Delayed O&M Costs for Delayed O&M Spent Fuel Activities for Spent Nuclear Fuel in the reactor vessel for Unit 1 at the time of the Second Closing and in the reactor vessel for Unit 2 at the time of the Final Closing, and reimbursement of any amounts from DOE for such costs and expenditures, the parties will calculate the percentage of responsibility by dividing (1) the Fuel Payment Amount paid by SRP at the Second Closing and Final Closing, by (2) the full amount of the Fuel Supply Costs when the fuel was loaded into the reactor.

(a) The Parties agree that they will take Commercially Reasonable Efforts to attach the final Fuel Payment Amount and Fuel Supply Costs to this Agreement when such amounts are finally determined pursuant to the APSA.

3.2.2 Unless otherwise specifically stated in this Agreement, the decision of the participants to the ANPP Participation Agreement shall be binding on the Parties as to whether a particular spent fuel management activity would have been necessary during the normal operation of PVNGS on an on-going basis if DOE were performing its obligations under the Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste and therefore is a Delayed O&M Spent Fuel Activity.

3.3 Payment of Spent Nuclear Fuel O&M Costs. SRP and PNM will be responsible to the Operating Agent under the ANPP Participation Agreement for payment of costs for management of Spent Nuclear Fuel, including (a) Delayed O&M Costs for Delayed Spent Fuel O&M Activities, such as costs for loading Spent Nuclear Fuel into a DOE-supplied transportation cask; (b) the cost of loading Spent Nuclear Fuel into dry cask storage and (c) operating expenses and capital improvements, if any, necessary for management of Spent Nuclear Fuel, each according to the Generation Entitlement Shares of each of SRP and PNM at the time the Spent Nuclear Fuel was burned and discharged. Each of SRP and PNM will make payments to the Operating Agent as those costs are charged based on Generation Entitlement Shares and will be entitled to its proportional share of DOE recovery, if any. The Parties shall cooperate using Commercially Reasonable Efforts to arrange for the Operating Agent to adjust invoicing for such obligations consistent with these provisions, if necessary.

3.4 Delayed O&M Costs for Delayed O&M Environmental Activities.

3.4.1 If an Environmental Liability with respect to Unit 1 or Unit 2 occurs during the Interim Period and the Remediation of such liability is fully completed by the participants to the ANPP Participation Agreement during the Interim Period, then such activities shall neither be Delayed O&M Environmental Activities nor a part of Decommissioning.

3.4.2 SRP shall be responsible for paying the Delayed O&M Costs for such Delayed O&M Environmental Activities for the transferred Generation Entitlement Share as if the resolution of such Environmental Liability was fully completed by the participants to the ANPP Participation Agreement during the Interim Period. SRP will pay the Operating Agent under the ANPP Participation Agreement directly for such Delayed O&M Costs for the resolution of such Delayed O&M Environmental Activities as if the Delayed O&M Environmental Activity were fully addressed by the current ownership during the Interim Period. The Parties shall cooperate, using Commercially Reasonable Efforts, to arrange for the Operating Agent to adjust invoicing for the costs for the Remediation of Environmental Liabilities that are subject to Section 3.4.2 consistent with these provisions, to the extent necessary.

3.5 Environmental Liabilities Occurring During Decommissioning. If an Environmental Liability occurs during the Decommissioning of PVNGS or arises as a direct result of Decommissioning activities of PVNGS, then PNM will be responsible for such Environmental Liability as a Decommissioning Cost.

3.6 Previously Unidentified Environmental Liabilities. If a previously unidentified Environmental Liability is discovered during Decommissioning activities with respect to a Unit, then SRP and PNM will use Commercially Reasonable Efforts to collaborate to determine the most likely occurrence date of the Environmental Liability.

3.6.1 If the occurrence date of such Environmental Liability is determined to have occurred during the Interim Period, responsibility for the Remediation of such Environmental Liability shall be as set forth in Section 3.4.

3.6.2 If the occurrence date of such Environmental Liability is determined to have occurred during Decommissioning, responsibility for the Remediation of such Environmental Liability shall be as set forth in Section 3.5.

