

**NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-528, 50-529, and 72-44; NRC-2021-0126]**

**Palo Verde Nuclear Generating Station, Units 1 and 2 and**

**Independent Spent Fuel Storage Installation**

**Consideration of Approval of Transfer of Licenses**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Application for indirect transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC, the Commission) received and is considering approval of a license transfer application filed by 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) on May 19, 2021. The application seeks NRC approval of the transfer of Renewed Facility Operating License Nos. NPF-41 and NPF-51 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1 and 2, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI) as a result of SRP acquiring PNM's 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and 0.7933333 percent share of the undivided interests in Palo Verde, Unit 2, whereby SRP would own a total of 25.423333 percent of the shares in Unit 1, and 18.2833333 percent of the shares in Unit 2, and PNM would own a total of 2.266667 percent of the shares in Unit 1, and 9.4066667 percent of the shares in Unit 2.

**DATES:** Comments must be filed by July 29, 2021. Requests for a hearing or petitions for leave to intervene must be filed by July 19, 2021.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the **Federal Rulemaking Website:**

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2021-0126**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-287-0624; e-mail: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **E-mail comments to:** Hearing.Docket@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Siva P. Lingam, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1564, e-mail: Siva.Lingam@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

A. Obtaining Information

Please refer to Docket ID **NRC-2021-0126** when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2021-0126**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The application for transfer of licenses dated May 19, 2021, is available in ADAMS under Accession No. ML21139A330.

- **Attention:** The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via e-mail at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

#### B. Submitting Comments

The NRC encourages electronic comment submission through the **Federal Rulemaking Website** (<https://www.regulations.gov>). Please include Docket ID **NRC-2021-0126** in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment

submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## **II. Introduction**

The NRC is considering the issuance of an order under § 50.80 and § 72.50 of title 10 of the *Code of Federal Regulations* (10 CFR) approving the partial transfer of Renewed Facility Operating License Nos. NPF-41 and NPF-51 for Palo Verde, Units 1 and 2, respectively, and the general license for the Palo Verde ISFSI. The proposed partial license transfer would result from SRP acquiring PNM's 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and 0.7933333 percent share of the undivided interests in Palo Verde, Unit 2.

According to the application, PNM currently has a 10.2 percent interest in Palo Verde, 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 (ADAMS Accession No. ML021680489). 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 in accordance with 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 Palo Verde. Instead, under the leases, PNM retains leasehold and control rights and responsibility under the NRC licenses for these interests.

According to the application, PNM entered into a total of 11 sale-leaseback transactions refinancing portions of its interests in Palo Verde, 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. The financial institutions have agreed to sell and transfer these interests to SRP starting from 2021 and SRP has agreed to purchase these interests, provided that SRP and PNM have secured the requisite approval from the NRC for SRP ownership of the incremental interests once the leases expire. After the proposed transfer, SRP would own a total of 25.423333 percent of the shares in Unit 1, and 18.2833333 percent of the shares in Unit 2, and PNM would own a total of 2.266667 percent of the shares in Unit 1, and 9.4066667 percent of the shares in Unit 2. APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the NRC licenses. Further, APS operates, and would continue to operate, each of the Palo Verde units and the ISFSI pursuant to the operating rights granted to it under the license of each Palo Verde unit. The remaining tenant-in-common co-owners that hold possession-only rights in the NRC licenses are: Southern California Edison Company (15.8 percent); IIF US Holding 2 LP (15.8 percent); Southern California Public Power Authority (5.91 percent); and Los Angeles Department of Water and Power (5.7 percent). Although the ownership interests in Palo Verde would change, significant actions involving operation of the Palo Verde units require unanimity of all

owners of Palo Verde. Currently, no entity owns 50 percent or more of the voting interests. The same would be true following the proposed transfer of the leased interests. Accordingly, after the effective date of the transactions, there would be no change in the control of operation of Palo Verde; APS would continue to make all technical decisions that do not require approval from all owners of Palo Verde.

No physical changes to the facilities or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 50.80 and 10 CFR 72.50 state that no license, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to be the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

### **III. Opportunity to Comment**

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

### **IV. Opportunity to Request a Hearing and Petition for Leave to Intervene**

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed

in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Website at <https://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the

requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).



If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

#### **V. Electronic Submissions (E-Filing)**

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Website at <https://www.nrc.gov/site-help/e-submittals.html>. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at 301-415-1677, to (1) request a digital

identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Website at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before

adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Website at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

For further details with respect to this application, see the application dated May 19, 2021 (ADAMS Accession No. ML21139A330).

Dated: June 23, 2021.

For the Nuclear Regulatory Commission.

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