



South Texas Project Electric Generating Station P.O. Box 289 Wadsworth, Texas 77483

June 28, 2005  
NOC-AE-05001902  
10 CFR 50.80

U.S. Nuclear Regulatory Commission  
Attention: James E. Dyer  
Director, Office of Nuclear Reactor Regulation  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

South Texas Project  
Units 1 and 2  
Docket Nos. STN 50-498 and STN 50-499  
Application for Order Approving Indirect Transfer of Control of Licenses

Reference: Letter, D. H. Jaffe to J. J. Sheppard, "Order Approving Application Regarding Proposed Acquisition (TAC Nos. MC4732 and MC4733)," dated April 4, 2005

Texas Genco, LP (Texas Genco) is a 44% owner and non-operating licensee of South Texas Project, Units 1 and 2 (STP). The owners of Texas Genco are planning a reorganization and an initial public offering of a minority interest in Texas Genco Inc., an indirect parent of the licensee to be created in the reorganization. STP Nuclear Operating Company (STPNOC), acting on behalf of Texas Genco, requests NRC consent pursuant to 10 CFR 50.80, to the extent required, for an indirect license transfer associated with the reorganization.

The enclosure to this submittal describes in detail the proposed reorganization and initial public offering. Texas Genco Inc. will become an indirect parent of licensee Texas Genco. A minority interest in the equity and voting power of Texas Genco Inc. will be offered to the public. However, prior to the offering and after giving effect to the offering, licensee Texas Genco will be controlled and majority-owned by the same combination of certain investment funds and members of the management team, as was approved by the NRC in the referenced letter.

The proposal does not affect STP or the management and operation of STP. STPNOC will continue to operate the plant on behalf of the owners. The proposal does not affect the financial qualifications of Texas Genco or the decommissioning funding assurance for the Texas Genco ownership interest in STP. Also, the proposal will not result in any foreign ownership or control of Texas Genco or STP. The bases for these conclusions are set forth in the enclosure.

There are no commitments in this letter.

A 001

STI: 31897467

STPNOC requests NRC approval of the application by September 1, 2005 in order to support plans to implement the reorganization and initial public offering.

If there are any questions regarding this request, please contact John Conly at (361) 972-7336 or me at (361) 972-8757. Service of any comments, hearing requests, intervention petitions, or other filings should be made to Nicholas S. Reynolds at Winston & Strawn LLP, 1700 K Street, NW, Washington, DC 20006-3817, ([nreynolds@winston.com](mailto:nreynolds@winston.com)) (tel: 202-282-5717) for Texas Genco; and to John E. Matthews at Morgan, Lewis and Bockius LLP, 1111 Pennsylvania Ave., NW, Washington, DC 20004, ([jmatthews@morganlewis.com](mailto:jmatthews@morganlewis.com)) (tel: 202-739-5524) for STPNOC.



J. J. Sheppard  
President & Chief Executive Officer

jtc

Enclosure: Application

cc:  
(paper copy)

Regional Administrator, Region IV  
U.S. Nuclear Regulatory Commission  
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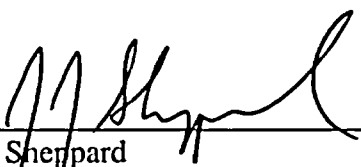
Nicholas S. Reynolds  
Winston & Strawn LLP

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**

In the Matter of	)	
	)	
STP Nuclear Operating Company	)	Docket Nos. 50-498
	)	50-499
South Texas Project Units 1 and 2	)	

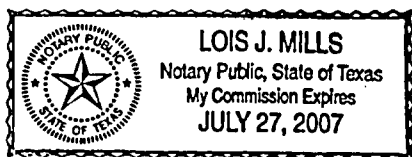
**AFFIRMATION**

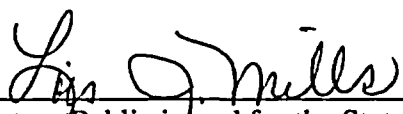
I, J. J. Sheppard, being duly sworn, hereby depose and state that I am President and CEO of STP Nuclear Operating Company; that I am duly authorized to sign and file with the Nuclear Regulatory Commission the attached application for order approving indirect transfer of control of licenses; that I am familiar with the content thereof; and that the matters set forth therein with regard to STP Nuclear Operating Company are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
J. J. Sheppard  
President & CEO

