

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
REGARDING DIRECT LICENSE TRANSFERS RELATING TO TRANSFER OF
OWNERSHIP INTEREST TO TEXAS GENCO, LP AND
CITY PUBLIC SERVICE BOARD OF SAN ANTONIO
FROM AEP TEXAS CENTRAL COMPANY
AND CONFORMING AMENDMENTS AND
REGARDING INDIRECT LICENSE TRANSFERS TO THE EXTENT EFFECTED
RELATING TO SOUTH TEXAS PROJECT NUCLEAR OPERATING COMPANY
SOUTH TEXAS PROJECT, UNITS 1 AND 2
FACILITY OPERATING LICENSES NPF-76 AND NPF-80
DOCKET NOS. 50-498 AND 50-499

1.0 INTRODUCTION

By application dated October 21, 2004, as supplemented by letters dated December 13 and 22, 2004, and February 23 and March 1, 2005, STP Nuclear Operating Company (STPNOC), acting on behalf of Texas Genco, LP (Texas Genco) (an indirect subsidiary of CenterPoint Energy, Inc.), the City of San Antonio, Texas, acting by and through the City Public Service Board, operating as City Public Service of San Antonio (CPS), and AEP Texas Central Company (TCC) (together, the applicants), requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of TCC's 25.2 percent undivided ownership interest in the South Texas Project, Units 1 and 2 (STP) to STP current co-owners Texas Genco and CPS, under three different scenarios. STPNOC is the non-owner licensed operator of STP, while the other applicants are co-owners of STP and have proportionate rights to participate in the corporate governance of STPNOC.

The applicants currently anticipate that the following proportionate shares of TCC's ownership interest in STP will be transferred to Texas Genco and CPS: a 13.2 percent undivided ownership interest to Texas Genco and a 12 percent undivided ownership interest to CPS. However, if the transfer to either Texas Genco or CPS fails to take place, the party whose transfer has not failed to take place will be obligated, subject to terms and conditions of a September 3, 2004, Purchase and Sale Agreement between TCC, CPS, and Texas Genco (Purchase and Sale Agreement), to purchase all of TCC's ownership interest in STP. Therefore, the applicants also requested NRC approval for the transfer of TCC's entire 25.2 percent ownership interest to either CPS or Texas Genco.

A fourth co-owner of STP, the City of Austin, Texas, which has a 16 percent undivided ownership interest in STP, is not involved in this license transfer action, and will remain a 16 percent co-owner under any of the three scenarios proposed.

The applicants have also requested approval of conforming license amendments, under 10 CFR 50.90, to reflect the transfer by TCC of all of its interest in STP.

As noted above, TCC currently has certain rights to participate in the corporate governance of STPNOC, the licensed operator of STP. With the transfer of TCC's ownership interest in STP, TCC will also transfer its rights with respect to STPNOC to the recipient(s) of TCC's ownership interest in STP, in proportionate shares to the recipients. Accordingly, the applicants have also requested NRC consent, to the extent deemed necessary by the NRC, to any indirect transfer of control of the STP licenses as held by STPNOC that may occur by reason of Texas Genco and/or CPS acquiring increased rights in the governance of STPNOC.

The supplements dated December 13 and 22, 2004, and February 23 and March 1, 2005, provided additional information that clarified the application and did not expand the scope of the application as originally noticed in the *Federal Register* on December 20, 2004 (69 FR 76019). In addition, the application cross-references certain financial information contained in an application for approval of indirect license transfers filed by Texas Genco and STPNOC dated October 12, 2004, which is being evaluated separately. This separate indirect license transfer application, which involves a potential indirect transfer of corporate control of Texas Genco from CenterPoint Energy, Inc., to Texas Genco, LLC, was referenced in the direct license transfer application notice.