3.7 Disputes as to Date of Occurrence of Previously Unidentified Environmental Liabilities. If the Parties cannot, using Commercially Reasonable Efforts, in consultation with the Operating Agent determine the occurrence date of a previously unidentified Environmental Liability within forty-five (45) days, or as mutually agreed otherwise, of the date of the discovery of the previously unidentified Environmental Liability, then:

3.7.1 SRP and PNM shall select and retain a mutually agreed and qualified third party environmental engineering firm (the “Independent Environmental Liabilities Expert”) to complete an assessment to determine the occurrence date of the Environmental Liability (“Independent Environmental Liabilities Classification”). Should the Parties be unable to agree on the selection of an Independent Environmental Liabilities Expert, each Party shall select an Independent Environmental Liabilities Expert and such two Independent Environmental Liabilities Experts shall select a third Independent Environmental Liabilities Expert (the Independent Environmental Liabilities Experts, collectively, the “Independent Environmental Liabilities Expert Panel”).

3.7.2 Within ten (10) Business Days after the selection of the Independent Environmental Liabilities Expert or the determination of Independent Environmental Liabilities Expert Panel, as applicable, each Party shall be permitted, but shall not be required, to submit grounds and documents with respect to the occurrence date of any such previously unidentified Environmental Liability.

3.7.3 The Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, shall render its written determination on the Independent Environmental Liabilities Classification as soon as possible, but in any event, no later than twenty (20) Business Days following the submission of the Independent Environmental Liabilities Classification to the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable. The determination by the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, shall be deemed to be agreed to by the Parties and shall become final and binding upon the Parties for all purposes hereunder (with respect to the facts and circumstances at the time of such determination).

3.7.4 Any fees or expenses charged by the Independent Environmental Liabilities Expert or the Independent Environmental Liabilities Expert Panel, as applicable, in connection with the resolution of any such Independent Environmental Liabilities Classification shall be borne equally by the Parties.

3.7.5 By mutual agreement, the Parties may, any time prior to the determination of the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, withdraw a request for an Independent Environmental Liabilities Classification by notifying the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, in writing.

3.7.6 For purposes of any determination as of the occurrence date for any previously unidentified Environmental Liability under this Section 3.7, if the Environmental Liability has a total project cost of less than \$500,000, it shall be a presumption that such liability is a Decommissioning liability and that PNM shall have responsibility for such Decommissioning Costs in accordance with Section 3.5.

3.7.7 If a determination is not made by the Parties or the Independent Environmental Liabilities Expert or Independent Environmental Liabilities Expert Panel, as applicable, as provided in this Section 3.7, then the Environmental Liabilities shall be divided between the Parties on a pro rata basis, sixty-six and two thirds percent (66.67%) to PNM and thirty three and one third percent (33.33%) to SRP and such pro rata amounts shall be treated as Decommissioning liabilities (for PNM) and as Delayed O&M Costs (for SRP) as otherwise provided herein.

3.8 Unanticipated Material Liability. In the event of a material Liability arising from an event or circumstance with respect to Delayed O&M Spent Fuel Activities or Delayed O&M Environmental Activities not otherwise anticipated in this Agreement that requires additional funding, the Parties will meet and confer with respect to the allocation of responsibility for such Delayed O&M Costs and whether any adjustment to the method of funding provided in this Agreement.

3.9 NDTs.

3.9.1 PNM agrees that at all times during the term of this Agreement, it will maintain NDTs for the Unit 1 Interests and Unit 2 Interests that are in compliance with the ANPP Participation Agreement and all applicable Laws, including the requirements of the NRC, FERC, and the NMPRC, and will otherwise only withdraw funds for administrative expenses consistent with past practices (including as set forth in Attachment B).

3.9.2 PNM agrees that it will maintain NDT balances that are adequate to provide for the payment of Decommissioning Costs associated with the Unit 1 Interests and Unit 2 Interests, as well as being adequate to fund the Decommissioning of PNM's remaining interests in Unit 1 and Unit 2. Until Decommissioning is complete, the balances maintained by PNM in the NDTs for both its interests in PVNGS and the Unit 1 Interests and Unit 2 Interests shall be adequate to provide financial assurance for Decommissioning in compliance with all applicable Nuclear Laws and any requirements of the NMPRC, and such balances shall be maintained in compliance with the requirements of the ANPP Participation Agreement.