STATE OF TEXAS                    )  
  )  
COUNTY OF MATAGORDA        )

Subscribed and sworn to me, a Notary Public in and for the State of Texas, this 28<sup>th</sup> day of June, 2005.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

**UNITED STATES OF AMERICA**  
**NUCLEAR REGULATORY COMMISSION**

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**AFFIRMATION**

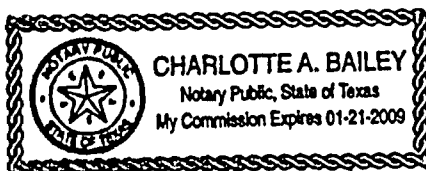
I, Thad Miller, being duly sworn, hereby depose and state that I am Executive Vice President and Chief Legal Officer of Texas Genco, LP; that I am familiar with the content of the attached application for order approving indirect transfer of control of licenses; and that the matters set forth therein with regard to Texas Genco, LP and its affiliates are true and correct to the best of my knowledge and belief.

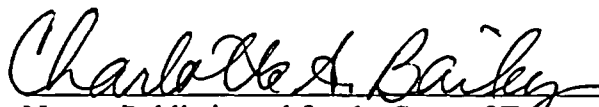


\_\_\_\_\_  
Thad Miller  
Executive Vice President and  
Chief Legal Officer

STATE OF TEXAS                     )  
  )  
COUNTY OF HARRIS             )

Subscribed and sworn to me, a Notary Public in and for the State of Texas, this 27<sup>th</sup> day of June, 2005.



  
\_\_\_\_\_  
Notary Public in and for the State of Texas

## APPLICATION

### I. INTRODUCTION/OVERVIEW

#### A. *Background*

Texas Genco, LP ("Texas Genco" or the "Licensee") is a 44% owner and non-operating licensee of South Texas Project, Units 1 and 2 ("STP").<sup>1</sup> The owners of the Licensee are planning a Reorganization (as defined below) and initial public offering of a minority interest in Texas Genco Inc., which will become an indirect parent of the Licensee as part of the Reorganization.

On April 4, 2005, the Nuclear Regulatory Commission ("NRC") issued an order approving the indirect transfer of control of Texas Genco's ownership in STP.<sup>2</sup> The approval was sought in connection with the transfer of Texas Genco's indirect parent company, Texas Genco Holdings, Inc., from Centerpoint Energy, Inc. to Texas Genco LLC. Texas Genco LLC is owned by investment funds affiliated with The Blackstone Group, Hellman & Friedman LLC, Kohlberg Kravis Roberts & Co. L.P., and Texas Pacific Group (the "Investment Funds") and certain members of the management team ("Management").

Texas Genco LLC owns one hundred percent (100%) of the capital stock of Texas Genco Holdings, Inc., which in turn, wholly owns one hundred percent (100%) of Texas Genco, a non-operating Licensee and co-owner of STP. An ownership chart detailing the current ownership structure of Texas Genco LLC's interest in STP, as previously approved by the NRC, is attached hereto as Exhibit A.

#### B. *Reorganization*

In anticipation of the proposed initial public offering, Texas Genco Inc. was incorporated in Delaware on May 20, 2005, as a wholly-owned subsidiary of Texas Genco Sponsor LLC, a limited liability company to be interposed between (i) the Investment Funds and Management and (ii) Texas Genco LLC, through the contribution by the Investment Funds and Management to Texas Genco Sponsor LLC of their respective membership interests in Texas Genco LLC, which contribution would proceed even if the subsequent Reorganization and initial public offering were not ultimately effected. Prior to the Reorganization, Texas Genco Inc. will

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<sup>1</sup> Texas Genco, LP and the City Public Service of San Antonio have recently completed their purchases of 13.2% and 12% interests in STP, respectively, from AEP Texas Central Company. These transactions were addressed in a license transfer application dated October 21, 2004, as supplemented ("Reference 1"), and approved by the NRC by order dated April 4, 2005. *See* 70 Fed. Reg. 20403 (2005).

<sup>2</sup> This indirect transfer of control was addressed in a transfer application dated October 12, 2004, as supplemented ("Reference 2"), and approved by the NRC order dated April 4, 2005. *See* 70 Fed. Reg. 20402 (2005).

be owned by the Investment Funds and Management through Texas Genco Sponsor LLC, and will not have engaged in any business or other activities except in connection with its formation and will not have any direct or indirect interest in Licensee or STP.