2.0 BACKGROUND

STP is composed of two 1,268 MWe, net, (3,853 MWt) nuclear power plants, each consisting of a Westinghouse four-loop pressurized water reactor and other associated plant equipment, and related site facilities. STP is located in southwest Matagorda County, approximately 12 miles south-southwest of Bay City and 10 miles north of Matagorda Bay. Four STP owners each currently own an undivided ownership interest in the two units, in the following percentages:

Texas Genco	30.8%
CPS	28.0%
TCC	25.2%
City of Austin, Texas	<u>16.0%</u>
Total:	100.0%

These same owners pay corresponding shares of the costs of operating STP and have certain rights with respect to the governance of STPNOC. STPNOC is governed by a Board of Directors comprising a representative of each of the current owners plus STPNOC's Chief Executive Officer. Voting is by majority of a quorum, with the voting being per capita, not weighted by percentage of ownership. However, "significant decisions" are required to be made by at least two STP owners having at least a combined 60 percent interest in STP.

Following the currently anticipated transfers, three STP owners will emerge owning undivided ownership interests in STP in the following percentages:

Texas Genco	44.0%
CPS	40.0%
City of Austin, Texas	<u>16.0%</u>
Total:	100.0%

In the event that the entire TCC ownership interest is transferred to Texas Genco, three STP owners will each own an undivided ownership interest in STP, in the following percentages:

Texas Genco	56.0%
CPS	28.0%
City of Austin, Texas	<u>16.0%</u>
Total:	100.0%

In the event that the entire TCC ownership interest is transferred to CPS, three STP owners will each own an undivided ownership interest in STP, in the following percentages:

Texas Genco	30.8%
CPS	53.2%
City of Austin, Texas	<u>16.0%</u>
Total:	100.0%

The applicants stated that the proposed transfer of TCC's ownership interest will not result in any change in the role of STPNOC as the licensed operator of STP and will not result in any changes to its technical qualifications. In addition, the applicants assert that Texas Genco and CPS will remain financially qualified to own their respective interests. Also, the applicants stated among other things that this license transfer approval request does not involve any entities that are owned, controlled, or dominated by foreign entities.

2.1 Purpose of Transfer

The applicants stated that, as provided for under Texas electric restructuring legislation (Texas Senate Bill 7), TCC offered for sale, through auction, its electric facilities. TCC received an offer from Cameco Corporation to purchase its ownership interest in STP. On April 21, 2004, STPNOC filed an NRC license transfer application on behalf of TCC and Cameco South Texas Project LP (Cameco STP), a subsidiary of Cameco Corporation, in anticipation of the sale of TCC's ownership interest in STP to Cameco STP. The offer from Cameco Corporation and TCC's acceptance of that offer triggered certain rights of first refusal, contained in the STP Participation Agreement and held by the other STP owners, to purchase the ownership interest being offered for sale. STP owners Texas Genco and CPS exercised their respective rights of first refusal to acquire TCC's ownership interest in STP. Therefore, on June 10, 2004, STPNOC requested that NRC suspend its review of the April 21, 2004, license transfer application, based on the exercise by Texas Genco and CPS of their rights of first refusal to acquire TCC's ownership interest in STP.

Texas Genco and CPS entered into a Purchase and Sale Agreement with TCC. Pursuant to the provisions of the STP Participation Agreement and the terms of the Purchase and Sale

Agreement, Texas Genco will acquire a proportionate part of TCC's ownership interest equating to a 13.2 percent undivided ownership interest in STP, and CPS will acquire a proportionate part of TCC's ownership interest equating to a 12.0 percent undivided ownership interest in STP.

Pursuant to the Purchase and Sale Agreement, "in the event that there is a termination as to the Texas Genco Purchased Interest [in STP from TCC], CPS shall purchase all of the STP Interest and the CPS Purchased Interest (and its Proportionate Share) shall equal 100% of the [TCC] STP Interest." Also, "in the event that there is a termination as to the CPS Purchased Interest [in STP from TCC], Texas Genco shall purchase all of the STP Interest and the Texas Genco Purchased Interest (and its Proportionate Share) shall equal 100% of the [TCC] STP Interest." Thus the Purchase and Sale Agreement prescribes terms under which, if the transfer of the proportionate part of TCC's interest in STP to Texas Genco does not take place, CPS will acquire the entire interest being sold by TCC, or if the transfer of the proportionate part of TCC's interest in STP to CPS does not take place, Texas Genco will acquire the entire interest being sold by TCC.

