

September 5, 2001

MEMORANDUM TO: Bob Gramm, Section Chief
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

FROM: Patrick Madden, Section Chief */RA/*
Non-Power Reactors Section
Operational Experience & Non-Power Reactors Branch
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

SUBJECT: SAFETY EVALUATION ON THE PROPOSED DIRECT AND
INDIRECT TRANSFER OF FACILITY OPERATING LICENSES FOR
SOUTH TEXAS PROJECT ELECTRIC GENERATING STATION,
UNIT NOS. 1 & 2

The attached analysis constitutes our financial qualifications, decommissioning funding assurance, nuclear indemnity, and foreign ownership review and input to the SER on the proposed direct and indirect transfer and amendment request dated May 31, 2001, and supplemented on June 14, 2001 and August 13, 2001. The submittal from STP Nuclear Operating Company, acting on behalf of Reliant Energy HL&P, requests that the NRC consent to the direct and indirect transfer of control of Reliant Energy HL&P's 30.80% undivided share of South Texas Project Electric Generating Station, Units 1 & 2, to Texas Genco, Inc. This transfer request is a result of a corporate restructuring taking place in Reliant Energy HL&P.

The basis for the review is 10 CFR 50.80(a), which states, "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 shall give its consent in writing."

Based on the analysis conducted on the information provided in the application, the request should be granted.

Attachment: As stated

Contact: Michael A. Dusaniwskyj, DRIP/REXB
301-415-1260

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DATE	08/ 29 /2001	08/ 27 /2001	08/ 29 /2001	09/ 04 /2001

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SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
DIRECT AND INDIRECT TRANSFER OF FACILITY OPERATING LICENSES FOR
SOUTH TEXAS PROJECT ELECTRIC GENERATING STATION, UNIT NOS. 1 AND 2

DOCKET NOS. 50-498 AND 50-499

1.0 INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), and Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.80), South Texas Project Nuclear Operating Company (STPNOC), acting on behalf of Reliant Energy HL&P (formerly known as Houston Lighting & Power Company (HL&P)), by application dated May 31, 2001, and supplemented on June 14, 2002, and August 13, 2001, (hereafter referred to as the application) requested that the Nuclear Regulatory Commission (NRC) consent to a direct transfer of ownership interest in Facility Operating License Nos. NPF-76 and NPF-80. The application requested the approval of conforming license amendments to reflect the proposed direct and indirect transfers as detailed later in this safety evaluation. The supplemental information did not expand the scope of the application as originally noticed in the *Federal Register*.

2.0 BACKGROUND

Facility Operating License Nos. NPF-76 and NPF-80 are for South Texas Project Electric Generating Station, Units 1 and 2, (STPEGS) respectively. These units are currently owned by:

Houston Lighting & Power Company ¹	30.80%
City Public Service Board of San Antonio	28.00%
Central Power and Light Company	25.20%
City of Austin, Texas	16.00%

STP Nuclear Operating Company is the licensed operator for STPEGS, and is in turn owned by the same entities that own STPEGS.

STPNOC seeks consent to the following transfers:

¹ The NRC is using the names as provided in the May 31, 2001 application, notwithstanding any previous changes that may not have been incorporated in the NRC licenses.

1. An indirect transfer of control of HL&P's 30.80% interest in STPEGS in connection with the formation of a new parent holding company of HL&P, currently referred to as "Regco."

2. A direct transfer of control of HL&P's interest in STPEGS to a Texas partnership, currently known as "Texas Genco LP," which will be indirectly wholly owned by Regco, through intermediary companies, Utility Holding LLC., Texas Genco, Inc., and dually held by GP, LLC, and LP, LLC.

STPEGS is composed of two 1250 megawatt (net) nuclear power plants, each consisting of a Westinghouse four-loop pressurized water reactor and other associated plant equipment, and related site facilities. STPEGS is located in southwest Matagorda County, Texas.

In connection with each of the transfer of its 30.80% undivided ownership interest in STPEGS, HL&P's corresponding 30.80% interest in STPNOC will also be transferred. It is anticipated that STPNOC will at all times remain the licensed operator of the facility.

HL&P is an unincorporated business division of Reliant Energy, Incorporated (Reliant Energy) that conducts Reliant Energy's regulated electric utility operations in Texas. In addition to its transmission and distribution system within its service territory in Texas, HL&P controls approximately 14,000 megawatts of net generation capacity in Texas, including its 30.80% undivided ownership interest in STPEGS. Reliant Energy owns and operates other generating assets in the United States and the Netherlands, and is developing other generating projects in the United States. Through its wholly-owned first-tier subsidiary, Reliant Energy Resources Corporation, Reliant Energy also conducts regulated gas utility operations in Arkansas, Louisiana, Minnesota, Mississippi, Oklahoma, and Texas, and owns interstate pipelines and associated gathering facilities.