Immediately prior to the initial public offering, Texas Genco Sponsor LLC and Texas Genco Inc. will form a new limited liability company, Texas Genco Holdings LLC. Texas Genco Sponsor LLC will contribute its equity interests in Texas Genco LLC to Texas Genco Holdings LLC and Texas Genco Inc. will agree to contribute the net proceeds of the initial public offering to Texas Genco Holdings LLC. In exchange, Texas Genco Sponsor LLC and Texas Genco Inc. will each receive common membership units of Texas Genco Holdings LLC. While the exact percentages of common membership units to be distributed has not been determined, Texas Genco Sponsor LLC will receive greater than fifty percent (50%), and could receive seventy-five percent (75%), of such common membership units, depending on the size of the initial public offering.

The certificate of incorporation of Texas Genco Inc. authorizes two classes of common stock, Class A common stock and Class B common stock. The Class B common stock will provide the holder with no economic rights, but will entitle the holder to voting rights that vary (without regard to the number of shares of Class B common stock held) based on the number of common membership units of Texas Genco Holdings LLC held by such holder. The certificate of incorporation of Texas Genco Inc. also entitles the holders of common membership units in Texas Genco Holdings LLC (other than Texas Genco Inc.) to exchange these units for shares of Class A common stock on a one-for-one basis. Texas Genco Inc. will sell shares of Class A common stock in the initial public offering and, pursuant to its prior agreement, contribute the proceeds therefrom to Texas Genco Holdings LLC. (Non-voting preferred stock or debt securities, or a limited number of Texas Genco Holdings LLC common membership units, may also be issued.)

As a result of the transactions described above, collectively referred to as the "Reorganization," immediately following the initial public offering:

- Texas Genco Inc. will become the sole managing member of Texas Genco Holdings LLC, and Texas Genco Holdings LLC will become the sole owner of Texas Genco LLC and the indirect owner of Licensee Texas Genco, which shall at all times continue to hold an NRC non-operating license in STP.
- Stockholders who purchase shares in the initial public offering will have a minority, and as little as twenty-five percent (25%) or less, of the voting power in Texas Genco Inc. Immediately after the initial public offering, the Investment Funds and Management, directly and indirectly, would control Texas Genco Inc. through their ownership of a majority, and as much as seventy-five percent (75%) or more, of the voting power in Texas Genco Inc.

As the sole managing member of Texas Genco Holdings LLC, Texas Genco Inc. will operate and control all of the business and affairs of Texas Genco Holdings LLC and, through Texas Genco Holdings LLC and its subsidiaries, continue to conduct the business now conducted by these subsidiaries. Texas Genco Inc. will consolidate the financial results of Texas Genco Holdings LLC and its subsidiaries.

An ownership chart detailing the ownership structure after giving effect to the Reorganization is attached hereto as Exhibit B.

In a Safety Evaluation addressing a transfer of the operating licenses for STP issued on December 20, 2001,<sup>3</sup> the NRC concluded that an initial public offering involving twenty percent (20%) of the stock of Texas Genco Holdings, Inc. would not involve any transfer of control of the undivided ownership interest in STP because approximately eighty percent (80%) of the shares of Texas Genco Holdings, Inc. would continue to be directly or indirectly owned and controlled by CenterPoint Energy, Inc. Although the present Reorganization will involve creation of new intermediate parents of the Licensee, it is expected that Texas Genco Inc., the indirect parent of Licensee Texas Genco, will offer a minority of twenty-five percent (25%) or less, of the equity and voting power of the company to the public. Prior to the initial offering, Texas Genco is one hundred percent (100%) owned and controlled indirectly by a combination of the Investment Funds and Management. Similarly, immediately after the offering, the Investment Funds and Management will continue to have a majority ownership in and control of the Licensee.

At all times before, during, and following the restructuring, Licensee Texas Genco shall be a non-operating NRC licensee of STP and will be wholly owned by Texas Genco Holdings, Inc., which in turn will be wholly owned by Texas Genco LLC. Finally, Texas Genco LLC will at all times prior to, during, and immediately following the restructuring be controlled by the Investment Funds and Management.