3.0 REGULATORY FRAMEWORK

The applicants requested the NRC's consent pursuant to the provisions of 10 CFR 50.80, "Transfer of licenses," and requested the approval of conforming license amendments under 10 CFR 50.90, "Application for amendment of license or construction permit." In drafting this safety evaluation under 10 CFR 50.80, the NRC staff referenced several relevant regulatory provisions including parts of 10 CFR 50.33, "Contents of applications; general information," 10 CFR 50.34, "Contents of applications; technical information," and parts of 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning."

The NRC staff has identified the applicable regulatory requirements. The NRC staff concurs with the applicants that the proposed ownership transfers represent sufficient change constituting a transfer of the STP licenses to the extent held by the participating owners.

4.0 EVALUATIONS

4.1 Financial Qualifications

The license transfers proposed in the application involve (1) Texas Genco acquiring an additional 13.2 percent ownership interest in STP, or an additional 25.2 percent ownership interest; and (2) CPS acquiring an additional 12.0 percent interest, or an additional 25.2 percent interest. Therefore, Texas Genco and CPS must be found to be financially qualified to hold each of these additional interests before the license transfers can be approved.

To the extent that a transfer of ownership interest to either Texas Genco or CPS as described in the application would result in an indirect transfer of the licenses as held by STPNOC, the staff concludes that no financial qualifications analysis of STPNOC is necessary in light of the fact that the owners, and not STPNOC, are financially responsible for the operation and maintenance expenses associated with STP.

Under 10 CFR 50.33(f), electric utilities are exempt from financial qualifications reviews. The regulation at 10 CFR 50.2 defines an electric utility as "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.” CPS recovers its cost of service, including costs associated with the operation of STP, through rates set by itself. Therefore, CPS is an electric utility, and thus is presumed to be financially qualified to hold the additional ownership interests proposed in the application. Accordingly, no further financial qualifications analysis is necessary for CPS.

On the other hand, the staff finds that Texas Genco does not qualify as an “electric utility” as defined in 10 CFR 50.2 because the majority of its electricity prices will not be set by a separate regulatory authority or by itself. Thus, the staff has determined that Texas Genco must undergo a further financial qualifications analysis. As a non-electric utility applicant, Texas Genco must demonstrate that it possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated operation costs for the period of the license. To accomplish this, Texas Genco must submit estimates for total annual operating costs for each of the first 5 years of facility operation (following the date of the proposed license transfers) and indicate the source(s) of funds to cover these costs. See 10 CFR 50.33(f).

Also, 10 CFR 50.33(k)(1) requires that Texas Genco and CPS provide information described in 10 CFR 50.75 demonstrating that they will be providing reasonable assurance that funds will be available to decommission the facilities. Texas Genco’s and CPS’s proposals for decommissioning funding assurances are discussed in Section 4.2 of this Evaluation.

The applicants provided financial information on a free cash flow basis, in addition to providing projected income statements, because the applicants believed that free cash flow would be a more accurate measure of the liquidity of Texas Genco in light of lower projected capital expenditures relative to historical depreciation and amortization expenses. Since the projected income statements in this case presented a more conservative outlook than the free cash flow basis, and the staff historically has based its financial qualifications analyses on applicants’ projected income statements, the staff determined that an analysis of the income statements submitted would be the more appropriate option for its review. As is evident from the NRC staff’s findings below, the staff found it unnecessary to perform a free cash flow analysis.

The following are summaries of Projected Income Statements submitted as part of the application that cover both alternative transfer scenarios involving Texas Genco:

TEXAS GENCO
PROJECTED INCOME STATEMENT
AT 44.0% OWNERSHIP
(In \$millions)

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenue:	[]	[]	[]	[]	[]
Expenses/Other Income:	[]	[]	[]	[]	[]
Net Income:	[]	[]	[]	[]	[]

(Note: The above information was contained in the indirect license transfer application cited earlier; this information was incorporated by reference by the direct application under review here.)

The NRC staff's review indicates that the supporting data supplied in the application as the basis for this summary projected income statement appear to be reasonable. The staff finds that Texas Genco's Projected Income Statement at a 44.0 percent ownership level, following the acquisition of a 13.2 percent interest from TCC, shows that Texas Genco's anticipated revenues from sales of energy and capacity from STP provide reasonable assurance of an adequate source of funds to meet Texas Genco's anticipated expenses for its share of capacity and energy from STP during the five year period covered by the projections. The NRC staff finds, therefore, that Texas Genco will have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and that Texas Genco thus will be financially qualified to hold the STP licenses to the extent proposed.

