



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

October 21, 2021

Mrs. Maria L. Lecal
Executive Vice President/
Chief Nuclear Officer
Mail Station 7605
Arizona Public Service Company
P.O. Box 52034
Phoenix, AZ 85072-2034

SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNITS 1 AND 2 AND THE
INDEPENDENT SPENT FUEL STORAGE INSTALLATION - ORDER
APPROVING TRANSFERS OF CONTROL OF LICENSES FOR MINORITY
INTERESTS SUBJECT TO EXPIRING LEASES (EPID L-2021-LLM-0003)

Dear Mrs. Lecal:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application dated May 19, 2021, as supplemented by letter dated September 14, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML21139A330 and ML21257A399, respectively), 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) (together, the Applicants), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, "Transfer of licenses," and 72.50, "Transfer of license," requesting approval of the partial transfers 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).

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 interests, are 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 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 interests 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, "Creditor regulations." The sale-leaseback transactions were structured so that although the investment and banking firms own the Unit 1 interests and the Unit 2 interests, 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.

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. The May 19, 2021, 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.

The proposed partial license transfers would result from SRP acquiring PNM's 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and 0.79333333 percent share of the undivided interests in Palo Verde, Unit 2, whereby SRP would own a total of 25.4233333 percent of the shares in Unit 1, and 18.28333333 percent of the shares in Unit 2, and PNM would own a total of 2.2666667 percent of the shares in Unit 1, and 9.40666667 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); El Paso Electric Company (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 transfers 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.

The NRC staff has completed its review of the application. The Order in Enclosure 1 approves the proposed partial license transfers of Palo Verde, Units 1 and 2 and the ISFSI. Enclosure 2 is the NRC staff's safety evaluation related to the application.

The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Siva P. Lingam, Project Manager
Plant Licensing Branch IV
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-528, STN 50-529,
and 72-44

Enclosures:

1. Order
2. Safety Evaluation

cc: Listserv

ENCLOSURE 1

ORDER APPROVING TRANSFERS OF CONTROL OF LICENSES
PALO VERDE NUCLEAR GENERATING STATION, UNITS 1 AND 2
AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION

ADAMS Accession No. ML21245A065

ENCLOSURE 2

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

FOR LICENSE TRANSFERS OF

RENEWED FACILITY OPERATING LICENSE NOS. NPF-41 AND NPF-51 AND

GENERAL LICENSE FOR THE INDEPENDENT SPENT FUEL STORAGE INSTALLATION

PALO VERDE NUCLEAR GENERATING STATION, UNITS 1 AND 2

DOCKET NOS. STN 50-528, STN 50-529, AND 72-44



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR LICENSE TRANSFERS OF
RENEWED FACILITY OPERATING LICENSE NOS. NPF-41 AND NPF-51 AND
GENERAL LICENSE FOR THE INDEPENDENT SPENT FUEL STORAGE INSTALLATION
PALO VERDE NUCLEAR GENERATING STATION, UNITS 1 AND 2
DOCKET NOS. STN 50-528, STN 50-529, AND 72-44

1.0 INTRODUCTION

By application dated May 19, 2021, as supplemented by letter dated September 14, 2021 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML21139A330 and ML21257A399, respectively), 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, the Applicants), requested consent from the U.S. Nuclear Regulatory Commission (NRC, the Commission) to the partial license transfers from PNM to SRP of a 7.9333330 percent share of the undivided interests in Palo Verde Nuclear Generating Station (Palo Verde), Unit 1, and of a 0.7933333 percent share of the undivided interests in Palo Verde, Unit 2.

PNM and SRP are both currently tenant-in-common co-owners that hold possession-only interests in the NRC licenses for Palo Verde, Units 1, 2, and 3. Because the proposed transfers only concern partial transfers of PNM's total possession-only interests in the NRC licenses for Palo Verde, Units 1 and 2 and because SRP is already a possession-only co-owner of Palo Verde, Units 1 and 2, both PNM and SRP would retain their current status as NRC licensees after the proposed transfers. The proposed transfers will change only the allocation between PNM and SRP of the percentage of their possession-only interests in Palo Verde, Units 1 and 2.