Additionally, Texas Genco Holdings LLC, Texas Genco Inc., Texas Genco Sponsor LLC, and the Investment Funds will enter into a stockholders' agreement prior to the closing of the offering of the Class A common stock. The stockholders' agreement will contain specific rights, obligations, and agreements of Texas Genco Sponsor LLC and the Investment Funds as holders of interests of Texas Genco Holdings LLC and holders of Class A common stock and Class B common stock of Texas Genco Inc. In particular, the stockholders' agreement provides that each of the four sponsors has the right to appoint up to two nominees to the Board of Directors of Texas Genco Inc. as long as the Investment Fund maintains certain levels of ownership, and each of the Investment Funds agrees to vote their shares of common stock in Texas Genco Inc. in favor of the election of the director nominees so designated by the four Investment Funds. This will effectively prevent any one Investment Fund from gaining direct control over the Board of Directors.

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<sup>3</sup> Letter, D. J. Wrona to W. T. Cottle, "Order Approving the Direct Transfer of Licenses from Reliant Energy Incorporated to Texas Genco LP, Approving Conforming Amendments, and Approving Indirect Transfers (TAC Nos. MB2140 and MB2141)," December 20, 2001, Safety Evaluation, p. 3.



## II. NRC REGULATORY ISSUES

### A. *Management and Technical Qualifications*

Following the Reorganization, Texas Genco would remain an NRC licensee holding a non-operating ownership interest in STP. The plant will continue to be operated by STP Nuclear Operating Company ("STPNOC"). There will be no change in the STPNOC management team resulting from the Reorganization, no changes in control of STPNOC, and no physical changes to the plant or changes in plant operations.

Detailed information on the business, organization, and management of Texas Genco and the other affiliated entities (including Texas Genco Holdings, Inc. and Texas Genco LLC) was provided in Reference 1 and Reference 2, as supplemented. The information contained therein is not materially changed as a result of the proposed Reorganization. As shown in the attached organization charts (Exhibits A and B), all transactions are at a corporate level above Texas Genco LLC.

Detailed information on the Investment Funds was provided in connection with the license transfers discussed in Reference 2. The information therein is also not materially changed as a result of the proposed transactions, other than as described above.

### B. *Financial Qualifications*

As discussed in Reference 2, Texas Genco possesses or has reasonable assurance of obtaining the funds necessary to cover its pro rata share of the estimated operating and maintenance expenses of STP. Reference 2 provided detailed financial qualification information including a balance sheet and projected income and cash flow statements for a five year period (including the additional 13.2% interest in STP acquired in the right of first refusal acquisition of the AEP Texas Central Company share addressed in Reference 1). The financial statements show that the anticipated cash flow from the sale of power output of STP by Texas Genco will provide reasonable assurance of an adequate source of funds to meet Texas Genco's pro rata share of STP's ongoing operating and maintenance expenses. In addition, Texas Genco committed to a Support Agreement with its parent, Texas Genco LLC, pursuant to which Texas Genco LLC committed to provide up to \$120 million to satisfy the need for additional funding with respect to Texas Genco's pro rata share of STP operating and maintenance expenses.

The proposed Reorganization would not affect the financial qualifications of Texas Genco. First, there will be no material effect on the financial information presented in Reference 2. The introduction of the intermediary parent companies will not affect the current arrangements for the sale of Texas Genco's share of the energy from STP. Second, the proposed Reorganization does not impact the Support Agreement in place with Texas Genco LLC. Nor does it impact the ability of Texas Genco LLC to meet that obligation. In total, Texas Genco will continue to be able to meet its financial obligations under the STP Operating Agreement through its operating earnings, available cash, and the existing Support Agreement.

*C. Decommissioning Funding Assurance*

The decommissioning funding assurance for the undivided ownership interest in STP held by Texas Genco is also addressed in References 1 and 2. The decommissioning funding assurance would not be affected by the proposed transactions. Texas Genco currently maintains and will continue to maintain external decommissioning trust funds in accordance with the requirements of 10 CFR § 50.75(e)(1)(ii). The transactions would not affect: (1) the current funds; (2) the collections from electric utility ratepayers associated with the decommissioning of Texas Genco's 30.8% interest acquired from CenterPoint Energy (addressed in more detail in Reference 2); or (3) the non-bypassable STP decommissioning funding charge maintained with respect to Texas Genco's interest in STP acquired from AEP Texas Central Company (described in more detail in Reference 1). In accordance with 10 CFR 50.75, there will remain reasonable assurance that Texas Genco has or will obtain the funds necessary to cover its share of the estimated decommissioning costs of STP at the time permanent termination of licensed operation is expected.

