

August 16, 2005

Mr. James J. Sheppard  
President and Chief Executive Officer  
STP Nuclear Operating Company  
South Texas Project Electric  
Generating Station  
P. O. Box 289  
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SUBJECT: SOUTH TEXAS PROJECT, UNITS 1 AND 2 - ORDER APPROVING  
APPLICATION REGARDING INDIRECT LICENSE TRANSFER  
(TAC NOS. MC7464 AND MC7465)

Dear Mr. Sheppard:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application dated June 28, 2005, as supplemented by letter dated August 4, 2005, submitted by STP Nuclear Operating Company, acting on behalf of Texas Genco, LP (Texas Genco), the Applicant, which requested that the NRC, pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations*, 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. The enclosed Order approves the proposed indirect license transfers. The Order will be placed in the NRC public document room (PDR), added to the Agencywide Documents Access and Management System Publicly Available Records System (ADAMS PARS) Library and has been forwarded to the Office of the Federal Register for publication.

J. Sheppard

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The NRC staff's safety evaluation related to the preceding actions (Enclosure 2) will be placed in the NRC PDR and added to the ADAMS PARS Library. As stated in Section 4.4 of the safety evaluation, the NRC staff requests that, within thirty days of completion of the indirect license transfer, STP Nuclear Operating Company provide the NRC staff with a copy of the executed stockholder agreement.

Sincerely,

*/RA/*

David H. Jaffe, Senior Project Manager, Section 1  
Project Directorate IV  
Division of Licensing Project Management  
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosures: 1. Order  
2. Safety Evaluation

cc w/enclosures: See next page

J. Sheppard

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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 June 28, 2005 (Agencywide Documents Access and Management System (ADAMS) Accession Number ML051870226), as supplemented on August 4, 2005 (ADAMS Accession Number ML052170402), STP Nuclear Operating Company (STPNOC), acting on behalf of Texas Genco, LP (Texas Genco or licensee) (with STPNOC, the applicants), requested that the United States Nuclear Regulatory Commission (NRC), pursuant to Title 10, *Code of Federal Regulations* (10 CFR), Part 50, Section 50.80, consent to the indirect license transfers that would be effected by the indirect transfer of control of Texas Genco's 44 percent ownership interest in the South Texas Project Electric Generating Station, Units 1 and 2 (STP). The transfer of control would result from a proposed corporate restructuring (Reorganization) by the owners of Texas Genco, including but not limited to, Texas Genco Inc.'s becoming an indirect parent of Texas Genco. STPNOC is licensed by the NRC to operate STP. Additionally, the applicants anticipate an initial public offering (IPO) of a minority interest in Texas Genco Inc. The supplement provided additional information that clarified the application and did not expand the scope of the application as originally noticed in the *Federal Register*.

The application dated June 28, 2005, cited: (1) the Texas Genco license transfer application dated October 21, 2004, as supplemented, and approved by the NRC by Order dated April 4, 2005 (dealing with the purchase of a 13.2 percent interest in STP, which was completed in 2005); and (2) the Texas Genco application dated October 12, 2004, as supplemented, and approved by the NRC by Order dated April 4, 2005 (dealing with the indirect transfer of control of the Texas Genco licenses for STP). Both license transfer applications and the NRC Orders approving these transfers are included by reference in this application.

## 2.0 BACKGROUND

Texas Genco is a wholly owned subsidiary of Texas Genco Holdings, Inc. (TGN), which is a wholly owned subsidiary of Texas Genco LLC. Approximately 99 percent of Texas Genco LLC is owned and controlled in equal parts by four Investment Funds affiliated with The Blackstone Group, Hellman & Friedman LLC, Kohlberg Kravis Roberts & Company, L.P., and Texas Pacific Group. The remaining approximately one percent is owned and controlled by certain members of Texas Genco LLC management (Management).