The Notice of Consideration of Approval of Transfer of Licenses was published in the *Federal Register* (FR) on June 29, 2021 (86 FR 34282). The supplemental letter dated September 14, 2021, provided additional information that clarified the application and did not expand the scope of the application as originally noticed.

2.0 BACKGROUND

The Palo Verde facility consists of three operating pressurized water reactors (i.e., Units 1, 2, and 3), with each generating approximately 1,300 megawatts electric. Located in Wintersburg, Arizona, construction began in 1976 on all three reactors, with Units 1, 2, and 3 operating licenses being issued by the NRC in 1985, 1986, and 1987, respectively. Renewed operating

licenses were issued on April 21, 2011, for all three reactors, with license expiration dates of 2045, 2046, and 2047, for Units 1, 2, and 3, respectively.

PNM currently has a 10.2 percent possession-only 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 interests, are 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 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 interests are currently held in trust and leased to PNM pursuant to the NRC's prior orders, license amendments, and creditor regulations in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.81, "Creditor regulations." The sale-leaseback transactions were structured so that although the investment and banking firms own the Unit 1 interests and the Unit 2 interests, 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.

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. The May 19, 2021, 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.

The proposed partial license transfers 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, 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. 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 independent spent fuel storage installation (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); El Paso Electric Company (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 transfers 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.

3.0 REGULATORY EVALUATION

The Applicants' request for NRC approval of the partial transfers of PNM's interests in Palo Verde as discussed in this safety evaluation is made under 10 CFR 50.80, "Transfer of licenses," and 10 CFR 72.50, "Transfer of license."

The regulation at 10 CFR 50.80(a) states, in part:

No license for a . . . utilization facility . . . , or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations at 10 CFR 50.80(b) and (c) apply. The regulation at 10 CFR 50.80(b) states, in part, that an application for a license transfer shall include as much of the information described in 10 CFR 50.33, "Contents of applications; general information," and 10 CFR 50.34, "Contents of applications; technical information," "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license." The regulation at 10 CFR 50.80(c) states, in part:

. . . the Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The regulation at 10 CFR 50.81(b) states:

Any creditor so secured may apply for transfer of the license covering such facility by filing an application for transfer of the license pursuant to [10 CFR] 50.80(b). The Commission will act upon such application pursuant to [10 CFR] 50.80(c).

The regulation at 10 CFR 50.33(f) states, in part:

Except for an electric utility applicant for a license to operate a utilization facility of the type described in [10 CFR] 50.21(b) or [10 CFR] 50.22, [each application shall state] information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulation at 10 CFR 50.2, "Definitions," states, in part, that an electric utility means:

[A]ny 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 regulation at 10 CFR 50.33(k)(1) states, in part:

For an application for an operating license . . . , information in the form of a report, as described in [10 CFR] 50.75[, "Reporting and recordkeeping for decommissioning planning,"] indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

Accordingly, an applicant is required to demonstrate reasonable assurance of funds for decommissioning by reactor type and power level.

In 10 CFR 50.34(b)(6), the NRC requires that applicants provide certain information on facility operation. It requires, in part, that the information provided by the applicant includes the following:

- (i) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualification requirements.
- (ii) Managerial and administrative controls to be used to assure safe operation.

In 10 CFR 50.34(b)(7), the NRC requires that applicants provide the following information in the final safety analysis report:

The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter.

In addressing foreign ownership, control, or domination (FOCD) issues, Section 103d of the Atomic Energy Act of 1954, as amended (the Act), states, in part:

No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The regulation at 10 CFR 50.33(d)(3) states that if the applicant is a corporation or an unincorporated association, the application shall state:

- (i) The state where it is incorporated or organized and the principal location where it does business;
- (ii) The names, addresses and citizenship of its directors and of its principal officers;
- (iii) Whether it is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.

