

Phan, Phuong

From: Lingam, Siva
Sent: Friday, May 14, 2021 2:30 PM
To: Matthew.Cox@aps.com
Cc: Carl.Stephenson@aps.com; Sarah.Kane@aps.com; Michael.Dilorenzo@aps.com; Dixon-Herrity, Jennifer; Wengert, Thomas; Wachutka, Jeremy; Riley, Jeffrey; Roundtree, Cliff
Subject: RE: RE: RE: Palo Verde 1, 2, and 3, and ISFSI - Final Package for an Order Associated with Indirect Transfers of Control of Licenses from PNM to Avangrid (EPID L-2020-LLM-0002)

We have no concerns with your proposed plan. We will be waiting for your supplemental letter. Thank you.

From: Lingam, Siva
Sent: Friday, May 14, 2021 12:54 PM
To: Matthew.Cox@aps.com
Cc: Carl.Stephenson@aps.com; Sarah.Kane@aps.com; Michael.Dilorenzo@aps.com
Subject: RE: RE: RE: Palo Verde 1, 2, and 3, and ISFSI - Final Package for an Order Associated with Indirect Transfers of Control of Licenses from PNM to Avangrid (EPID L-2020-LLM-0002)

I will pass this information to Jeremy and get back to you. Thank you for the insights.

From: Matthew.Cox@aps.com <Matthew.Cox@aps.com>
Sent: Friday, May 14, 2021 12:51 PM
To: Lingam, Siva <Siva.Lingam@nrc.gov>
Cc: Carl.Stephenson@aps.com; Sarah.Kane@aps.com; Michael.Dilorenzo@aps.com
Subject: [External_Sender] RE: RE: Palo Verde 1, 2, and 3, and ISFSI - Final Package for an Order Associated with Indirect Transfers of Control of Licenses from PNM to Avangrid (EPID L-2020-LLM-0002)

Siva,

We reviewed the Crystal River supplemental information provided, and it appears that the NRC staff is 'literally' following that precedent, which was a direct transfer with a license amendment. In the case of a direct transfer, the conditions are included in the license and would be submitted under 10 CFR 50.90.

We are in a different situation, because this is an indirect transfer that does not include a license amendment. In indirect transfer situations, the NRC staff routinely imposes conditions in its Order approving the transfers, and there is no license amendment. PNM-Avangrid counsel spoke with the NRC staff (Jeremy Watchuka) regarding this question. He is on board with conditions to the Order, not a license amendment.

Based on this information, we plan clarify in the letter that we are accepting the conditions to the Order under 10 CFR 50.80 instead of a license amendment under 10 CFR 50.90. This would avoid the need to revise the email sent 5/12/21. If the Staff would like to revise the email or have a clarification call, we can adjust accordingly.



Matthew S. Cox

Section Leader, Licensing

5801 South Wintersburg Road, Tonopah, AZ 85354-7529, M.S. 7636

Office 623.393.5753 **Cell** 865.300.1903

From: Lingam, Siva <Siva.Lingam@nrc.gov>

Sent: Thursday, May 13, 2021 4:19 AM

To: Cox, Matthew S <Matthew.Cox@aps.com>

Cc: Stephenson, Carl J <Carl.Stephenson@aps.com>; Kane, Sarah M <Sarah.Kane@aps.com>; Dilorenzo, Michael D <Michael.Dilorenzo@aps.com>

Subject: RE: RE: Palo Verde 1, 2, and 3, and ISFSI - Final Package for an Order Associated with Indirect Transfers of Control of Licenses from PNM to Avangrid (EPID L-2020-LLM-0002)

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ADAMS Accession No. ML21132A237.

The document s scheduled to be released on 5/26/21.

Please take another look at Crystal River supplemental letter and note the highlighted portion. Thank you.

From: Matthew.Cox@aps.com <Matthew.Cox@aps.com>

Sent: Wednesday, May 12, 2021 8:16 PM

To: Lingam, Siva <Siva.Lingam@nrc.gov>

Cc: Carl.Stephenson@aps.com; Sarah.Kane@aps.com; Michael.Dilorenzo@aps.com

Subject: [External_Sender] RE: Palo Verde 1, 2, and 3, and ISFSI - Final Package for an Order Associated with Indirect Transfers of Control of Licenses from PNM to Avangrid (EPID L-2020-LLM-0002)

Siva,

We received this message and are reviewing internally to determine next steps. I highlighted the statement below which indicates a license amendment pursuant to 50.90, which we are interpreting as more than a supplemental letter described in our weekly call this morning.

We will likely request a clarification call and will make that request after our internal discussion tomorrow.