The State of Texas has adopted restructuring legislation, which requires that the regulated electric utility operations in Texas be separated into at least three separate business activities: power generation, transmission and distribution, and retail electric. (See Texas Utilities Code Section 39.051.) Thus, pursuant to this legislation, Reliant Energy is required to transfer its generation assets, including its interest in STPEGS, to one or more separate companies by January 1, 2002. Reliant Energy's plans for meeting these requirements are described in its Business Separation Plan, as amended, which was approved by the Public Utility Commission of Texas (TPUC) on December 1, 2000. (See TPUC Order, Docket 21956, issued March 15, 2001.)

In accordance with the Business Separation Plan approved by the TPUC, Reliant Energy has transferred its unregulated domestic and certain foreign businesses to a wholly-owned subsidiary, Reliant Resources, Incorporated (Reliant Resources), which is a Delaware corporation formed on August 9, 2000. On May 4, 2001, Reliant Resources sold approximately 20% of its common stock in an initial public offering (IPO). Reliant Energy retains more than 80% of the shares of Reliant Resources, but plans to distribute all of its shares in Reliant Resources to its shareholders. These transactions do not involve any transfer of control of HL&P's interest in STPEGS. However, Reliant Resources will retain an option (known as the "Texas Genco Option") that is exercisable in 2004, pursuant to which it could acquire a significant ownership interest in Reliant Energy's currently regulated generating assets in Texas, including its interest in STPEGS. The NRC staff notes that no NRC consent is being sought in connection with the Texas Genco Option at this time and the NRC is neither

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evaluating nor approving in this Safety Evaluation any direct or indirect transfer pursuant to the Texas Genco Option.

According to the application, the first step in the restructuring involving an NRC license transfer will occur in the fourth quarter of 2001, when Reliant Energy will create a company, currently referred to as Regco, which will become a parent holding company of Reliant Energy. The existing shareholders of Reliant Energy will become the shareholders of Regco, and these same shareholders will continue to exercise ultimate control over HL&P's ownership interests in STPEGS. Reliant Energy will form an intermediate entity under Delaware law, to be known as "Utility Holdings, LLC," as a wholly owned subsidiary of Regco that will directly or indirectly hold Regco's interests in its utility subsidiaries.

The second step will occur when Reliant Energy forms a partnership, currently known as Texas Genco LP, which will be indirectly wholly-owned by Regco through Utility Holdings, LLC, and its subsidiaries. HL&P will transfer all of its regulated generation assets in Texas, including its 30.80% undivided ownership interests in STPEGS, to Texas Genco LP.

Following the transfer of assets to Texas Genco, Inc., approximately 20% of the stock of Texas Genco, Inc. will be the subject of an IPO that would take place sometime in mid-2002. This transaction would be undertaken in order to establish a value for the generation assets under the Texas restructuring legislation. If the IPO is not conducted, HL&P contemplates that approximately 20% of the common stock of Texas Genco, Inc. would be distributed to Regco's shareholders. Neither transaction would involve any transfer of control of the 30.80% undivided ownership interests in STPEGS, because approximately 80% of the shares of Texas Genco, Inc. would continue to be directly or indirectly owned by Regco, and Texas Genco, Inc. would continue to be directly or indirectly controlled by Regco. Pursuant to the Texas Genco Option, Reliant Resources may exercise a right in January 2004 to acquire the approximately 80% interest in Texas Genco, Inc. that is not part of the contemplated IPO. If Reliant Resources does not exercise its option, Regco would sell or otherwise dispose of its remaining interest in Texas Genco, Inc. at that time. HL&P recognizes that any exercise of the Texas Genco Option or other disposition of this approximately 80% ownership interest in Texas Genco, Inc. would involve a transfer of control of the 30.80% share of STPEGS. The applicant would request NRC consent in connection with such a future transfer at an appropriate time prior to the exercise of the Texas Genco Option.

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

Pursuant to 10 CFR 50.33(f), an electric utility as defined in 10 CFR 50.2 is not required to demonstrate its financial qualifications. Section 50.2 of 10 CFR states that an electric utility is "any 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 application states that "after January 1, 2002, Texas Genco will sell its generation in the wholesale power markets at auction..." The staff finds that Texas Genco will not meet the definition of an electric utility, according to the application.