TEXAS GENCO
PROJECTED INCOME STATEMENT
AT 56.0% OWNERSHIP
(In \$millions)

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Revenue:	[]	[]	[]	[]	[]
Expenses/Other Income:	[]	[]	[]	[]	[]
Net Income:	[]	[]	[]	[]	[]

The NRC staff's review indicates that the supporting data supplied in the application as the basis for this summary projected income statement appear to be reasonable. The staff finds that Texas Genco's Projected Income Statement at a 56.0 percent ownership level following the acquisition of a 25.2 percent interest from TCC shows that Texas Genco's anticipated revenues from sales of energy and capacity from STP provide reasonable assurance of an adequate source of funds to meet Texas Genco's anticipated expenses for its share of capacity and energy from STP during the five year period covered by the projections. The NRC staff finds, therefore, that Texas Genco will have reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and that Texas Genco thus will be financially qualified to hold the STP licenses to the extent proposed.

4.2 Decommissioning Funding Assurance

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation in 10 CFR 50.33(k) requires that an applicant for an operating license for a utilization facility contain information to demonstrate how reasonable assurance will be provided that funds will be available to decommission the facility.

4.2.1 Texas Genco

TCC currently provides decommissioning funding assurance for its share of STP by maintaining external nuclear decommissioning trust funds in accordance with 10 CFR 50.75(e)(1)(ii). The status of TCC's decommissioning funding as of December 31, 2002, was reported to the NRC on March 31, 2003. These funds are sinking funds, with contributions made periodically based on collections from an established regulatory charge mechanism described further below.

The application states that Texas Genco will receive a proportionate share of TCC's decommissioning trust funds that corresponds with the ownership interest in STP actually being acquired from TCC. (Thus, if Texas Genco acquires the entire TCC interest in STP, Texas Genco will receive all of the decommissioning funds accumulated by TCC at that time.) With respect to these funds, Texas Genco will maintain them in a new external sinking fund segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1)(ii). A draft decommissioning trust agreement regarding the new trust was submitted in the March 1, 2005, supplement to the initial application.

Periodic contributions to Texas Genco's nuclear decommissioning trust funds for the newly acquired STP ownership interest will continue to be based on collections from a non-bypassable charge mechanism consistent with NRC requirements in 10 CFR 50.75(e)(1)(ii)(B).

Specifically, Section 39.205 of the Texas Utilities Code provides that, after January 1, 2002, costs associated with nuclear decommissioning obligations shall continue to be subject to cost-of-service rate regulation and will be included as a non-bypassable charge to retail customers. Pursuant to that statutory provision and in accordance with an October 5, 2001, order issued by the Public Utility Commission of Texas (PUCT) in Docket No. 22352, TCC's share of STP decommissioning charges is collected from Texas ratepayers through a non-bypassable charge that is included in TCC's base rates collected from ratepayers within the retail service area historically served by TCC's electric distribution facilities. On February 19, 2003, the PUCT issued an order in Docket No. 26844, clarifying that TCC's collection of decommissioning charges in its base rates is for the benefit of the new owner of the redistributed TCC's ownership interest in STP and its successor, which is obligated to contribute the decommissioning charges collected by TCC into the owner's decommissioning trust. On November 3, 2003, TCC initiated a rate proceeding to remove the decommissioning charge from its base rates and establish a separate rider for those charges (Rider NDC).

Accordingly, after closing, TCC will provide for deposit into Texas Genco's nuclear decommissioning trust funds the decommissioning charges collected through a non-bypassable charge mechanism from Texas retail ratepayers within the service territory historically serviced by TCC's electric distribution facilities. These decommissioning charges collected by TCC will be remitted weekly to Texas Genco's nuclear decommissioning trusts pursuant to a Decommissioning Funds Collection Agreement between TCC and Texas Genco to be entered into at closing. This Agreement is subject to PUCT approval pursuant to PUCT Substantive Rule § 25.303, adopted by the PUCT on September 30, 2004. Pursuant to the Texas Utilities Code and PUCT Substantive Rule § 25.303, among other things, decommissioning costs relating to STP will continue to be subject to cost-of-service rate regulation by the PUCT.