Matthew

From: Lingam, Siva <Siva.Lingam@nrc.gov>

Sent: Wednesday, May 12, 2021 11:14 AM

To: Cox, Matthew S <Matthew.Cox@aps.com>; Stephenson, Carl J <Carl.Stephenson@aps.com>

Cc: Dixon-Herrity, Jennifer <Jennifer.Dixon-Herrity@nrc.gov>; Wengert, Thomas <Thomas.Wengert@nrc.gov>; Wertz, Trent <Trent.Wertz@nrc.gov>; Harwell, Shawn <Shawn.Harwell@nrc.gov>; Vazquez, Justin <Justin.Vazquez@nrc.gov>; Green, Brian <Brian.Green@nrc.gov>; Cowdrey, Christian <Christian.Cowdrey@nrc.gov>; Riley, Jeffrey <Jeffrey.Riley@nrc.gov>; Roundtree, Cliff <Cliff.Roundtree@nrc.gov>; Wachutka, Jeremy <Jeremy.Wachutka@nrc.gov>; Dilorenzo, Michael D <Michael.Dilorenzo@aps.com>; Weber, Thomas N <Thomas.N.Weber@aps.com>

Subject: Palo Verde 1, 2, and 3, and ISFSI - Final Package for an Order Associated with Indirect Transfers of Control of Licenses from PNM to Avangrid (EPID L-2020-LLM-0002)

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By application dated December 2, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20337A344), as supplemented by letter dated February 26, 2021 (ADAMS Accession No. ML21061A156), Arizona Public Service Company (APS), on behalf of Public Service Company of New Mexico (PNM), Avangrid, Inc. (Avangrid), and their corporate affiliates (together, the Applicants), requested consent from the U.S. Nuclear Regulatory Commission (NRC, the Commission) to the indirect transfer of PNM's 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 (Palo Verde) Units 1, 2, and 3, respectively, and the general license for the Palo Verde Independent Spent Fuel Storage Installation (ISFSI), Docket No. 72-44, to Avangrid. The Applicants requested 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 pursuant to 10 CFR 72.50, "Transfer of license," for the ISFSI. The Applicants requested this licensing action as a result of an Agreement and Plan of Merger, dated October 20, 2020, whereby PNM and its parent holding company would become indirect wholly owned subsidiaries of Avangrid.

In the application, Applicants stated that "PNM has committed to adopting a Negation Action Plan ('NAP') in order to assure that the transfers requested in the Application will not result in any impermissible foreign ownership, control or domination" and that "[i]n order to address and negate the possibility of any foreign ownership, control or domination ('FOCD') of the [Palo Verde] licenses, PNM will adopt a Negation Action Plan to address FOCD" and that the "FOCD negation measures assure that U.S. control will be exercised over the PNM licenses." The NAP is provided in Attachment 2 to the application and it states that "In order to negate any potential for FOCD, PNM's shareholder has issued a written consent to amend Article IV, Section 2 of PNM's Bylaws" and provides that amendment. The NAP also states that "any proposed change that would result in a decrease in the effectiveness of this Plan will not be implemented without the prior approval of the NRC" and that "PNM will provide NRC with 30 days prior written notice before implementing any material changes to the FOCD negation measures."

The NRC staff has completed its review of the application; however, it cannot make the finding that it has reasonable assurance that PNM will not be foreign owned, controlled, or dominated without the **Applicants supplementing the application to request NRC approval of a draft conforming administrative license amendment pursuant to 10 CFR 50.80 and 10 CFR 50.90 that amends the Palo Verde licenses** to include the PNM commitment to adopt the NAP as a condition of these licenses. For example, the Palo Verde Units 1 and 2 licenses and the Palo Verde Unit 3 license could be amended to change license conditions 2.F and 2.G, respectively, from "Deleted" to "Public Service Company of New Mexico (PNM) must adopt the Negation Action Plan in Attachment 2 to Enclosure 1 of the APS letter dated December 2, 2020 (ADAMS Accession No. ML20337A344); Article IV, Section 2 of PNM's Bylaws must be amended as provided for in the Negation Action Plan; and PNM must provide the NRC with 30 days prior written notice before any further material amendment to Article IV, Section 2 of PNM's Bylaws."

Please provide a response to this communication as early as possible. Precedent for this communication includes the 2020 transfer of the Crystal River Unit 3 license (ADAMS Accession No. ML20069A028). In that matter, the applicants provided a NAP and stated that the transferee "will implement this plan upon acceptance by the NRC staff" (ADAMS Accession No. ML20017A216). The applicants later supplemented the application with license conditions, consistent with the information provided in the application, "to confirm acceptance of the Conditions for inclusion in the Facility License upon approval of the [application]" (ADAMS Accession No. ML20065K737).

Siva P. Lingam
U.S. Nuclear Regulatory Commission
Project Manager

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