

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

RELATED TO INDIRECT LICENSE TRANSFERS RESULTING FROM

INDIRECT TRANSFER OF OWNERSHIP OF TEXAS GENCO, LP

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 12, 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), CenterPoint Energy, Inc. (CenterPoint Energy), and GC Power Acquisition LLC (renamed Texas Genco LLC) (together, the Applicants), requested that the U.S. Nuclear Regulatory Commission (NRC), pursuant to 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), consent to the indirect license transfers that would be effected by the indirect transfer of control of Texas Genco's ownership interest in the South Texas Project, Units 1 and 2 (STP). This action is being sought as a result of the transfer of Texas Genco's indirect parent company, Texas Genco Holdings, Inc. (TGN), from Centerpoint Energy to Texas Genco LLC. No changes to the STP licenses are proposed in the application. The supplements dated December 13 and 22, 2004, and February 23 and March 1, 2005, provided additional information that clarified the application.

In connection with the indirect transfer of control of Texas Genco's ownership interest in STP, indirect control over Texas Genco's related interest in STPNOC, a not-for-profit Texas corporation that is the licensed operator of STP, will also be transferred. To the extent that the indirect transfer of control of Texas Genco's interest in STPNOC would constitute an indirect transfer of control of the licenses as held by STPNOC, consent under 10 CFR 50.80 is also being sought.

2.0 BACKGROUND

Texas Genco is an indirect subsidiary of TGN and TGN is an indirect subsidiary of CenterPoint Energy. Through a subsidiary, CenterPoint Energy owns approximately 81 percent of the stock of TGN. The remaining shares are traded publicly on the New York Stock Exchange. Currently, Texas Genco owns a 30.8 percent undivided ownership interest in STP. The other owners of STP are the City Public Service Board of San Antonio (CPS) (28.0 percent), AEP Texas Central Company (TCC) (25.2 percent), and the City of Austin, Texas (16.0 percent). Texas Genco's 30.8 percent ownership interest in STP may increase to 44 percent or

56 percent, as the result of Texas Genco exercising its right of first refusal (ROFR) under the Amended and Restated South Texas Project Participation Agreement. Pursuant to this agreement, Texas Genco has entered into a Purchase and Sale Agreement dated September 3, 2004, to acquire an additional 13.2 percent undivided ownership interest in STP from TCC. The CPS is planning to acquire the remaining 12 percent interest from TCC. If the CPS acquisition does not occur, then Texas Genco will acquire that 12 percent interest, in addition to the 13.2 percent interest. The acquisition by Texas Genco and resultant increase in its ownership interest in STP and related increase in its ownership interest in STPNOC is the subject of a separate application under 10 CFR 50.80 before the NRC for approval of the license transfers involved.

Texas Genco LLC is owned in equal parts by investment funds affiliated with The Blackstone Group, Hellman & Friedman LLC, Kohlberg Kravis Roberts & Company, L.P. and Texas Pacific Group.

The transaction through which CenterPoint Energy will sell Texas Genco LLC its ownership interest in TGN involves four steps, pursuant to which Texas Genco LLC will acquire all of the generating assets of Texas Genco:

First, the fossil generation assets of Texas Genco will be transferred to a new subsidiary of TGN. (STPNOC, on behalf of Texas Genco, has filed with the NRC a separate Notice of Intent to Transfer Generation Assets, pursuant to Conditions 2.C.8 and 2.C.10 of the STP operating licenses, under which a submission is to be made to the NRC when more than 10 percent of the generation assets of Texas Genco are transferred to an affiliate.)

Second, CenterPoint Energy will buy the publicly held TGN stock. This step merely returns TGN to its status before May 2001 when its predecessor sold the stock in an initial public offering pursuant to the Business Separation Plan approved by the Public Utility Commission of Texas (PUCT) as part of electricity industry restructuring in Texas.

