

March 30, 2004

Raymond A. Mosley, Director
Office of the Federal Register
National Archives and Records Administration
Washington, DC 20408

SUBJECT: EMERGENCY PUBLICATION OF *FEDERAL REGISTER* NOTICE

Dear Mr. Mosley:

The Nuclear Regulatory Commission (NRC) is requesting emergency publication of the document entitled "STP NUCLEAR OPERATING COMPANY, ET AL." (Docket Nos. 50-498 and 50-499) which was transmitted on March 31, 2004, to the Office of the Federal Register for publication. We request that this document be published Friday, April 2, 2004. Publication on this date is necessary to ensure that the NRC staff can issue in a timely manner an exigent Technical Specification (TS) change to the South Texas Project (STP) Units 1 and 2 licenses. Exigent approval of the proposed license amendments is needed in accordance with enforcement discretion granted by the NRC staff on March 17, 2004. Approval of the amendment request will enable STP Units 1 and 2 to continue to operate in compliance with their TSs thereby ensuring adequate electric power for the State of Texas and provide the public with the standard comment period in the regulations.

Sincerely,

/RA/

Robert A. Gramm, Chief, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosure: Notice

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Docket Nos. 50-498 and 50-499

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UNITED STATES NUCLEAR REGULATORY COMMISSION

STP NUCLEAR OPERATING COMPANY

DOCKET NOS. 50-498 AND 50-499

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR A HEARING

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF-76 and NPF-80, issued to STP Nuclear Operating Company (STPNOC or the licensee), for operation of the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would change the Technical Specification (TS) Surveillance Requirement (SR) 4.7.7.e.3 to add a footnote that will allow an evaluation for points that do not meet the 1/8 inch Water Gauge criterion of the current TS. The footnote would state that "Measured points at a positive pressure but less than 1/8 inch Water Gauge are acceptable if an evaluation, considering appropriate compensatory action, demonstrates that the condition meets the requirements of GDC [General Design Criterion]-19. The provisions of this note expire at 0800 on September 19, 2005."

During testing, STPNOC identified points on the boundary of the control room envelope that do not meet the 1/8 inch Water Gauge requirement of SR 4.7.7.e.3. On March 17, 2004, STPNOC requested and received from the NRC staff enforcement discretion from taking the TS actions required if SR 4.7.7.e.3 is not met. Based on information submitted as part of the enforcement discretion process, STPNOC committed to submit a proposed change to the TS.

Exigent approval of the proposed license amendments is needed in accordance with the enforcement discretion granted on March 17, 2004. Therefore, STPNOC has requested approval of this license amendment application on an exigent basis and issuance of the amendment as described in the terms of the enforcement discretion.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 50.91(a)(6) of Title 10 of the *Code of Federal Regulations* (10 CFR) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident. The Control Room ventilation system has no significant role as a potential accident initiator. The Control Room ventilation system continues to remain functional and provides positive pressure with respect to adjacent areas. The test results demonstrate that the operator dose limits of General Design Criterion 19 of 10CFR50, Appendix A are met.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different accident from any previously evaluated. No new accident precursors will be created by adding a provision to allow compensatory action to mitigate the margin lost if the control room envelope is degraded. The Control Room ventilation system continues to remain functional and provides positive pressure with respect to adjacent areas and to limit inleakage so that the operator dose limits of General Design Criterion 19 of 10CFR50, Appendix A are met.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not involve a significant reduction in the margin of safety. Three trains of Control Room ventilation remain functional and continue to provide positive pressure with respect to adjacent plant areas. The proposed condition of the plant meets the operator dose limits of General Design Criterion 19 of 10CFR50, Appendix A.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/crf/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief

Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: 1) the name, address and telephone number of the requestor or petitioner; 2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; 3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and 4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact¹. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if

¹To the extent that the applications contain attachments and supporting documents that are not publically available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact applicant's counsel and discuss the need for a protective order.

proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups, and all like subject-matters shall be grouped together.

1. Technical – primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the applicant’s safety analysis for the application (including issues related to emergency planning and physical security to the extent such matters are discussed or referenced in the application).
2. Environmental – primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the application.
3. Miscellaneous – does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a single representative who shall have the authority to act for the requestors/petitioners with respect to that contention within ten (10) days after admission of such contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after

issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: 1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; 2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; 3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HEARINGDOCKET@NRC.GOV; or 4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemaking and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by email to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to A. H. Gutterman, Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW, Washington, DC 20004, attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment dated March 18, 2004, which is available for public inspection at the Commission's PDR, located at

One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1 (800) 397-4209, (301) 415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 30th day of March 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael K. Webb, Project Manager, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

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Dated at Rockville, Maryland, this 30th day of March 2004.

FOR THE NUCLEAR REGULATORY COMMISSION

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Michael K. Webb, Project Manager, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

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*See previous concurrence

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