*D. Foreign Ownership, Control, or Domination*

The proposed transactions would not result in Texas Genco being owned, controlled, or dominated by any alien, foreign corporation, or foreign government. Most fundamentally, as discussed above, the proposed transactions (including the initial public offering) will not involve any change in ultimate control over Texas Genco or STP.

Moreover, the information presented in Reference 2, as supplemented, regarding foreign ownership and control will not change in any material respect. As part of the initial public offering of Texas Genco Inc.'s Class A common stock, it is expected that such shares will be publicly traded securities on the New York Stock Exchange or the NASDAQ National Market and will be widely held. The Class B common stock will be owned by the owners of the common membership units in Texas Genco Holdings LLC other than Texas Genco Inc. Foreign investment in the Investment Funds is *de minimis* and does not represent more than five percent (5%) of the total investment in the Investment Funds. Notwithstanding this limited foreign investment, each Investment Fund's general partner will exercise one hundred percent (100%) control over the governance of the Investment Funds. None of the general partners of the Investment Funds is, or is controlled by, a foreign person or entity.

Texas Genco, Texas Genco Holdings, Inc., Texas Genco LLC, Texas Genco Sponsor LLC, and Texas Genco Inc. will continue to be domiciled in the United States, and will continue to be managed and controlled by a majority of executive officers or managers who are United States citizens. Additionally, Texas Genco Holdings LLC, which will be created to implement the initial public offering, will be domiciled in the United States. The charter documents for each of the new intermediate companies will require that the directors or management committee members, as appropriate, be United States citizens.

Additionally, the stockholders' agreement discussed above will contain specific rights, obligations, and agreements of Texas Genco Sponsor LLC and the Investment Funds as holders of interests of Texas Genco Holdings LLC and holders of Class A common stock and Class B common stock of Texas Genco Inc. In particular, the stockholders' agreement provides that each of the four sponsors has the right to appoint up to two nominees to the Board of Directors of Texas Genco Inc. as long as the Investment Fund maintains certain levels of ownership and each of the Investment Funds agrees to vote their shares of common stock in Texas Genco Inc. in favor of the election of the director nominees designated by the four Investment Funds. This protection will further serve to mitigate any potential for foreign control over the Board of Directors of Texas Genco Inc. by effectively restricting the ability of any Investment Fund or other stockholder to unanimously appoint members to the Texas Genco Inc. Board of Directors in violation of the NRC regulations on foreign control of nuclear power plant management and operations.

*E. Restricted Data and Classified National Security Information*

The proposed Reorganization and indirect license transfer, if necessary, would not involve any change in access to Restricted Data or Classified National Security Information. Existing restrictions on access will continue to apply.

*F. Environmental Considerations*

A consent to an indirect license transfer would be exempt from environmental review because it falls within the categorical exclusion contained in 10 CFR § 51.22(c)(21), for which neither an Environmental Assessment nor an Environmental Impact Statement is required. Moreover, a transfer would not involve any amendment to the facility operating licenses or other changes that would directly affect the operation of STP. A transfer would not involve an increase in the amounts, or a change in the types, of any radiological effluents that may be allowed to be released off-site, and would involve no increase in the amounts, or change in the types, of non-radiological effluents that may be released off-site. Further, the Reorganization involves no increase in the individual or cumulative operational radiation exposure and the proposed transfer has no environmental impact.

*G. Nuclear Insurance*

The Reorganization and indirect license transfer would have no effect on the existing Price-Anderson indemnity and nuclear insurance for STP.

