



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

March 5, 2020

Mr. Adrian J. Rodriguez
Interim Chief Executive Officer, General
Counsel and Assistant Secretary
El Paso Electric Company
P.O. Box 982
El Paso, TX 79960-0982

SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3 –
ORDER APPROVING INDIRECT TRANSFER OF LICENSES FOR UNITS 1, 2,
AND 3, AND THE INDEPENDENT SPENT FUEL STORAGE INSTALLATION
(EPID L-2019-LLM-0002)

Dear Mr. Rodriguez:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application dated August 13, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19225D197), filed by El Paso Electric Company (EPE) pursuant to Title 10 of the *Code of Federal Regulations* Sections 50.80 and 72.50, requesting approval of the indirect transfer of control of Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, respectively, and the general license for the Independent Spent Fuel Storage Installation (ISFSI).

According to the application, EPE currently owns a 15.8 percent tenant-in-common interest and holds possession-only rights in the NRC licenses. The proposed indirect license transfer would result from IIF US Holding 2 LP indirectly acquiring 100 percent of the shares in EPE. Arizona Public Service Company (APS) would continue to operate each of the Palo Verde units and the ISFSI. APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the NRC licenses. Further, APS operates 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: Salt River Project Agricultural Improvement and Power District (17.49 percent); Southern California Edison Company (15.8 percent); Public Service Company of New Mexico (10.2 percent); Southern California Public Power Authority (5.91 percent); and Los Angeles Department of Water and Power (5.7 percent). The proposed transaction implicates only an indirect upstream change in control over EPE's possession-only rights in the NRC licenses. The proposed transaction would not involve or implicate any change in EPE's rights and obligations under any of the NRC licenses, nor would it implicate APS's or any possession-only co-owners' rights and obligations under any of the NRC licenses.

The enclosed Order approves the proposed indirect ownership transfer of Palo Verde Units 1, 2, and 3, and the ISFSI. A copy of the related Safety Evaluation is also enclosed.

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,
STN 50-530, and 72-44

Enclosures:

1. Order
2. Safety Evaluation

cc: Listserv

ENCLOSURE 1

ORDER APPROVING INDIRECT TRANSFER OF LICENSES
PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3,
AND INDEPENDENT SPENT FUEL STORAGE INSTALLATION

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
Arizona Public Service Company)	
El Paso Electric Company)	
)	
Palo Verde Nuclear Generating Station,)	Docket Nos. STN 50-528, STN 50-529
Units 1, 2, 3, and Independent Spent)	STN 50-530, and 72-44
Fuel Storage Installation)	License Nos. NPF-41, NPF-51, and NPF-74

ORDER APPROVING INDIRECT TRANSFER OF LICENSES

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; Southern California Edison Company; El Paso Electric Company; Public Service Company of New Mexico; 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 August 13, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19225D197), El Paso Electric Company (EPE) requested, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80 and 72.50, that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of EPE's possession-only non-operating interests in Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 for Palo Verde Units 1, 2, and 3, respectively, and the general license for the Palo Verde ISFSI to IIF US Holding 2 LP.

According to the application, EPE currently owns a 15.8 percent tenant-in-common interest and holds possession-only rights in the NRC licenses. The proposed indirect license transfer would result from IIF US Holding 2 LP indirectly acquiring 100 percent of the shares in EPE. APS would continue to operate each of the Palo Verde units and the ISFSI. APS owns a 29.1 percent tenant-in-common interest and holds both operating and possession rights in the NRC licenses. Further, APS operates 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: Salt River Project Agricultural Improvement and Power District (17.49 percent); Southern California Edison Company (15.8 percent); Public Service Company of New Mexico (10.2 percent); Southern California Public Power Authority (5.91 percent); and Los Angeles Department of Water and Power (5.7 percent). The proposed transaction implicates only an indirect change in control over EPE's possession-only rights in the NRC licenses. The proposed transaction would not involve or implicate any change in EPE's rights and obligations under any of the NRC licenses, nor would it implicate APS's or any possession-only co-owners' rights and obligations under any of the NRC licenses.

No physical changes or operational changes are being 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* on October 28, 2019 (84 FR 57774). In response, on November 18, 2019, Public Citizen, Inc. filed a hearing request. The hearing request is currently pending before the Commission. The NRC did not receive any comments 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 EPE can indirectly transfer its 15.8 percent tenant-in-common interest and possession-only rights in the NRC licenses to IIF US Holding 2 LP. The proposed transferee is qualified to be the indirect holder of the licenses and the indirect transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this Order, which is available at ADAMS Accession No. ML20038A235.

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 indirect license transfer is approved for Palo Verde Units 1, 2, and 3, and the ISFSI, subject to the following condition.