As both a newly formed entity and a non-electric utility applying to own nuclear power plants, Texas Genco is subject to a more detailed financial qualifications review by the NRC than an

established electric utility. Specifically, Texas Genco must meet the requirements of 10 CFR 50.33(f) by providing information which shows the following:

- (1) As a non-electric utility applicant for ownership interest in operating licenses, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses. It must submit estimates for total annual operating costs for the first five years of facility operations and indicate the source of funds to cover these costs.
- (2) As a newly formed entity organized primarily for the purpose of operating nuclear power plants, it must show: (a) the legal and financial relationships it has or proposes to have with its stockholders or owners; (b) its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur; and (c) any information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

In addition, 10 CFR 50.33(k)(1) requires that Texas Genco must provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facilities. Texas Genco's proposals for decommissioning funding assurances are discussed in Section 4.0 of this evaluation.

HL&P is currently an electric utility within the meaning of 10 CFR 50.2, and exempt from financial qualifications review pursuant to 10 CFR 50.33(f). Immediately upon formation of Regco as the parent holding company of HL&P, HL&P will continue to be the 30.80% licensee and will remain financially qualified to own its interest in STPEGS. Thereafter, the licensed interest in STPEGS will be transferred to Texas Genco, Inc.

Texas Genco, Inc. will also own and operate the approximately 14,000 megawatts of electrical generating capacity currently owned and operated by HL&P, and the operations of the two companies (HL&P and Texas Genco, Inc.) will not be materially different. Thus, the following information confirms that each will possess, or have reasonable assurance of obtaining, the funds necessary to cover its 30.80% share of the estimated operating costs of STPEGS for the period of the licenses in accordance with 10 CFR 50.33(f)(2) and the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1) (Standard Review Plan). HL&P has prepared a Projected Income Statement for Texas Genco, Inc., including specific line items reflecting the operation of its 30.80% interests in STPEGS, for the five-year period from January 1, 2002 until December 31, 2006. Copies of the Projected Income Statement, related schedules, and Projected Opening Balance Sheet are contained in Attachment 11A of the application.

As stated in the application, Texas Genco, Inc. will be a wholly owned indirect subsidiary of Regco. The names, titles and addresses of the directors, principal senior executives and officers of Texas Genco, Inc. are expected to all be citizens of the United States, and will be provided when the management structure of Texas Genco, Inc. is determined.

The staff finds that the Projected Income Statement shows that the anticipated revenues from sales of capacity and energy from STPEGS provide reasonable assurance of an adequate

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source of funds to meet Texas Genco's 30.80% share of STPEGS's ongoing operating expenses. Until January 2002, Texas Genco, or HL&P, will recover its costs through traditional rate making mechanisms under the rates in effect for HL&P. After January 1, 2002, Texas Genco will sell its generation in the wholesale power markets at auction at least until 2004, when Reliant Resources may exercise its option to acquire Regco's ownership interests in Texas Genco. The Projected Income Statement through 2006 shows that anticipated revenues from sales of capacity and energy from all of Texas Genco's approximately 14,000 megawatts of generating capacity averaging an estimated \$ _____, provides assurance that Texas Genco will have an adequate source of funds to its 30.80% share of STPEGS's ongoing operating expenses. Even after Texas Genco begins to sell its generation in the wholesale power markets, the application states that Regco is committed to funding Texas Genco's external capital needs until the IPO of approximately 20% of the common stock of Texas Genco, Inc., in mid-2002. This will provide an additional source of funds during the period leading up to the IPO.

The application provides the following projected income statement reflecting Texas Genco's entire fleet of 14,000 megawatts of capacity. Texas Genco's 30.80% ownership interest in STPEGS is included and is the only nuclear generating capacity included.

Texas Genco, Inc.
 Projected Income Statement
 14,000 Megawatts of Capacity
 (In millions)

<u>Fiscal Year</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Total Revenue:					
Total Expenses:					
Operating Income:					
Other Deductions:					
Income b/f Taxes:					
Taxes:					
Net Income:					

In the following projected income statement, Texas Genco, Inc.'s nuclear capacity is independently stated from the above projected income statement which contains nuclear as well as fossil capacity.