Third, a subsidiary of Texas Genco LLC will acquire the fossil generation assets. Throughout each of the first three steps in the transaction, the corporate ownership of Texas Genco will remain unchanged and Texas Genco will retain its ownership interest in STP and continue to hold its interest in the STP licenses.

Fourth, contingent upon NRC approval of the indirect transfer of control of the STP licenses to the extent held by Texas Genco, TGN will be merged with a subsidiary of Texas Genco LLC and Texas Genco will become an indirect wholly owned subsidiary of Texas Genco LLC.

According to the application, the proposed indirect transfer of control of the STP licenses as held by Texas Genco will not result in any changes to (1) the physical assets of STP, (2) the authority of STPNOC to operate STP, (3) the operating procedures of STP, (4) the management of STPNOC, or (5) the technical qualifications of STPNOC.

2.1 Purpose of Transfer

The application states that the sale of CenterPoint Energy's ownership interest in Texas Genco is consistent with CenterPoint Energy's undertakings pursuant to the Business Separation Plan approved in December 2000 by the PUCT pursuant to the Texas Electric Restructuring Law.

3.0 REGULATORY FRAMEWORK

The licensee requests the NRC's consent pursuant to the general provisions of 10 CFR 50.80, "Transfer of Licensees." In part, 10 CFR 50.80 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."

To conduct an analysis under 10 CFR 50.80, several regulations, including 10 CFR 50.33, "Contents of applications; general information," 10 CFR 50.34, "Contents of applications; technical information," and 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," are also relevant.

The NRC staff has identified the applicable regulatory requirements. The NRC staff concurs with the Applicants that the proposed transaction described in the application constitutes an indirect transfer of the STP licenses to the extent held by Texas Genco, requiring prior NRC approval.

4.0 EVALUATIONS

4.1 Financial Qualifications

In analyzing indirect license transfers, the staff must assess whether the underlying transaction that will result in the indirect license transfers will affect the financial qualifications of the holder of the licenses.

The applicable financial qualifications requirements are found in 10 CFR 50.33(f). Certain entities are exempt from financial qualifications reviews under section 50.33(f), namely electric utilities. 10 CFR 50.2 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 NRC staff finds that Texas Genco does not qualify as an "electric utility" as defined in 10 CFR 50.2 because it does not recover its costs of generating electricity through cost of service rate regulation. Thus, the staff has determined that Texas Genco must be analyzed under the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). Accordingly, to show that the indirect transfer of control of Texas Genco will not affect the financial qualifications of Texas Genco, i.e., that Texas Genco will remain qualified to hold the licenses, Texas Genco must provide information that shows it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses. The applicant must submit estimates for the first 5 years of facility operation (following the close of the transaction) and indicate the source(s) of funds to cover these costs.

Also, 10 CFR 50.33(k)(1) requires that Texas Genco provide information described in 10 CFR 50.75 indicating reasonable assurance that funds will be available to decommission the facilities. The effects of the indirect transfer of control of Texas Genco on Texas Genco's decommissioning funding assurances are discussed in Section 4.2 of this Evaluation.

As mentioned earlier, Texas Genco has a 30.8 percent ownership interest in STP, but may also acquire either an additional 13.2 percent interest (for a total of 44 percent) or an additional 25.2 percent interest (for a total of 56 percent) in STP from AEP Texas Central Company under a separate transaction. Thus, the staff is analyzing Texas Genco's financial qualifications under each of the above three scenarios should the indirect transfer of control of Texas Genco occur during any of these scenarios.

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 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:

TEXAS GENCO
PROJECTED INCOME STATEMENT
AT 30.8% 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:	[]	[]	[]	[]	[]

Staff 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 30.8 percent ownership level shows that Texas Genco's anticipated revenues from sales of energy and capacity from the STP units will exceed STP's anticipated expenses during the 5 year period covered by the projections. Accordingly, the NRC staff finds that Texas Genco has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and thus will continue to be financially qualified to hold the licenses, notwithstanding the indirect transfer of control of Texas Genco and the STP licenses as held by 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:	[]	[]	[]	[]	[]

Staff 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 shows that Texas Genco's anticipated revenues from sales of energy and capacity from the STP units will exceed STP's anticipated expenses during the 5 year period covered by the projections. Accordingly, the NRC staff finds that Texas Genco has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and thus will continue to be financially qualified to hold the licenses, notwithstanding the indirect transfer of control of Texas Genco and the STP licenses as held by Texas Genco if Texas Genco were to hold a 44.0 percent interest in STP.