3.10 Payments. PNM agrees that it promptly will make all payments when due for Decommissioning Costs attributable to the Unit 1 Interests or the Unit 2 Interests in accordance

with the terms of the ANPP Participation Agreement. Such Payments may be made by directing that the payments be made from the NDTs.

3.11 ANPP Participation Agreement. It is the mutual intent of the Parties that, notwithstanding termination of the Leased Interest or anything in the ANPP Participation Agreement (including Section 15.10.2.3 of the ANPP Participation Agreement) to the contrary, PNM will retain and perform and discharge the Termination Obligations otherwise allocable or chargeable to the Leased Interests. This Agreement is intended to address only Termination Obligations related to the Leased Interests as between PNM and SRP. For avoidance of doubt, nothing in this Agreement to alter in any manner the obligations and liabilities of SRP in respect of decommissioning and removal from service of a PVNGS generating unit to the extent that such obligations and liabilities relate to interests in such PVNGS generating unit that are not Leased Interests. The Parties agree to cooperate and use all Commercially Reasonable Efforts to have the ANPP Participation Agreement reflect the allocation of Termination Obligations set forth in this Agreement.

3.12 Lease Participation Agreements. Upon consummation of the closings under the ISAs and concurrently with the execution and delivery hereof, SRP became thereby the sole beneficial owner and owner participant in respect of the Trust No. 1, Trust No. 3, Trust No. 4, Trust No. 11 and Trust No. 12. In connection with the Second Closing under the APSA, SRP will have succeeded by assignment to all right, titles, and interest of the U.S. Bank National Association in its respective capacities as owner trustee in relation to Trust No. 1, Trust No. 3, Trust No. 4 and Trust No. 11. In connection with the Final Closing under the APSA, SRP will have succeeded by assignment to all right, titles and interests of the U.S. Bank National in its respective capacities as owner trustee in relation to Trust No. 12. SRP and PNM agree that, as between PNM and SRP and commencing upon the date of the execution and delivery hereof, the terms of this Agreement supersede and act *in lieu* of the provisions of Section 10(b)(3)(xi) of each of the Lease Participation Agreements (including the provisions of any Lease Document that directly or indirectly incorporate Section 10(b)(3)(xi), or the purpose or effect of such Section, into any other Lease Document).

3.13 ANPP High Voltage Switchyard. SRP and PNM agree that the dismantlement and removal of the ANPP High Voltage Switchyard, or other activities for the retirement, dismantlement, decontamination, or storage of the ANPP High Voltage Switchyard are matters addressed in the ANPP High Voltage Switchyard Participation Agreement and shall be determined and resolved without regard to the provisions of this Agreement. Nothing in this Agreement is intended to change or abridge the rights, liabilities, entitlements and obligations of PNM and SRP (including SRP in its capacity as operator) existing under or by virtue of the ANPP High Voltage Switchyard Agreement.

3.14 Indemnification. PNM agrees that, without regard to the sufficiency of the funds set aside in its NDTs, PNM will fully indemnify and hold harmless SRP for any liability associated with the *pro rata* share of Decommissioning Costs for PVNGS, the PVNGS common facilities, the ISFSI, and the NRC-Licensed Site, to the extent attributable to the Unit 1 Interests and/or to the Unit 2 Interests.

3.15 Illustrative Examples. Attachment A provides illustrative examples with respect to the Parties' obligations with respect to Decommissioning Costs and Delayed O&M Costs related to Delayed O&M Environmental Activities.

**ARTICLE 4
MISCELLANEOUS PROVISIONS**

4.1 Term. This Agreement shall remain in full force and effect until the Decommissioning of PVNGS, the ISFSI, and the NRC-Licensed Site is complete in compliance with all applicable Nuclear Laws and Environmental Laws. In no event shall this Agreement terminate before the NRC terminates the NRC Licenses and releases the NRC-Licensed Site for unrestricted use.

4.2 Amendment and Modification. Subject to applicable Law, this Agreement may be amended, modified or supplemented only by written agreement of PNM and SRP.