In addition, the regulated electric distribution company owned by CenterPoint Energy or its successor will continue to collect from its electric utility ratepayers costs associated with the

decommissioning of Texas Genco's existing 30.8 percent ownership interest in STP, 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 decommissioning trusts for the benefit of Texas Genco. Texas Genco will deposit the amounts received into its decommissioning trust(s). These decommissioning funding arrangements were specifically approved by the PUCT (Docket No. 21956, March 15, 2001).

The staff finds that the arrangements discussed above adequately demonstrate that Texas Genco will be able to provide reasonable assurance that it will be able to pay its pro rata share of decommissioning costs for STP following the acquisition of TCC's ownership interest in either proposed amount, i.e., 13.2 percent or 25.2 percent. This finding is based in part on the condition that TCC will transfer all or a part of its accumulated decommissioning funds to Texas Genco in proportion to the ownership interest that will be transferred to Texas Genco. Thus, the following should be made a condition of the order approving the direct license transfers to Texas Genco:

On the closing date of the transfer of any part of TCC's interest in STP to Texas Genco, TCC shall transfer to Texas Genco TCC's decommissioning funds accumulated as of such date, as follows: (1) if TCC transfers a 13.2 percent interest in STP to Texas Genco, TCC shall transfer 52.38 percent (13.2/25.2) of its accumulated decommissioning funds to Texas Genco; (2) if TCC transfers its entire 25.2 percent interest in STP to Texas Genco, TCC shall transfer all of its accumulated decommissioning funds to Texas Genco. In either case, Texas Genco shall ensure the deposit of such funds received from TCC into an external decommissioning trust consistent with the application.

The NRC staff notes that Texas Genco is already subject to certain license transfer conditions imposed in connection with the Order Approving Transfer of Licenses and Conforming Amendments dated December 20, 2001. Such conditions, which are now part of the STP licenses, were not proposed to be amended by the applicants here, and are not being amended at this time. The conditions provide, in part, that the trust agreement must be in a form acceptable to the NRC. The staff concludes that these conditions are applicable to the new decommissioning trust that will be established to receive the funds associated with the TCC ownership interest. Accordingly, the specific provisions of 10 CFR 50.75(h)(1) will not apply to the new decommissioning trust, unless at a later time, Texas Genco seeks to amend the current license conditions in accordance with the provisions of 10 CFR 50.75(h)(5).

4.2.2 CPS

According to the application, CPS will receive a proportionate share of TCC's decommissioning trust funds that corresponds with the ownership interest in STP being acquired by CPS and will continue to maintain its existing decommissioning trust funds for its current 28.0 percent ownership interest in STP. CPS will continue to maintain these external sinking funds segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1)(ii). As explained below, since decommissioning funds for the new ownership interest in STP that CPS may acquire will be collected from ratepayers within the retail service area historically served by TCC's electric distribution facilities, CPS intends to keep these decommissioning funds in their own trust accounts segregated from funds that CPS collects from ratepayers within its own service territory. Section 39.305 of the

Texas Utilities Code provides that, after January 1, 2002, costs associated with nuclear decommissioning obligations shall continue to be subject to cost-of-service rate regulation and will be included as a non-bypassable charge to retail customers. Pursuant to that statutory provision, CPS's existing share of STP decommissioning expenses is collected from its ratepayers within its retail service area through a non-bypassable charge.

TCC currently provides decommissioning funding assurance for its ownership share of STP by maintaining external sinking funds in accordance with 10 CFR 50.75(e)(1)(ii). Contributions are made periodically based on collections from an established regulatory charge mechanism described further below.