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:	[]	[]	[]	[]	[]

Staff 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 shows that Texas Genco's anticipated revenues from sales of energy and capacity from the STP units will exceed STP's anticipated expenses during the 5 year period covered by the projections. Accordingly, the NRC staff finds that Texas Genco has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license, and thus will continue to be financially qualified to hold the licenses, notwithstanding the indirect transfer of control of Texas Genco and the STP licenses as held by Texas Genco if Texas Genco were to hold a 56.0 percent interest in STP.

The staff has also taken into consideration the support agreement referenced in the application under which Texas Genco LLC will provide to Texas Genco up to \$120 million to pay for operation and maintenance expenses incurred by Texas Genco with respect to its obligations

for STP. The \$120 million figure represents Texas Genco's pro rata share of average annual operating and maintenance expenses, according to the application. The staff notes that this is the approximate average annual amount for the 44 percent ownership scenario. The staff finds that the support agreement between Texas Genco and Texas Genco LLC will provide additional assurance that Texas Genco will remain financially qualified following the indirect transfer of control of Texas Genco proposed in the application. As a general matter, the staff believes that a traditional utility organization with widely-held securities typically may have a greater ability and/or inclination to ensure the long-term financial health of a subsidiary generation facility than a closely held or limited group of equity investors, whose interests in comparison may more often be shorter-term. Accordingly, the support agreement in this case and the additional assurance provided are particularly important because the ultimate entities proposed to own Texas Genco will be a limited group of investment funds rather than a traditional utility organization. Therefore, for the reasons cited above, the staff believes that the commitment regarding a support agreement for providing up to \$120 million from Texas Genco LLC to Texas Genco to satisfy any need for additional funding with respect to Texas Genco's pro rata share of STP operating and maintenance expenses should be made a condition of the order approving the proposed indirect license transfers, as follows:

Texas Genco shall take no action to cause Texas Genco LLC, or its successors and assigns, to void, cancel, or modify its \$120 million contingency commitment to Texas Genco, as represented in the application, or cause it to fail to perform or impair its performance under the commitment, or remove or interfere with Texas Genco's ability to draw upon the commitment, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after completion of the indirect license transfers. Also, Texas Genco shall inform the NRC in writing any time that it draws upon the \$120 million commitment.

In summary, the NRC staff has determined that Texas Genco would meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f) at either the 30.8 percent, 44.0 percent, or 56.0 percent levels of ownership of STP, and that the anticipated change in parent company corporate structure resulting in the indirect transfer of control of the licenses to the extent held by Texas Genco will not affect the financial qualifications of Texas Genco under either of the three scenarios.

To the extent that the indirect transfer of control of Texas Genco were to occur with Texas Genco holding either a 30.8 percent, 44 percent, or 56 percent interest in STP and such indirect transfer were to also constitute an indirect transfer of control of STPNOC (and thus the STP licenses to the extent held by STPNOC), the staff concludes that the indirect transfer of control of Texas Genco would not affect the financial qualifications of STPNOC. This conclusion is based on: (1) the staff's finding above that there will be no effect on Texas Genco's financial qualifications notwithstanding the various ownership scenarios prior to the indirect transfer of control of Texas Genco; and (2) Texas Genco ultimately being responsible for its pro rata share of operation expenses, whether such expenses are subject to a pass-through agreement between the owners of STP and STPNOC or paid directly by the owners.