The regulation at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements the FOCD provisions of the Act. The NRC staff evaluates license transfer applications in a manner that is consistent with the guidance provided in the "Final Standard Review Plan on Foreign Ownership, Control, or Domination" (64 FR 52355; September 28, 1999) to determine whether the transferee is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

The regulation at 10 CFR 72.50 is analogous to the regulation at 10 CFR 50.80 and also states that "[t]he application shall describe the financial assurance that will be provided for the decommissioning of the facility under [10 CFR] 72.30." The regulation at 10 CFR 72.30, "Financial assurance and recordkeeping for decommissioning," paragraph (e)(5), states:

In the case of licensees who are issued a power reactor license under part 50 of this chapter or ISFSI licensees who are an electric utility, as defined in part 50 of

this chapter, with a specific license issued under this part, the methods of 10 CFR 50.75(b), (e), and (h), as applicable. In the event that funds remaining to be placed into the licensee's ISFSI decommissioning external sinking fund are no longer approved for recovery in rates by a competent rate making authority, the licensee must make changes to provide financial assurance using one or more of the methods stated in paragraphs (1) through (4) of this section.

The NRC staff reviews information that relates to the Price-Anderson insurance and indemnity requirements under Section 170 of the Act, "Indemnification and Limitation of Liability," and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," and reviews the onsite property insurance requirements under 10 CFR 50.54, "Conditions of licenses," paragraph (w).

The regulation at 10 CFR 140.11, "Amounts of financial protection for certain reactors," paragraph (a)(4), provides requirements for the appropriate amount of insurance. The regulation at 10 CFR 140.21, "Licensee guarantees of payment of deferred premiums," provides requirements for financial protection.

NUREG 1307, Revision 18, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities," dated January 2021 (ADAMS Accession No. ML21027A302), contains burial cost escalation factors updated to the year 2020 for the reference pressurized-water and boiling-water reactors.

The NRC staff applies guidance in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance" (ADAMS Accession No. ML013330264), to evaluate the financial qualifications and methods of providing decommissioning funding assurance for licensees affected by proposed license transfers.

The NRC staff uses the guidance in Chapter 13, "Conduct of Operations," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water Reactor] Edition," from the following sections:

- Section 13.1.1, Revision 6, "Management and Technical Support Organization," dated August 2016 (ADAMS Accession No. ML15005A449), which describes the process used for the review of the corporate-level management and technical support organization of applicants.

This Section states, in part, that "[t]he review for license transfer will examine the acceptability of any changes to the technical organization or personnel qualifications proposed as a result of a license transfer..." It also states that "[t]he objective of this review is to ensure that the corporate management is involved with, informed of, and dedicated to the safe design, construction, testing, and operation of the nuclear plant. In addition, the review is to ensure that sufficient technical resources have been, are being, and will continue to be provided to adequately accomplish these objectives."

- Sections 13.1.2 - 13.1.3, Revision 7, "Operating Organization," dated August 2016 (ADAMS Accession No. ML15007A296), which describes the process used for the review of the operating organization of applicants, including the structure, functions, and responsibilities of the onsite organization established to safely operate and maintain the facility.

These sections state, in part, that “[t]he review for a transfer of an [operating license] should focus on evaluating changes to the operating organization proposed as a result of the transfer.” They also state that “[t]he [NRC staff] reviewer should ensure that the proposed changes will result in an organization that will continue to meet the relevant review criteria.”

4.0 TECHNICAL QUALIFICATIONS

4.1 Management and Technical Support Organization

Section 4, “Technical Qualifications,” of Enclosure 1 to the application dated May 19, 2021, states that:

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

Section 2, “Statement of Purpose of Transfers and Nature of the Transaction Making the Transfers Necessary or Desirable,” of Enclosure 1 to the application dated May 19, 2021, states, in part, that:

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 [Palo Verde] Unit 1 Interests or Unit 2 Interest. SRP is an existing co-owner and licensee for [Palo Verde], 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.