1. The NRC staff's approval of this license transfer is subject to the Commission's authority to rescind, modify, or condition the approved transfer based on the outcome of any post-effectiveness hearing on the license transfer application.

IT IS FURTHER ORDERED that after receipt of all required regulatory approvals of the proposed indirect transfer action, the applicant shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 2 business days prior to the date of the closing of the indirect transfer. Should the proposed indirect transfer not be completed within 1 year from the date of this Order, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may be extended by order. The condition of this Order may be amended upon application by the applicants and approval by the Director of the Office of Nuclear Reactor Regulation.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated August 13, 2019, and the NRC safety evaluation dated the same date of this Order, which are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible 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 PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 5th day of March, 2020.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Craig G Erlanger, Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

ENCLOSURE 2

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR INDIRECT TRANSFER OF
RENEWED FACILITY OPERATING LICENSE NOS. NPF-41, NPF-51, AND NPF-74, AND
GENERAL LICENSE FOR THE
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3
DOCKET NOS. STN 50-528, STN 50-529, STN 50-530, AND 72-44



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

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
FOR INDIRECT TRANSFER OF
RENEWED FACILITY OPERATING LICENSE NOS. NPF-41, NPF-51, AND NPF-74, AND
GENERAL LICENSE FOR THE
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3
DOCKET NOS. STN 50-528, STN 50-529, STN 50-530, AND 72-44

1.0 INTRODUCTION

By application dated August 13, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19225D197), El Paso Electric Company (EPE), acting for itself and on behalf of IIF US Holding 2 LP (IIF US 2) (together, the Applicants), requested consent from the U.S. Nuclear Regulatory Commission (NRC, the Commission) to the indirect transfer of control of EPE's possession-only, non-operating interests in Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, Docket Nos. STN 50-528, STN 50-529, and STN 50-530, for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde, PVNGS), respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI), Docket No. 72-44, to IIF US 2. The Applicants are requesting this licensing action pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, "Transfer of licenses," for the three 10 CFR Part 50 licenses, and 10 CFR 72.50, "Transfer of license," for the ISFSI. The Applicants are requesting this licensing action as a result of a proposed transaction, announced in June 2019, in which IIF US 2 would indirectly acquire 100 percent of the shares of EPE, a utility that trades on the New York Stock Exchange under symbol EE.

EPE is currently a 15.8 percent licensed co-owner (tenant-in-common) of Palo Verde (and its ISFSI), with no operating rights. The remaining 84.2 percent ownership of Palo Verde is held by six other co-owners, as follows: 29.1 percent by Arizona Public Service Company (APS, APSC), which holds both operating and possession rights in the NRC licenses for Palo Verde; 17.49 percent by Salt River Project Agricultural Improvement and Power District; 15.8 percent by Southern California Edison Company; 10.2 percent by Public Service Company of New Mexico; 5.91 percent by Southern California Public Power Authority; and 5.7 percent by Los Angeles Department of Water and Power. The proposed transaction would not involve, or result in changes to, APS's or any of the possession-only co-owners' rights and obligations under any of the NRC licenses for Palo Verde and the ISFSI. Moreover, the proposed indirect transfer of

control would not result in changes to the role of APS as the sole licensed operator for Palo Verde, Units 1, 2, and 3, and the ISFSI.

The purpose of the proposed transaction, as communicated by the Applicants, is for IIF US 2 to take private ownership of EPE. The transaction would replace public shareholders of EPE with private ownership of EPE by IIF US 2 through a subsidiary of IIF US 2, Sun Jupiter Holdings LLC. The proposed transaction would affect only the indirect change in control of EPE's possession-only rights in the NRC licenses. The proposed transaction would not involve any changes in EPE's generating facilities or their operation, including Palo Verde Units 1, 2, and 3. According to the Applicants, the proposed transaction would occur during the first half of 2020.

The Notice of Consideration of Approval of Transfer of Licenses was published in the *Federal Register* (FR) on October 28, 2019 (84 FR 57774).

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.

In the application dated August 13, 2019, EPE requested consent from the NRC to the indirect transfer of control of its possession-only, non-operating interests in Palo Verde, Units 1, 2, and 3, as well as the general license for the Palo Verde ISFSI, to IIF US 2, as a result of a proposed transaction where IIF US 2 would indirectly acquire 100 percent of the shares in EPE. EPE would continue to retain direct ownership of its 15.8 percent share of the facility and would continue to have no operating interest in the facility.

3.0 REGULATORY EVALUATION

The proposed transaction described in the application would constitute an indirect transfer of ownership interest in the facility. Generally, for indirect transfers of control of a license, the NRC must find that the transaction will not affect the technical and financial qualifications of the holders of the license.

The Applicants' request for approval of the indirect transfer of ownership in Palo Verde as discussed in this safety evaluation is made under 10 CFR 50.80, which states, in part:

No license for a production or 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:

(1) An application for transfer of a license shall include:

(i)...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.