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 application states that Texas Genco will continue to provide financial assurance for decommissioning funding in accordance with 10 CFR 50.75. Texas Genco currently receives non-bypassable charges and maintains external sinking funds in order to meet NRC regulations. Following the indirect transfer of control, decommissioning trust funds that have been collected to provide funding for decontamination and decommissioning of its undivided ownership interest in STP will continue to be maintained by Texas Genco, segregated from its assets and outside its administrative control.

CenterPoint Energy has agreed to cause CenterPoint Houston Electric, LLC (CenterPoint Houston), its wholly-owned regulated electric transmission and distribution company, or its successor, to continue to collect from its electric utility ratepayers the costs associated with the decommissioning of Texas Genco's 30.8 percent interest in STP. Specifically, CenterPoint Houston will maintain in its rates for the delivery of electricity a non-bypassable charge for STP decommissioning funding (within the meaning of 10 CFR 50.75(e)(1)(ii)(B)), with such changes to the decommissioning funding charge as may be ordered from time to time by the PUCT. All such funds collected by CenterPoint Houston will be transferred to the decommissioning trust maintained by and for the benefit of Texas Genco. These funding arrangements were specifically approved by the PUCT, Texas Commission Order, Docket No. 21956 on March 15, 2001. CenterPoint Energy has further agreed to cause CenterPoint Houston to cooperate with Texas Genco in supporting any necessary future changes to the decommissioning funding charge, including providing information and filing conforming tariffs to implement a change in the decommissioning funding charge as may be ordered by the PUCT.

With respect to the additional interest in STP that may be acquired by Texas Genco from AEP Texas Central Company, the indirect transfer of control of Texas Genco, should it occur following the acquisition of the additional interest, would have no effect on Texas Genco's decommissioning funding arrangements. On October 6, 2004, the PUCT issued a final order adopting new Substantive Rule section 25.303. The new rule codifies the continuing responsibility of the electric transmission and distribution companies whose predecessors owned nuclear power plants prior to the restructuring of the Texas electricity industry, to collect funds necessary for the decommissioning of those facilities for the benefit of the transferee company. The rule provides that the annual decommissioning costs must be stated as a separate non-bypassable charge in the individual transmission and distribution company's rates, and provides for the periodic adjustment of the non-bypassable charge based on the most current estimate of the costs of decommissioning the nuclear plant. According to the application, CenterPoint Houston and AEP Texas Central's obligation to continue to collect the cost of decommissioning is codified in the PUCT regulations.

The staff notes that Texas Genco is currently subject to certain license transfer conditions, relating to Texas Genco's decommissioning trusts, 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. Accordingly, Texas Genco's current decommissioning trusts will continue to be subject to the license conditions following the indirect transfer of control of Texas Genco. The staff further concludes that the conditions are also applicable to any new decommissioning trusts that may be established to receive decommissioning funds associated with Texas Genco's acquisition of an additional interest in STP from the AEP Texas Central Company. Thus, Texas Genco's decommissioning trusts, with respect to the requirements of the license conditions, will not be affected by the indirect transfer of control of Texas Genco.

In summary, the staff finds that the indirect transfer of control of Texas Genco, whether it occurs before or after Texas Genco's acquisition of an additional interest in STP from AEP Texas Central, will not affect the decommissioning funding arrangements of Texas Genco.

4.3 Antitrust Review

The Atomic Energy Act of 1954, as amended (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 LLC is a Delaware limited liability company formed to acquire Texas Genco. Texas Genco LLC is owned in equal parts by four entities or groups: Blackstone Funds, Hellman & Friedman Funds, KKR Funds, and TPG Funds, which are limited partnerships controlled solely by their general partners. The Blackstone Funds general partner is owned and controlled by the "Founding Members and Senior Managing Directors" of The Blackstone Group. The general partner of Hellman & Friedman Funds is owned and controlled by the "Managing Directors" of Hellman & Friedman LLC. The general partners for KKR Funds are owned and controlled by the members of Kohlberg Kravis Roberts & Co. L.P. The general partners for the TPG Funds are ultimately controlled by the principals of the Texas Pacific Group. According to the application, each of the foregoing general partners is domiciled in the U.S., and each is ultimately controlled by U.S. citizens. In addition, all of the executive officers and managers of Texas Genco will be U.S. citizens.