As reported to the NRC in March 2003, TCC maintains its decommissioning funds in two separate trust funds per STP unit - one qualified nuclear decommissioning reserve fund (within the meaning of Section 468A of the Internal Revenue Code and the regulations thereunder) and one non-qualified trust fund. Thus, all these decommissioning monies are maintained in four separate trust funds. Upon close of the sale of all or a portion of TCC's ownership interest to CPS, a proportionate share of the funds accumulated in the TCC nuclear decommissioning trust funds as of the date of the closing that corresponds with the ownership interest in STP being acquired will be transferred to external nuclear decommissioning trust funds established by CPS for purpose of receiving TCC's qualified and non-qualified decommissioning trust funds. Because CPS is a municipality, not subject to federal taxes, once the funds are under CPS's trustees' control, the former TCC funds will be rolled into CPS grantor trust funds - one per unit - for decommissioning with respect to the newly acquired ownership interest in STP that will be owned by CPS. CPS has filed a private letter ruling request with the Internal Revenue Service (IRS) to ensure that the proposed transfer will not result in tax consequences adverse to the corpus of the trust or to CPS. At this time, the NRC staff does not know the status of the IRS private letter ruling. However, the staff does not believe that the ruling will affect CPS's decommissioning funding obligations under NRC regulations.

On February 19, 2003, the PUCT issued an order on Docket No. 26844, clarifying that TCC's collection of decommissioning charges in its base rates is for the benefit of the new owner of TCC's ownership interest in STP and its successor, which is obligated to contribute the decommissioning charges collected by TCC into the owner's decommissioning trust(s). On November 3, 2003, TCC initiated a rate proceeding to remove the decommissioning charge from its base rates and establish a separate rider for those charges (Rider NDC). In any event, TCC's retail customers will remain the revenue source for the costs of decommissioning associated with TCC's ownership interest in STP after it is transferred. CPS will maintain new grantor trusts separate from the grantor trusts currently used to collect decommissioning funds for CPS's current 28.0 percent ownership interest in STP. These trust funds will be consistent with NRC requirements at 10 CFR 50.75(e)(1)(ii) for the external sinking fund assurance method. Periodic contributions to CPS's nuclear decommissioning trust funds for the newly acquired STP ownership interest will continue to be based on collections from the non-bypassable charge mechanism from TCC's customers consistent with NRC requirements in 10 CFR 50.75(e)(1)(ii)(B), and as described above.

After the closing, TCC will provide for deposit into CPS's nuclear decommissioning trust funds the decommissioning charges collected by TCC and its successors from ratepayers through non-bypassable charges. These decommissioning charges collected by TCC will be remitted weekly to CPS's nuclear decommissioning trusts pursuant to a Decommissioning Funds

Collection Agreement between TCC and CPS to be entered into at the closing. This Agreement is subject to PUCT approval pursuant to PUCT Substantive Rule § 25.303 adopted on September 30, 2004. Pursuant to the Texas Utilities Code and PUCT Substantive Rule § 25.303, among other things, decommissioning costs relating to STP that are collected from TCC customers will continue to be subject to cost-of-service rate regulation by the PUCT after the transfer of TCC's STP ownership interest.

In addition, CPS will continue to collect from its electric utility ratepayers decommissioning costs associated with its existing 28.0 percent ownership interest in STP pursuant to a non-bypassable charge within the meaning of 10 CFR 50.75(e)(1)(ii)(B), and will deposit the amounts received into CPS's existing decommissioning trust funds.

The staff finds that the arrangements discussed above adequately demonstrate that CPS will be able to provide reasonable assurance that it will be able to pay its pro rata share of decommissioning costs for STP following the acquisition of TCC's ownership interest in either proposed amount, i.e., 12.0 percent or 25.2 percent. This finding is based in part on the condition that TCC will transfer all or a part of its accumulated decommissioning funds to CPS in proportion to the ownership interest that will be transferred to CPS. Thus, the following should be made a condition of the order approving the direct license transfers to CPS:

On the closing date of the transfer of any part of TCC's interest in STP to CPS, TCC shall transfer to CPS TCC's decommissioning funds accumulated as of such date, as follows: (1) if TCC transfers a 12.0 percent interest in STP to CPS, TCC shall transfer 47.62 percent (12.0/25.2) of its accumulated decommissioning funds to CPS; (2) if TCC transfers its entire 25.2 percent interest in STP to CPS, TCC shall transfer all of its accumulated decommissioning funds to CPS. In either case, CPS shall ensure the deposit of such funds received from TCC into an external decommissioning trust consistent with the license transfer application.

4.3 Antitrust Review

The Act does not require or authorize antitrust reviews of post-operating licence transfer applications. *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). Therefore, since the application postdates the issuance of the STP operating licenses, no antitrust review is required or authorized.