In 10 CFR 50.33(a) through (d), the NRC requires applicants to provide information including the name of the applicant, address of the applicant, description of the corporate structure of the applicant, citizenship of the applicant, and foreign ownership, control, or domination of the applicant, as applicable.

In addition, 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.

The regulation at 10 CFR 50.75 specifies how a licensee will provide reasonable assurance that funds will be available for the decommissioning process. Specifically, 10 CFR 50.75(b) requires that decommissioning financial assurance be provided in an amount not less than the minimum formula amount in 10 CFR 50.75(c). In 10 CFR 50.75(e), the NRC includes the methods acceptable to the agency for covering this decommissioning financial assurance amount, including using a decommissioning trust fund. Finally, 10 CFR 50.75(f) and (h) provide additional requirements on the reporting and management of decommissioning trust funds.

The NRC staff applies the 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.

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.

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" (SRP), from the following sections:

- Section 13.1.1, Revision 6, "Management and Technical Support Organization," 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.
- Sections 13.1.2–13.1.3, Revision 7, "Operating Organization," August 2017 (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.

In addressing foreign ownership, control, or domination (FOCD) issues, Section 103d of the Atomic Energy Act of 1954, as amended (the Act), provides, in part, that no license may be issued to:

[A]ny 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 NRC's 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 [SRP] on Foreign Ownership, Control, or Domination" (64 FR 52355; September 28, 1999) (hereafter referred to as the "SRP on FOCD"), to determine whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

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

4.0 TECHNICAL QUALIFICATIONS

4.1 Management and Technical Support Organization

The NRC staff reviewed the application to determine whether the proposed corporate management is involved in, informed of, and dedicated to the safe operation of Palo Verde Units 1, 2, and 3, and the ISFSI. For this review, the NRC staff used, in part, the applicable guidance provided in NUREG-0800, Section 13.1.1, Revision 6.

The indirect transfer of control of EPE's ownership interest in Palo Verde and the ISFSI would result from the proposed transaction in which the current indirect owner, consisting of public shareholders, would be replaced with a new indirect owner (i.e., IIF US 2 and its subsidiaries). The licensed operator, and 29.1 percent tenant-in-common co-owner, of the facility would continue to be APS. As stated in Section V, "Technical Qualifications," of the application:

APSC owns a 29.1 [percent] tenant-in-common interest in, and holds both operating and possession rights in the NRC license with respect to, each of PVNGS Units 1, 2, and 3. Pursuant to the Participation Agreement, APSC operates each of the PVNGS Units pursuant to the operating rights granted to it under each PVNGS Unit's respective NRC License. Following closing of the Proposed Transaction, APSC will continue to operate each of PVNGS Units 1, 2, and 3, pursuant to the Participation Agreement and its PVNGS NRC Licenses, and its rights and obligations with respect thereto are unaffected by the Proposed Transaction. More particularly, the Proposed Transaction will not require any change in APSC's management or staffing of its nuclear organization or procedures or have any effect whatsoever on APSC's technical qualifications to operate PVNGS Units 1, 2, and 3 pursuant to the Participation Agreement and its PVNGS NRC Licenses. Further, APSC's nuclear organization will continue to have clear and direct lines of responsibility and authority, which will be unaffected by the Proposed Transaction.

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 transaction and indirect license transfer.

4.2 Operating Organization

The NRC staff reviewed the application to determine whether sufficient technical resources would continue to be provided to adequately operate Palo Verde and the ISFSI as a result of the proposed transaction and indirect license transfer. 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 above, the application provided that APS would continue to be the licensed operator of Palo Verde and its ISFSI. Upon the consummation of the proposed transaction resulting in the indirect transfer of control of EPE's possession-only share of the facility, the NRC staff

concludes that the technical qualifications of the APS operating organization will not be adversely affected by the transaction and indirect license transfer and that APS will continue to safely operate Palo Verde and the ISFSI.

Based on its evaluation as described above, the NRC staff concludes that the proposed indirect license transfer satisfies 10 CFR 50.80 with respect to technical qualifications.

5.0 FINANCIAL QUALIFICATIONS

According to the application, following the close of the proposed transaction and indirect license transfer, EPE would continue to generate, transmit, and distribute electricity to ratepayers and recover its costs for such activities through rates authorized by the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, and the Federal Energy Regulatory Commission. As such, EPE would continue to be an electric utility as defined in 10 CFR 50.2 following the proposed transaction. Accordingly, for the operating Palo Verde facility and the affiliated generally-licensed ISFSI, 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 indirect transfer of ownership of EPE's shares of Palo Verde and the ISFSI as described in the application, would not adversely impact the financial qualifications of EPE.