Each of the limited partnerships that owns Texas Genco LLC has foreign investors that are dispersed. None of the foreign investors represents more than 4 percent of the total investment in Texas Genco LLC. The aggregate foreign interest in each limited partnership that owns Texas Genco LLC ranges from less than or equal to 12.9 percent to less than or equal to 26 percent, and the aggregate foreign investment in Texas Genco LLC is less than or equal to 21.2 percent.

The application states that Texas Genco will not, after the proposed indirect transfer of control of Texas Genco, be owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe otherwise.

To the extent that the proposed indirect transfer of control of Texas Genco were to occur under any of the various ownership scenarios discussed herein and result in an indirect transfer of control of STPNOC and thus the licenses as held by STPNOC, the staff concludes that based on the findings above concerning Texas Genco, the staff does not know or have reason to believe that STPNOC would be owned, controlled, or dominated by a foreign interest following the indirect transfer of control of Texas Genco.

4.5 Nuclear Insurance and Indemnity

According to the application, the proposed indirect transfer of control of Texas Genco to Texas Genco LLC will not affect the existing Price-Anderson indemnity agreement for STP under which Texas Genco is covered as a licensee, and will not affect the insurance and indemnity coverage as required under Section 170 of the Act, 10 CFR Part 140, and 10 CFR 50.54(w).

The financial qualification information submitted in the application (see the projected income statements in section 4.1 above) shows that Texas Genco will be able to pay its pro rata share of the obligations for retrospective premiums for STP, following the indirect transfer of control of Texas Genco.

In consideration of the foregoing, the staff concludes that the indirect transfer of control of Texas Genco will not affect Texas Genco's insurance coverage or Texas Genco's ability to meet its insurance obligations.

4.6 Technical Qualifications

Texas Genco does not hold the authority to operate STP under the licenses. Therefore, there is no issue concerning the impact of the indirect transfer of control of Texas Genco on its technical qualifications. With respect to STPNOC, the licensed operator, the proposed indirect transfer of control of Texas Genco will not affect the technical qualifications of STPNOC, according to the application. Also, there will be no physical changes to STP or changes in operations, and no changes to STPNOC senior management. There is no indication in the application that these representations would be affected should Texas Genco acquire all of the ownership interest now held by AEP Texas Central Company, which would result in Texas Genco holding a 56 percent interest in STPNOC, or should Texas Genco acquire the planned 13.2 percent interest in STP from AEP Texas Central Company, prior to the indirect transfer of control of Texas Genco.

Based on the above, the staff finds that the indirect transfer of control of Texas Genco does not raise any technical qualifications issues.

5.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed indirect transfer of control of Texas Genco's parent company will not affect the qualifications of Texas Genco as holder of the STP licenses, whether Texas Genco holds a 30.8 percent, 44 percent, or 56 percent interest in STP, and that the indirect transfer of control of the licenses as held by Texas Genco under each of the three scenarios discussed, to the extent effected by the transfer of control of Texas Genco, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC pursuant thereto, subject to the condition discussed herein. The NRC staff also concludes that, to the extent Texas Genco holds a 30.8 percent interest in STPNOC, or a 44 percent or 56 percent interest in STPNOC by reason of Texas Genco's acquisition of a part or all of AEP Texas Central Company's 25.2 percent interest in STP and STPNOC, and control of Texas Genco is then indirectly transferred to Texas Genco LLC, any resulting indirect transfer of control of STPNOC will not affect STPNOC's qualifications to hold the STP licenses to the extent

now held by STPNOC, and that to the extent an indirect transfer of control of the licenses as held by STPNOC is effected, such indirect transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributors: M. Dusaniwskyj
S. Hom

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