4.3 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver of such obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

4.4 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but no Party may assign this Agreement or its rights under this Agreement, including by operation of law, without the prior written consent of the other Party, such consent not to be unreasonably withheld, delayed or conditioned. Any assignment in contravention of the foregoing sentence shall be null and void and without legal effect on the rights and obligations of the Parties.

4.5 Third Party Beneficiaries. This Agreement does not, and is not intended to, confer upon any other Person except the Parties any rights, interests, obligations or remedies hereunder.

4.6 Governing Law. This Agreement shall be governed by and construed in accordance with the Law of the State of Arizona (without giving effect to conflict of law principles) as to all matters, including matters of validity, construction, effect, performance, and remedies.

4.7 Entire Agreement. This Agreement, the APSA and the ancillary agreements to any of the foregoing, including the Attachments, exhibits, schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement and shall supersede all previous oral and written and all contemporaneous oral negotiations, commitments and understandings including all letters, memoranda or other documents or communications, whether oral, written or electronic, submitted or made by either PNM, or SRP, or any of their respective representatives, in connection with the negotiation and execution of this Agreement.

4.8 No Joint Venture. Nothing in this Agreement creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship among the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to the Parties. Except as expressly provided herein, no Party is or shall act as or be the agent or representative of any other Party.

4.9 Change in Law. If and to the extent that any Laws or regulations that govern any aspect of this Agreement shall change, so as to make any aspect of this transaction unlawful, then the Parties agree to make such modifications to this Agreement as may be reasonably necessary for this Agreement to accommodate any such legal or regulatory changes, without materially changing the overall benefits or consideration expected hereunder by any Party.

4.10 Severability. Any term or provision of this Agreement that is held invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation; provided, however, that the remaining terms and provisions of this Agreement may be enforced only to the extent that such enforcement in the absence of any invalid terms and provisions would not result in (a) deprivation of a Party of a material aspect of its original bargain upon execution of this Agreement, (b) unjust enrichment of a Party, or (c) any other manifestly unfair or inequitable result.

4.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4.12 LIMITATION ON CONSEQUENTIAL DAMAGES. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, NONE OF THE PARTIES SHALL BE LIABLE TO ANY OTHER PARTY (OR TO ANY OTHER PERSON CLAIMING THROUGH THEM OR UNDER THIS AGREEMENT) PURSUANT TO THIS AGREEMENT OR UNDER ANY CAUSE OF ACTION RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL LOSSES OR DAMAGES, OR ANY LOSS, DAMAGE OR OTHER LIABILITY OTHERWISE EQUIVALENT TO OR IN THE NATURE OF SUCH LOSSES OR DAMAGES, OR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE DOWNTIME COSTS, LOSS OF OPPORTUNITY OR GOODWILL, LOSS OF PRODUCTIVITY, LOSS OF OR REDUCTION IN BONDING CAPACITY, LOSSES DUE TO THEORIES SUCH AS CUMULATIVE IMPACT, COST OF PURCHASED OR REPLACEMENT POWER, COST OF CAPITAL OR CLAIMS OF CUSTOMERS, WHETHER SUCH LIABILITY ARISES IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY OR OTHERWISE.

{Remainder of this page intentionally left blank}

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized officers as of the date first written above.

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT:**

By: _____

Name: _____

Title: _____

**PUBLIC SERVICE COMPANY OF NEW
MEXICO COMPANY:**

By: _____

Name: _____

Title: _____

Attachment A

Examples of the Allocation of Costs for Decommissioning Costs and Delayed O&M Costs for Delayed O&M Environmental Activities

The values set forth below are intended to be used for illustrative purposes only.

1. During the Interim Period, two new steam generators are installed in Unit 1. The removed steam generators are stored on site, and the PVNGS participants do not pay for disposal of the replaced steam generators. The cost to dispose of the removed steam generators at the time of Decommissioning is \$5 million. The cost to dispose of the two operating Unit 1 steam generators at the time of Decommissioning is \$8 million.