Section 3, “General Corporate Information Regarding SRP,” of Enclosure 1 to the application dated May 19, 2021, states, in part, that:

As the licensed entity with possession and responsibility for operating [Palo Verde], APS will continue to act for itself and the other [Palo Verde] co-owners.

Section 1, “Introduction,” of Enclosure 1 to the application dated May 19, 2021, states, in part, that:

[S]ignificant actions involving operation of the Palo Verde units require unanimity of all owners of [Palo Verde].

For this review, the NRC staff used, in part, the applicable guidance provided in NUREG-0800, Section 13.1.1, Revision 6, as stated in Section 3.0 of this safety evaluation.

The NRC staff considered the licensee’s request and determined that the proposed transfers of interests from PNM to SRP are not expected to have any impact on the management and technical support organization of Palo Verde. PNM currently holds 10.2 percent undivided interests in Palo Verde, Units 1 and 2 with some of the interests being leased from financial institutions. SRP currently holds 17.49 percent undivided interests in Palo Verde, Units 1 and 2.

Neither PNM nor SRP hold operating rights in Palo Verde; operating rights are only held by APS. The proposed partial license transfers involve five leases of ownership interests in Palo Verde, Units 1 and 2, as they are approaching their expiration dates. The financial institutions have agreed to sell and transfer these interests to SRP starting from 2021 and SRP has agreed to purchase these interests.

Section 1 of Enclosure 1 to the application dated May 19, 2021, provides the following chart, which describes the proposed changes in interests:

[Palo Verde] 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%	18.283333%	10.2%	9.4066667%	27.69%
3	0%	17.49%	17.49%	10.2%	10.2%	27.69%

Currently, no entity owns 50 percent or more of the voting interests. The same is true following the proposed transfers of the leased interests. Further, unanimous agreement between owners is required for significant actions regarding operations. 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.

Based on its review of the application, the NRC staff finds that the management and technical support organization of Palo Verde and its associated ISFSI will continue to support the safe operation of the facility and will retain responsibility for the operation of Palo Verde and the ISFSI after the proposed partial license transfers.

4.2 Operating Organization

The NRC staff reviewed the application to determine whether the operating organization would continue to adequately operate Palo Verde and the ISFSI after the proposed partial license transfers. For this review, the NRC staff used, in part, the applicable guidance provided in NUREG 0800, Sections 13.1.2 - 13.1.3, Revision 7, as stated in Section 3.0 of this safety evaluation.

The application provides that APS would continue to be the licensed operator of Palo Verde and its associated ISFSI. The NRC staff determined that with the consummation of the proposed transactions, the technical qualifications of the APS operating organization would not be adversely affected and that APS would continue to safely operate Palo Verde and the ISFSI.

Based on its evaluation as described above, the NRC staff finds that the management and technical support organization and the operating organization of Palo Verde and the ISFSI will continue to support the safe operation of the facility and will retain responsibility for the operation of the facility after the proposed partial license transfers. Therefore, the NRC staff concludes that the proposed partial license transfers satisfy 10 CFR 50.80 with respect to technical qualifications.

5.0 FINANCIAL QUALIFICATIONS

According to the application, following the close of the proposed transactions, PNM and SRP would continue to generate, transmit, and distribute electricity to ratepayers and recover their costs for such activities through rates authorized by their respective public utilities commissions and the Federal Energy Regulatory Commission. As such, PNM and SRP would continue to be electric utilities as defined in 10 CFR 50.2 following the proposed transactions. Accordingly, the application is not subject to a financial qualifications review under 10 CFR 50.33(f)(2). This is consistent with the guidance in NUREG-1577.

In consideration of the foregoing, the NRC staff finds that the proposed transactions would not adversely impact the financial qualifications of PNM or SRP. Based on its evaluation as described above, the NRC staff concludes that the proposed partial license transfers satisfy 10 CFR 50.80 with respect to financial qualifications.