### III. CONCLUSIONS

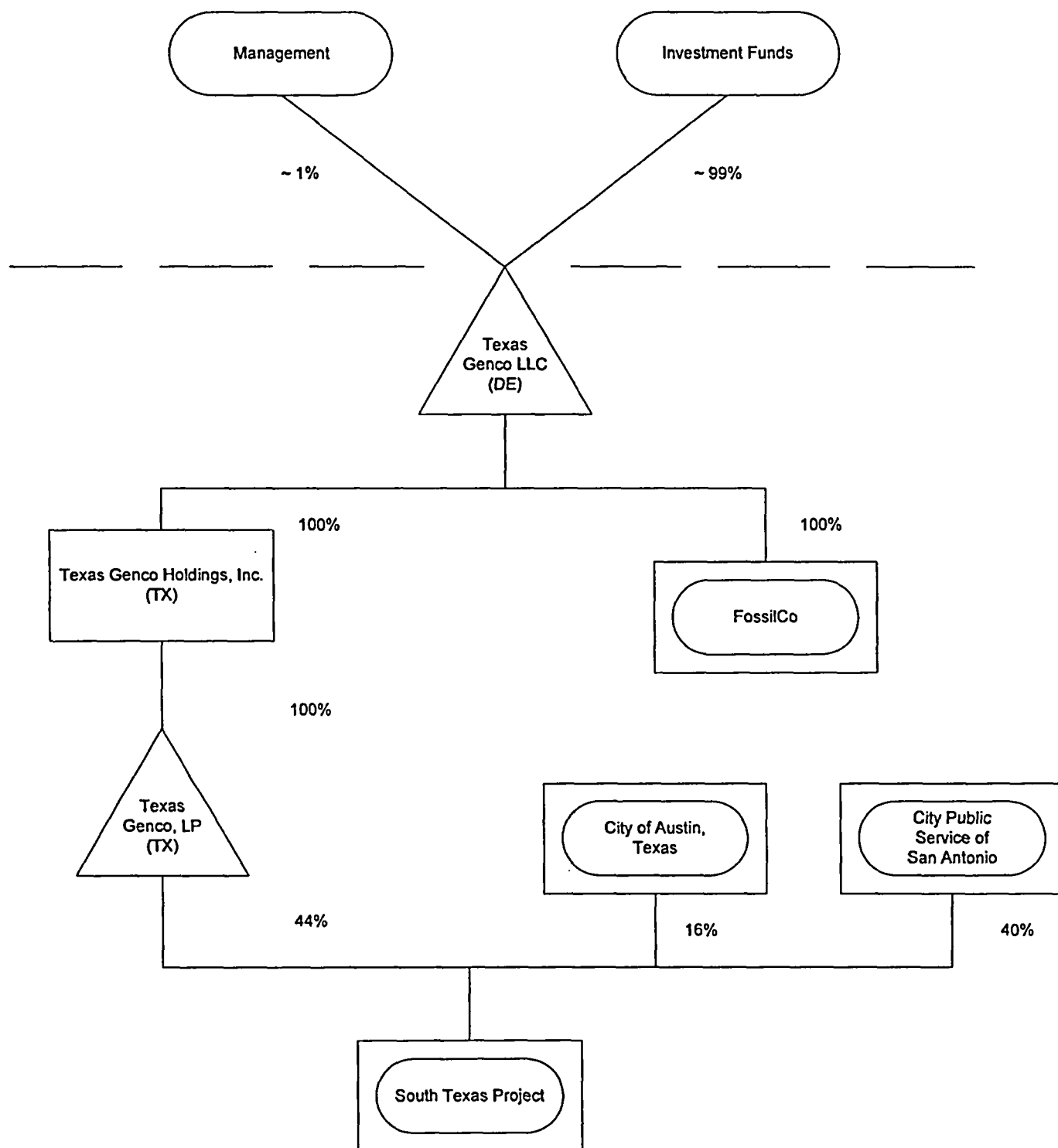
For the reasons discussed above, the proposed Reorganization and initial public offering would not involve any change in ultimate control over the Licensee, Texas Genco, or STP. To the extent the NRC considers the Reorganization and public offering to involve an indirect transfer of control, STPNOC requests prior NRC approval in accordance with 10 CFR 50.80.

Time is of the essence with respect to the Reorganization and initial public offering in that the financial markets are variable and presently favorable. Texas Genco seeks any necessary NRC approval by September 1, 2005 to support completing the Reorganization and public offering. Regulatory action prior to the public offering is also required from the Securities and Exchange Commission.