(This area purposely left blank)

Texas Genco, Inc.
Projected Income Statement
30.80% share of STPEGS
(In millions)

<u>Fiscal Year</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Capacity Factor: 30.80% share of 2500MW Price per Megawatt hour	770	770	770	770	770
Total Revenue:					
Total Expenses:					
Operating Income:					
Taxes:					
Net Income:					

The applicant also submitted additional financial information indicating that if the price of a megawatt hour of electricity were to drop by an arbitrary 10%, the average decrease in net income would be approximately \$ per year. The staff notes that the projected capacity factor of for the years 2002 thru 2006, is approximately that the historical six year average capacity factor experienced in the years 1994 thru 1999. The NRC staff concludes that this capacity factor assumption is appropriately conservative.

In view of the NRC's concern that restructuring can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plants, the NRC has sought to obtain commitments from its licensees that initiate restructuring actions not to transfer significant assets from the licensee without notifying the NRC. Thus, the NRC proposes the following commitment or equivalent be made a condition for the units licenses or of the order granting the proposed restructuring:

Regco and its subsidiaries agree to provide the Director, Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Regco subsidiaries to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on Texas Genco's book of accounts.

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Based on the above information, the NRC staff finds that the amount of revenue, the source of funds, and Regco's and its subsidiaries' ability to obtain funds necessary to operate its units as a direct result of the proposed restructuring is sufficient to continue to fund safe operations at STPEGS. Further the NRC staff finds that the application has fulfilled the regulatory requirements of 10 CFR 50.33(f) and that the applicants have thus demonstrated reasonable assurances of financial qualifications for operations for its 30.80% share of STPEGS.

4.0 DECOMMISSIONING FUNDING

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

Section 50.33(k) of 10 CFR requires that an application for an operating license for a utilization facility contain information indicating how reasonable assurance will be provided that funds will be available to decommission the facility.

The application states that the financial qualifications of HL&P and Texas Genco to own a 30.80% undivided ownership interest in STPEGS are further demonstrated by the fact that HL&P and then Texas Genco will provide financial assurance for decommissioning funding in accordance with 10 CFR 50.75. HL&P currently maintains and will continue to maintain decommissioning trust funds that have been established to provide funding for decontamination and decommissioning of HL&P's 30.80% undivided ownership interest in STPEGS. When HL&P's 30.80% undivided ownership interest in STPEGS is transferred to Texas Genco LP, HL&P will also transfer its decommissioning trust funds to Texas Genco LP. Texas Genco LP will later transfer these trust funds to Texas Genco, Inc., along with the ownership interest in STPEGS. These entities will at all times maintain these external sinking funds segregated from their assets and outside their administrative control in accordance with the requirements of 10 CFR 50.75(e)(1)(ii).

HL&P, as an electric utility, or its successor will collect from its electric utility ratepayers costs associated with the decommissioning of its 30.80% undivided interest in STPEGS pursuant to a non-bypassable charge (within the meaning of 10 CFR 50.75(e)(1)(ii)(B)), and transfer all such funds to Texas Genco or to the decommissioning trust for the benefit of Texas Genco. Texas Genco, in turn, will deposit the amounts received from HL&P for this purpose into the decommissioning trust. These decommissioning funding arrangements were specifically approved by the TPUC. (See Texas PUC Order, Docket 21956 (March 15, 2001.)) The NRC staff concludes that these arrangements ensure that Texas Genco will have the total amount of funds estimated to be needed for decommissioning pursuant to 10 CFR 50.75(c), 10 CFR 50.75(f), and 10 CFR 50.82.

In addition, the application states that the Texas Genco Nuclear Decommissioning Master Trust Fund Agreement will be in a form that is acceptable to the NRC and will provide, in addition to other required clauses, that:

1. Investments in the securities or other obligations of Reliant Energy, Reliant Resources, Regco, their affiliates, or their successors or assigns will be prohibited, except for investments in funds tied to market indices or other non-nuclear sector collective, commingled or mutual funds.
2. Investments in any entity owning one or more nuclear power plants shall be prohibited, except for investments in funds tied to market indices or non-nuclear sector collective, commingled or mutual funds.
3. Investments made in the trust shall adhere to the standards for such investments established by the TPUC (e.g., 16 Texas Administration Code § 25.301).
4. Except for taxes and administrative costs, no disbursements or payments from the trust shall be made by the trustee unless the trustee has first provided thirty days prior written notice of such disbursement or payment to the Director, Office of Nuclear Reactor Regulation, and the trustee has not received prior written notice of an objection from the Director, Office of Nuclear Reactor Regulation by later of (1) the date that the thirty days after the giving of such notice, or (2) the date of the disbursement.
5. The Director, Office of Nuclear Reactor Regulation, shall be given thirty days prior written notice of any material modification to the trust agreement.
6. Texas Genco will notify the Director, Office of Nuclear Reactor Regulation, of any action that reduces, eliminates, or changes the manner of the collection of decommissioning funds from that which was described in the May 31, 2001, application.