6.0 DECOMMISSIONING FUNDING

According to the application, PNM intends to continue to maintain its current nuclear decommissioning trust funds (NDTs) for the full 10.2 percent interests in Palo Verde, Units 1, 2, and 3 for which it has been historically responsible. Along with retaining its NDTs, PNM would retain its 10.2 percent share of liability and regulatory responsibility for the decommissioning costs for Palo Verde, Units 1, 2, and 3.

As provided in 10 CFR 50.75(f)(1), licensees are required to report to the NRC, by March 31, 1999, and at least once every 2 years thereafter, on the status of their decommissioning funding for each reactor or part of a reactor that they own. The most recent PNM decommissioning funding status report for its current 10.2 percent share of ownership of Palo Verde and the ISFSI was provided to the NRC by APS on March 26, 2021 (ADAMS Accession No. ML21085A877). This submittal provides comprehensive decommissioning funding status report information for each of the seven co-owners of Palo Verde.

The March 26, 2021, decommissioning funding status report provided information to the NRC on the status of decommissioning funding for Palo Verde, as of December 31, 2020. Per this submittal, the total amount of decommissioning funds required for each unit at Palo Verde, using the table of minimum amounts formula under 10 CFR 50.75, was \$530 million (in 2020 dollars). Based on PNM's current 10.2 percent ownership of Palo Verde, the amount of decommissioning funds estimated to be required for PNM pursuant to 10 CFR 50.75(b) and (c) was \$54 million per unit (in 2020 dollars); per the submittal, PNM reported NDT balances of approximately \$112 million, \$123 million, and \$140 million, for Units 1, 2, and 3, respectively, as of December 31, 2020.

The NRC staff evaluated these funding amounts using the guidance provided in NUREG 1307, Revision 18. The NRC staff determined that PNM's current funding amounts, which would be retained following the proposed transactions, exceed the NRC minimum decommissioning funding requirements based on current NDT balances and future compounding of assets within the NDTs through the operating licenses' expiration dates. Also, the ISFSI at Palo Verde is a generally licensed ISFSI and the Palo Verde co-owners currently rely on excess funds from their decommissioning trust funds as financial assurance for ISFSI decommissioning, a method authorized by 10 CFR 50.75(e) and 10 CFR 72.30(e)(5). The NRC staff determined that PNM's financial instruments sufficiently exceed decommissioning cost estimates such that these

financial instruments are also adequate to cover PNM's current responsibility for ISFSI decommissioning.

Because decommissioning funding and responsibility are not changing between PNM and SRP despite the proposed change in ownership, PNM and SRP have agreed to execute a Decommissioning Agreement, which documents PNM's obligations to SRP regarding paying the costs of decommissioning associated with the Palo Verde Unit 1 interests and the Palo Verde Unit 2 interests, including certain spent fuel management costs during decommissioning and certain costs of decommissioning the Palo Verde ISFSI once all spent fuel has been removed from the Palo Verde site. A copy of this agreement in a form agreed to by PNM and SRP is provided in the application. 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 the Unit 2 interests, including for Palo Verde, any common facilities, the ISFSI, and the NRC-licensed site, regardless of the change in ownership.

In consideration of the above, the NRC staff finds that the proposed transactions would not affect the decommissioning funding arrangements currently in place for Palo Verde and the ISFSI. The information provided in the application and in the most recent biennial decommissioning funding status report for Palo Verde conforms to the guidance in NUREG 1577 for the NRC staff's review of decommissioning funding assurance. Therefore, the NRC staff concludes that the Applicants have complied with the regulations at 10 CFR 50.75 and 10 CFR 72.30 with respect to providing decommissioning funding assurance for Palo Verde and the ISFSI. Accordingly, the NRC staff concludes that the proposed partial license transfers satisfy 10 CFR 50.33(k)(1) and 10 CFR 50.80 with respect to decommissioning funding.