# TEXAS GENCO/SOUTH TEXAS PROJECT

## Current Ownership Structure

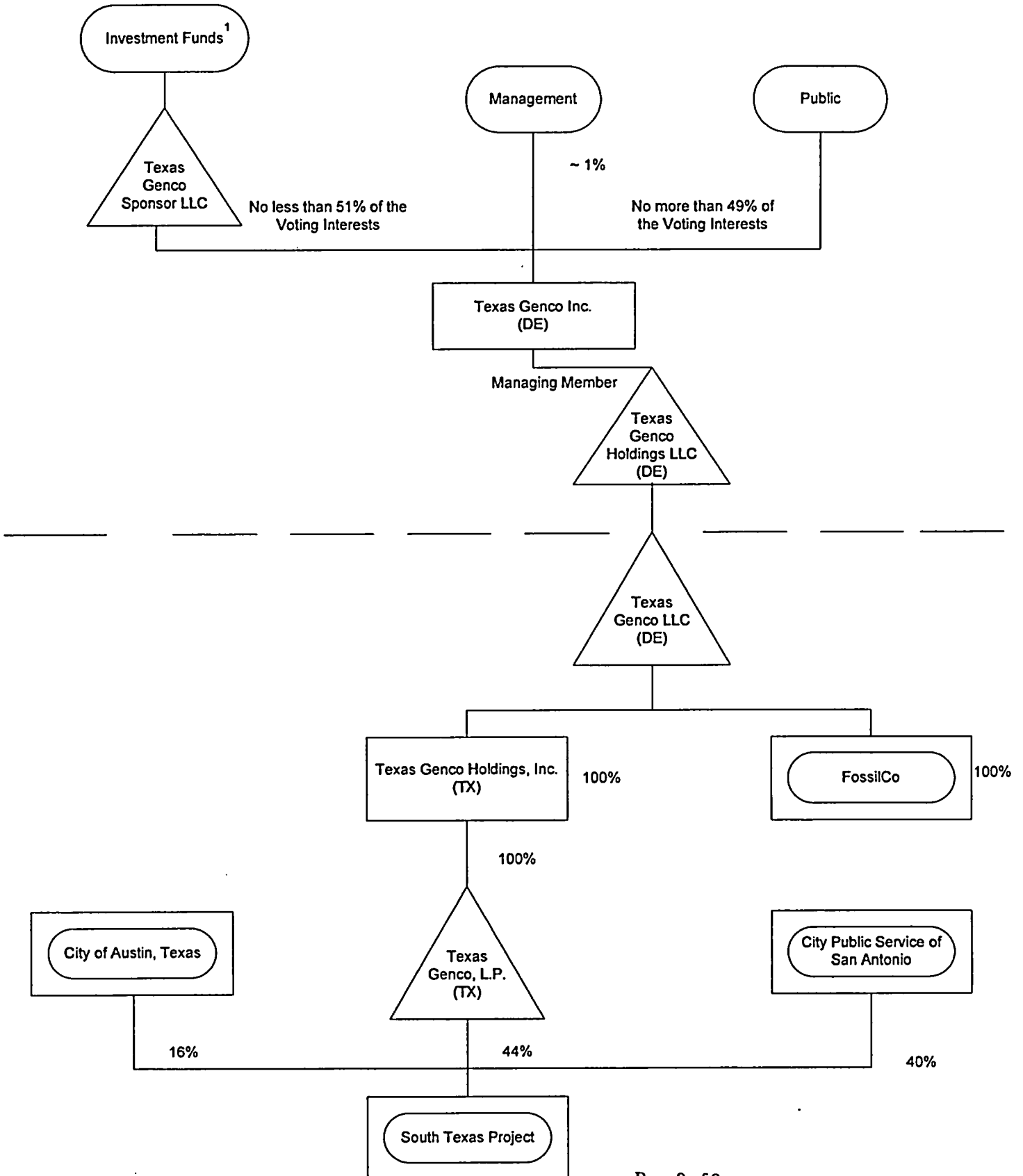
*Investment Funds And Management Indirectly Control 100% of Licensee*



# TEXAS GENCO/SOUTH TEXAS PROJECT

## Post Restructuring Ownership Structure

*Investment Funds and Management Indirectly Control no less than 51% of Licensee*



1 - Some portion of the Investment Funds' holdings in Texas Genco Inc. may be held directly rather than through Texas Genco Sponsor LLC.