4.4 Foreign Ownership, Control, or Domination

Section 103d of the Act prohibits the NRC from issuing a license for a nuclear power plant to "any 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 regulations at 10 CFR 50.38 implement this prohibition.

Texas Genco is a subsidiary in a corporate organization that consists of U.S. entities. The ultimate parent company is a widely held stock corporation. Relevant officers and directors that directly or indirectly control Texas Genco are U.S. citizens. CPS's board of trustees and senior management team are all U.S. citizens. Based on the information provided in the application,

the NRC staff does not know or have reason to believe that either Texas Genco or CPS is owned, controlled, or dominated by a foreign interest.

The staff notes that to the extent that any of the proposed transfers of ownership interests discussed herein would result in an indirect transfer of control of the licenses as held by STPNOC, the staff does know or have reason to believe that STPNOC would not be owned, controlled, or dominated by foreign interests, based on the staff's conclusion above regarding Texas Genco and CPS.

4.5 Nuclear Insurance and Indemnity

Texas Genco and CPS as current STP licensees are already subject to requirements under the Price-Anderson Act (Section 170 of the Act) and 10 CFR Part 140 to provide primary insurance and participate in the secondary retrospective insurance pool. Texas Genco and CPS are presently identified in the Price-Anderson indemnity agreement, as is TCC. Once TCC transfers its interest in STP, the indemnity agreement will be amended to remove TCC. Texas Genco and CPS are also already subject to the requirements under 10 CFR 50.54(w) to maintain property insurance.

Based on the staff's financial qualifications analysis, there appears to be adequate assurance that Texas Genco and CPS will be able to pay their pro rata share of retrospective insurance premiums for STP.

4.6 Technical Qualifications

According to the application, the proposed transfer of TCC's ownership interest will not result in any change to STPNOC's role as the licensed operator of STP, and will not result in any changes to its technical qualifications. There will be no change in STPNOC's senior management team. Thus, the staff has concluded that it need not make any findings with respect to technical qualifications other than that there will no effect on STPNOC's technical qualifications since there is no proposed change in operating authority or change in the current operator's qualifications to operate STP.

5.0 CONFORMING AMENDMENTS

5.1 Introduction

STPNOC has requested approval of proposed conforming amendments to the operating licenses for STP to remove references to TCC as a licensee. No physical or operating changes to the facilities are requested. Supplemental information that was received that was not specifically referenced in the *Federal Register* notice of the application did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

5.2 Discussion

The changes to be made to the operating licenses do no more than accurately reflect the proposed direct license transfer actions. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

5.3 State Consultation

In accordance with the Commission's regulations, the Texas State official was notified of the proposed issuance of the amendments. The State official had no comments.

5.4 Conclusion With Respect to the Conforming Amendments

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

6.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(21). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

7.0 CONCLUSION

In view of the foregoing, the NRC staff concludes, with respect to the transfer of TCC's ownership interest in STP to Texas Genco and/or CPS as discussed above under the three potential scenarios, that both Texas Genco and CPS are qualified to hold the STP licenses to the extent proposed, and that the transfer of the STP licenses, to the extent now held by TCC, to Texas Genco and/or CPS, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the conditions discussed herein.

As mentioned previously, Texas Genco has also applied for NRC approval in connection with a proposed transfer of corporate control of the licensee, from CenterPoint Energy, Inc., to Texas Genco LLC. In a separate safety evaluation, the NRC has concluded that such transfer of control will not affect the qualifications of Texas Genco to hold the STP licenses, to the extent now held, or to the extent that would be held if Texas Genco were to acquire the additional ownership interests in STP from TCC. Therefore, the approval of the proposed direct license transfers today would not be affected and would be valid if the ultimate corporate control of Texas Genco were to be transferred to Texas Genco LLC.

The staff also concludes that to the extent that the transfer of TCC's ownership interest under any of the scenarios presented would effect an indirect transfer of control of the licenses as held by STPNOC, such transfer of TCC's interest will not affect the qualifications of STPNOC as a holder of the licenses, and that the indirect transfer of control of the licenses, to the extent effected by the transfer of TCC's interest, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

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