Texas Genco has stated in the application, that it will take all necessary steps to ensure that the decommissioning trust is maintained in accordance with the above statements of this safety evaluation.

Based on the above information, the NRC staff finds that Texas Genco will provide reasonable assurance of decommissioning funding assurance for STPEGS.

5.0 **ANTITRUST REVIEW**

The Atomic Energy Act does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CAI-99-19, 49 NRC 441, 468 (1999). Therefore, since the transfer application postdates the issuance of the South Texas Project Electric Generating Station, Units 1 and 2 Operating Licenses, no antitrust review is required or authorized.

6.0 **FOREIGN OWNERSHIP, DOMINATION OR CONTROL**

Regco will be a publicly traded company whose securities will be traded on the New York Stock Exchange and widely held. Texas Genco LP and Texas Genco, Inc. will be indirectly owned and controlled by Regco. After the IPO or distribution to Regco's shareholders of its shares,

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Texas Genco, Inc. will be publicly traded on a national stock exchange. Reliant Energy is not currently owned, controlled, or dominated by any alien, foreign corporation, or foreign government. Based upon filings with the Securities and Exchange Commission, Reliant Energy states that it is not aware of any alien, foreign corporation, or foreign government that holds more than 5.0% of the securities of Reliant Energy. Reliant Energy's shareholders will initially own 100% of the stock of Regco, and thereafter, the shares of Regco will be widely held.

Therefore, the staff finds that there is no reason to believe that Regco will be owned, controlled, or dominated by any alien, foreign corporation, or foreign government. The staff further notes that all of the directors and officers of Regco, Texas Genco, Inc., and the company which will be the General Partner controlling Texas Genco LP will be United States citizens. Thus, Regco, Texas Genco LP, and Texas Genco, Inc. will not be under foreign ownership, domination, or control within the meaning of the Atomic Energy Act of 1954, as amended.

7.0 MANAGEMENT OF OPERATIONS AND TECHNICAL QUALIFICATIONS

The staff finds that there will be no physical change to STPEGS and no changes in the day-to-day operations of STPEGS in connection with the transfer of the 30.80% ownership interest from HL&P to Texas Genco LP, to Texas Genco, Inc. The application states that STPNOC will at all times remain the licensed operator of the facility.

8.0 NUCLEAR INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that Texas Genco, Inc. be added to the current indemnity agreement for STPEGS. In accordance with the Price-Anderson Act, Texas Genco, Inc. will also be required to provide primary insurance and participate in the secondary retrospective insurance pool. These requirements can be met by purchasing insurance policies from the nuclear liability insurance pool, American Nuclear Insurers. Texas Genco, Inc. will also be required to maintain property insurance as specified in 10 CFR 50.54(w). The information provided in the application concerning financial qualifications demonstrates that Texas Genco, Inc. will be able to pay its 30.80% share of the \$10 million per unit annual insurance premium in accordance with 10 CFR 140.21(e)-(f).

Consistent with NRC practice, the NRC staff will require Texas Genco, Inc. to provide satisfactory documentary evidence that Texas Genco, Inc. has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended licenses reflecting Texas Genco, Inc. as the licensee. Because the issuance of the amended licenses is directly tied to the proposed transfers, the order approving the transfer of the licenses for STPEGS will be conditioned as follows:

Texas Genco, Inc. shall, prior to the completion of the transfers, provide the Director, Office of Nuclear Reactor Regulation satisfactory documentary evidence that Texas Genco, Inc. has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

9.0 CONCLUSION

In view of the foregoing, the NRC staff finds that Texas Genco, Inc. is qualified to be the holder of the facility operating licenses for TSPEGS, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to all of the conditions addressed in this safety evaluation.

The staff further finds that the establishment of GP, LLC, and LP, LLC, as the immediate intermediate parent companies of Texas Genco, Inc., would not effect the financial qualifications of Texas Genco, and would not effect the qualifications of Texas Genco, Inc. as the holder of the licenses, and that the indirect transfer of the licenses, to the extent effected by the foregoing transactions, is otherwise consistent with applicable provisions of law, regulations and orders issued by the Commission pursuant thereto.

Principal Contributor: M. A. Dusaniwskyj

Date: September 5, 2001