Based on its evaluation as described above, the NRC staff concludes that the proposed indirect license transfer satisfies 10 CFR 50.80 with respect to financial qualifications.

6.0 DECOMMISSIONING FUNDING

Following the proposed transaction, EPE would continue as a corporate entity, becoming an indirect wholly-owned subsidiary of IIF US 2. According to the Applicants, at the time of the proposed indirect license transfer, the existing decommissioning trust funds maintained by EPE for its 15.8 percent interest in Palo Verde and the ISFSI would be retained by EPE.

Pursuant to 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 EPE decommissioning funding status report for its 15.8 percent share of ownership of Palo Verde and the ISFSI was provided to the NRC by APS on March 29, 2019 (ADAMS Accession No. ML19088A281). APS's submittal provides comprehensive decommissioning funding status report information for each of the seven owners of Palo Verde.

Pursuant to 10 CFR 50.75(e)(1)(ii), "External sinking fund," each Palo Verde owner maintains decommissioning trust funds that satisfy the NRC's requirements using the external sinking fund method of financial assurance for decommissioning. The proposed transaction would not result in changes to EPE's decommissioning trust funds or to the method of providing financial assurance for decommissioning. Following the indirect license transfer, EPE's 15.8 percent share of Palo Verde and the ISFSI, including decommissioning liability, would continue to be owned by and remain the responsibility of EPE, but with a different, indirect owner.

The March 29, 2019, APS decommissioning funding status report provided information to the NRC on the status of decommissioning trust funding for the Palo Verde facility, as of December 31, 2018. Per the 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 \$522 million (2018 dollars). Based on EPE's 15.8 percent ownership of Palo Verde, the amount of decommissioning funds estimated to be required by EPE pursuant to 10 CFR 50.75(b) and (c) was \$82.5 million per unit (2018 dollars). Per the status report, EPE reported trust fund balances of \$91.95 million, \$92.52 million, and \$87.20 million, for Units 1, 2, and 3, respectively, as of December 31, 2018, all of which were greater than the reported formula amount.

The NRC staff evaluated these funding amounts using the guidance provided in NUREG-1307, Revision 17, "Report on Waste Burial Charges: Changes in Decommissioning Waste Disposal Costs at Low-Level Waste Burial Facilities," dated February 2019 (ADAMS Accession No. ML19037A405). The NRC staff determined that the current funding amounts, which would be retained following the proposed transaction, exceed the NRC minimum decommissioning funding requirements based on current decommissioning trust fund balances and future compounding of fund assets within the decommissioning trust funds through the expiration dates of the operating licenses. Also, the ISFSI at Palo Verde is a generally-licensed ISFSI and Palo Verde licensee owners currently rely on excess funds from the 10 CFR 50.75 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 finds that the aggregate dollar amount of EPE's financial instruments provides adequate financial assurance to cover its decommissioning cost estimates and, therefore, that these financial instruments are acceptable for ISFSI decommissioning.

The information provided in the application and in the 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 finds that EPE has 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. Additionally, the NRC staff finds that the proposed indirect license transfer would not affect the decommissioning funding arrangements currently in place for Palo Verde and the ISFSI. Therefore, the NRC staff concludes that the proposed indirect license transfer satisfies 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 post-dates the issuance of the operating licenses for the units 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, the proposed transaction would not result in EPE becoming owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government. The application states, in part:

... following closing of the Proposed Transaction EPE will retain its own board of directors and principal officers all of whom are currently expected to be U.S. citizens. Further, all of EPE's upstream owners will be U.S. entities

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

controlled by U.S. citizens that are ultimately controlled by the IIF US 2 GP Owners, all of whom are U.S. citizens.

Consistent with 10 CFR 50.33(d), the application contains the names and addresses of the directors and principal officers of all parent companies and license holders involved, and indicates that they are all U.S. citizens.

The NRC staff conducted an independent analysis, including open-source research and verification of the information provided in the application related to ownership of all relevant parties in the proposed transaction, and found no evidence of FOCD.

Based on its independent analysis of the information provided in the application, the NRC staff concludes that it does not know or have reason to believe that any of the parties related to the indirect license transfer are owned, controlled, or dominated by a foreign interest and that the transfer meets the FOCD requirement of 10 CFR 50.38.

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 indirect license transfer of the parent companies 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

The proposed indirect license transfer satisfies 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 indirect holder of the licenses and (2) the indirect transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributor: R. Turtill, NMSS

Date: March 5, 2020

SUBJECT: PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3 –
ORDER APPROVING INDIRECT TRANSFER OF LICENSES FOR UNITS 1, 2,
AND 3, AND THE INDEPENDENT SPENT FUEL STORAGE INSTALLATION
(EPID L-2019-LLM-0002) DATED MARCH 5, 2020

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NAME	JWachutka	JDixon-Herrity	CErlanger	SLingam
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