

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|---|---|-------------------------------------|
| In the Matter of |) | |
| |) | |
| Arizona Public Service Company |) | |
| Salt River Project Agricultural Improvement |) | |
| and Power District |) | |
| Public Service Company of New Mexico |) | |
| |) | |
| Palo Verde Nuclear Generating Station, |) | Docket Nos. STN 50-528, STN 50-529, |
| Units 1 and 2 and Independent Spent |) | and 72-44 |
| Fuel Storage Installation |) | License Nos. NPF-41 and NPF-51 |

CORRECTED ORDER APPROVING TRANSFERS OF CONTROL OF
LICENSES (SUPERSEDING ORDER OF OCTOBER 21, 2021)

I.

Arizona Public Service Company (APS) is the licensed operator and a licensed co-owner of Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for the Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI). Palo Verde is located in Maricopa County, Arizona. The other licensed co-owners (tenants-in-common), Salt River Project Agricultural Improvement and Power District (SRP); Southern California Edison Company; El Paso Electric Company; Public Service Company of New Mexico (PNM); Southern California Public Power Authority; and Los Angeles Department of Water and Power, hold possession-only rights for these licenses (i.e., they are not licensed to operate the facility).

II.

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), APS, on behalf of SRP and PNM (together, the Applicants), requested, pursuant to Title 10 of the *Code of Federal Regulations*

(10 CFR) Sections 50.80, "Transfer of licenses," and 72.50, "Transfer of license," that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the partial license transfers from PNM to SRP of a 7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and of a 0.7933333 percent share of the undivided interests in Palo Verde, Unit 2.

According to the application, 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, 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 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.

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. The 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 partial license transfers, 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); 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.

No physical changes or operational changes are proposed in the application.

A notice of the application and opportunity to comment, request a hearing, and petition for leave to intervene on the application was published in the *Federal Register* (FR) on June 29, 2021 (86 FR 34282). The NRC did not receive any comments or hearing requests on the application.

Under 10 CFR 50.80 and 10 CFR 72.50, no license for a production or utilization facility or ISFSI, or any right thereunder, shall be transferred, 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. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that PNM can transfer a

7.9333330 percent share of the undivided interests in Palo Verde, Unit 1, and a 0.7933333 percent share of the undivided interest in Palo Verde, Unit 2, to SRP. The proposed transferee is qualified to be the holder of the licenses and transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by an NRC staff safety evaluation dated October 21, 2021, which is available at ADAMS Accession No. ML21245A064.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC § 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, IT IS HEREBY ORDERED that the application regarding the proposed partial license transfers is approved for Palo Verde, Units 1 and 2 and the Palo Verde ISFSI.

IT IS FURTHER ORDERED that after receipt of all required regulatory approvals of the proposed partial license transfers, the Applicants shall inform the Director of the NRC Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of the closing of the initial transactions under the beneficial interest sales agreements described in the application, no later than 2 business days prior to the date of the closing. Should the closing not be completed within 1 year of the date of this Order, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order. The Applicants shall also inform the Director of the NRC Office of Nuclear Reactor Regulation in writing of the expiration of each of the leases no later than 2 business days after their expiration.

This Order is effective upon issuance and it corrects and supersedes the NRC Order approving the application issued on October 21, 2021 (ADAMS Accession No. ML21245A065) and published on October 27, 2021 (86 FR 59432).

For further details with respect to this Order, see the application dated May 19, 2021, as supplemented by letter dated September 14, 2021, and the NRC staff's safety evaluation dated

October 21, 2021, which are available for public inspection electronically through ADAMS in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems accessing the documents located in ADAMS should contact the NRC Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

Dated: November 17, 2021.

FOR THE NUCLEAR REGULATORY COMMISSION

Bo M. Pham, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.