7.0 ANTITRUST

The Act does not require or authorize antitrust reviews of post-operating license transfer applications.¹ The application postdates the issuance of the operating licenses for the facility under consideration in this safety evaluation and, therefore, no antitrust review is required or authorized.

8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

According to the application, SRP (which is currently a co-owner of Palo Verde and the ISFSI) 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. It is not subject to any foreign ownership, control, or domination. All the members of its Board, its Officers, and its Executive managers are U.S. citizens.

The NRC staff reviewed the information in the application. Based on this review, the staff has reasonable assurance that SRP will continue to not be foreign owned, controlled, or dominated.

9.0 NUCLEAR INSURANCE AND INDEMNITY

Upon review of the requirements of the Price-Anderson Act (Section 170 of the Act) and the NRC's implementing regulations at 10 CFR Part 140, the NRC staff finds that the current indemnity agreement does not need to be modified to reflect the proposed partial license

¹ Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999).

transfers since there would be no change to the named license holders. Additionally, the financial protection currently provided by APS in the form of offsite liability insurance and onsite property insurance would continue to remain in effect unchanged. APS remains required to provide, maintain, and report the appropriate amount of insurance in accordance with 10 CFR 50.54(w), 10 CFR 140.11(a)(4), and 10 CFR 140.21.

10.0 CONCLUSION

Based on its review of the information provided in the application and its independent analysis, the NRC staff finds that the proposed partial license transfers satisfy the NRC's technical qualifications; financial qualifications; decommissioning funding; antitrust; foreign ownership, control, or domination; and nuclear insurance and indemnity requirements.

The Commission has concluded, based on the considerations discussed above, that (1) the proposed transferee is qualified to be the holder of the licenses and (2) transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributors: T. Wertz, NMSS
K. Martin, NRR

Date: October 21, 2021

SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNITS 1 AND 2 AND THE INDEPENDENT SPENT FUEL STORAGE INSTALLATION - ORDER APPROVING TRANSFERS OF CONTROL OF LICENSES FOR MINORITY INTERESTS SUBJECT TO EXPIRING LEASES (EPID L-2021-LLM-0003) DATED OCTOBER 21, 2021

DISTRIBUTION:

PUBLIC	RidsNrrDrololb Resource
PM File Copy	JMcKirgan, NMSS
RidsACRS_MailCTR Resource	TWertz, NMSS
RidsNmssRefsFab Resource	KMartin, NRR
RidsNrrDorl Resource	BGreen, NRR
RidsNrrDorlLpl4 Resource	RRichardson, NSIR
RidsNrrDrololb Resource	JRiley, NSIR
RidsNrrOd Resource	AGhosh, OGC
RidsNrrLAPBlechman Resource	JWachutka, OGC
RidsNrrPMPaloVerde Resource	AMcCraw, OEDO
RidsOpaMail Resource	CNolan, OEDO
RidsRgn4MailCenter Resource	DBetancourt-Roldan, NRR
RidsSecyMailCenter Resource	SBurnell, OPA

ADAMS Accession Nos.:

Package: ML21245A072

Letter/SE: ML21245A064

Order: ML21245A065

FRN (not in pkg): ML21245A066

*by e-mail

**by memorandum

OFFICE	NRR/DORL/LPL4/PM*	NRR/DORL/LPL4/LA*	NMSS/REFS/FAB/BC*	NRR/DRO/IOLB/BC**
NAME	SLingam	PBlechman	FMiller	CCowdrey
DATE	9/1/2021	9/8/2021	8/25/2021	8/27/2021
OFFICE	OGC – NLO*	NRR/DORL/LPL4/BC*	NRR/DORL/D*	NRR/DORL/LPL4/PM*
NAME	JWachutka	JDixon-Herrity	BPham	SLingam
DATE	9/27/2021	9/28/2021	10/21/2021	10/21/2021

OFFICIAL RECORD COPY