Cost allocation at time of Decommissioning:

PNM pays 10.200000% (§ 3.1)¹ of \$8 million = \$0.816 million
 SRP pays 17.490000% (ANPP PA)² of \$8 million = \$1.399 million
 SRP pays 25.423333% (17.49% (ANPP PA) + 7.933333% (§ 3.4.2)) of \$5 million
 = \$1.271 million
 PNM pays 2.266667% (ANPP PA) of \$5 million = \$0.113 million

2. During the Interim Period, two new steam generators are installed in Unit 1 as replacements for the existing steam generators. The two removed steam generators are promptly disposed at a cost of \$5 million, and the costs are charged to the PVNGS participants as Unit 1 O&M costs. The cost to dispose of the two operating Unit 1 steam generators at the time of Decommissioning is \$8 million.

During Decommissioning:

PNM pays 10.200000% (§3.1, §3.4.1) of \$8 million = \$0.816 million
 SRP pays 17.490000% (ANPP PA) of \$8 million = \$1.399 million

During the Interim Period:

SRP pays 25.423333% (17.49% (ANPP PA) + 7.933333% (§ 3.4.2)) of \$5 million
 = 1.271 million
 PNM pays 2.266667% (ANPP PA) of \$5 million = \$0.113 million

¹ Section references are to the Decommissioning Agreement.

² Throughout this Attachment A (other than Example 4), "ANPP PA" refers to the ANPP Participation Agreement and the allocation of costs pursuant to Generation Entitlement Share.

3. During Decommissioning, a Release of either Nuclear Material or non-radiological material associated with Unit 1 is discovered. It is determined that 30% of this environmental damage is attributed to the Interim Period, so that 30% of the cost is allocated to the Interim Period. The cost of Remediation is \$100 million.

PNM pays $10.200000\% (\S 3.1) \times 70\% (\S 3.6.1, \S 3.4.2) + 2.266667\% (\text{ANPP PA}) \times 30\% (\S 3.6.1, \S 3.4.2) \times \$100 \text{ million} = \$7.820 \text{ million}$

SRP pays $17.490000\% (\text{ANPP PA}) \times 70\% (\S 3.6.1, \S 3.4.2) + 25.423333\% (\text{ANPP PA}) \times 30\% (\S 3.6.1, \S 3.4.2) \times \$100 \text{ million} = \$19.870 \text{ million}$

4. During Decommissioning, a Release of either Nuclear Material or non-radiological material is discovered and is associated generally with the PVNGS site, but it is not identifiable to a single Unit. It is determined that 30% of this environmental damage is attributed to the Interim Period, so that 30% of the cost is allocated to the Interim Period. The cost of Remediation is \$100 million.

PNM pays $(10.200000\% (\S 3.1) \times 70\% + 7.293457\% (\text{ANPP PA})^3 \times 30\% (\S 3.6.1, \S 3.4.2)) \times \$100 \text{ million} = \$9.328 \text{ million}$

SRP pays $\$18.362 \text{ million} (17.490000\% (\text{ANPP PA}) \times 70\% (\S 3.6.1, \S 3.4.2) + 20.396543\% (\text{ANPP PA}) \times 30\% (\S 3.6.1, \S 3.4.2)) \times \100 million

5. Unit 1 experiences an accident during the Interim Period. The plant permanently ceases operations, and the Operating Agent commences Remediation and Decommissioning activities. The cost of Remediation due to the accident is \$500 million. The remaining Decommissioning Cost is \$853.384 million.

PNM pays $10.200000\% (\S 3.1) \text{ of } \$853.384 \text{ million} = \87.045 million

SRP pays $17.490000\% (\text{ANPP PA}) \text{ of } \$853.384 \text{ million} = \149.257 million

PNM pays $2.266667\% (\text{ANPP PA}) \text{ of } \$500 \text{ million} (\S 3.4.2) = \11.333 million

SRP pays $25.423333\% (\text{ANPP PA}) \text{ of } \$500 \text{ million} (\S 3.4.2) = \127.117 million

³ References to ANPP PA in Example 4 refer to site common ownership share.

Attachment B

**Schedule of NDT Administrative Expenses Paid by Public Service Company of New Mexico
from 2016-2020**