In anticipation of the IPO, Texas Genco Inc. was incorporated in Delaware on May 20, 2005, as a wholly owned subsidiary of Texas Genco Sponsor LLC (Sponsor), which is a limited liability company to be interposed between (1) the Investment Funds and Management, and (2) Texas Genco LLC, through the planned contribution by the Investment Funds and Management to Sponsor of their respective membership interests in Texas Genco LLC.

Prior to the Reorganization, Texas Genco Inc. will be owned by the Investment Funds and Management through Sponsor, will not have engaged in any activities except those related to its formation, and will not have had any direct or indirect interest in the licensee or STP. Immediately prior to the IPO, Sponsor and Texas Genco Inc. will form a new limited liability company, Texas Genco Holdings LLC (Holdings LLC). Sponsor will contribute its equity interests in Texas Genco LLC, once acquired, to Holdings LLC, and Texas Genco Inc. will agree to contribute the net proceeds of the IPO to Holdings LLC. In exchange, Sponsor and Texas Genco Inc. will each receive common membership units (CMUs) of Holdings LLC. While the specific number and percentage of CMUs to be distributed has not been determined, Sponsor will receive a majority share (greater than 50 percent) of the CMUs, with the specific number and percentage of CMUs being dependent upon the size of the IPO.

The June 28, 2005, application states that, while the Reorganization will create new intermediate parents of the licensee, it is expected that Texas Genco Inc., as an indirect parent of the licensee, will offer a minority interest of 25 percent or less of the equity and voting power of Texas Genco Inc. to the public. The certificate of incorporation of Texas Genco Inc. authorizes two classes of common stock, Class A and Class B. Prior to the closing of the Class A stock offering, Texas Genco Inc., Holdings LLC, Sponsor, and the Investment Funds will enter into a stockholder agreement that will contain the specific rights, obligations, and agreements of Sponsor and the Investment Funds as holders of interests of Holdings LLC and holders of Class A and Class B common stock of Texas Genco Inc. Class A stock will be offered to the public, and Class B stock will be issued to the Investment Funds and Management which currently control Texas Genco LLC.

Holders of Class A stock will have economic and voting rights. Each Class A share will entitle its holder to dividend rights and to one vote on all matters voted on by common stockholders generally. Each Class B share will provide a holder with no economic rights, but will entitle the holder to voting rights on all matters voted on by common stockholders generally, with the number of votes based on the number of CMUs of Holdings LLC held by a Class B holder (not on the number of Class B shares held). Holders of Class B stock will have a majority of the combined voting rights of Class A and Class B stock immediately after the IPO. The holders of CMUs in Holdings LLC (other than Texas Genco Inc.) can exchange these CMUs for shares of Class A stock on a one-for-one basis. Also, Texas Genco Inc. will sell shares of Class A stock in the IPO and, pursuant to its agreement, contribute the proceeds to Holdings LLC.

As a result of the Reorganization transactions described above, immediately following the IPO the following organizational relationships will be in place:

- Texas Genco Inc. will become the sole managing member of Holdings LLC, and Holdings LLC will become the sole owner of Texas Genco LLC and the indirect owner of Texas Genco, which shall at all times continue to hold non-operating licenses for its ownership interest in STP.
- Stockholders who purchase shares in the IPO will have a minority of the voting power in Texas Genco Inc., and the Investment Funds and Management will have a majority of the voting power in Texas Genco Inc. and will maintain their control of Texas Genco Inc.

- As sole managing member of Holdings LLC, Texas Genco Inc. will control all the affairs of Holdings LLC and, through Holdings LLC and its subsidiaries, conduct the business now conducted by these subsidiaries. Texas Genco Inc. will consolidate the financial results of Holdings LLC and its subsidiaries.
- At all times before, during, and following the Reorganization, the licensee, Texas Genco, will be wholly owned by TGN, which in turn will be wholly owned by Texas Genco LLC. Texas Genco LLC will at all times before, during, and immediately following the Reorganization be controlled ultimately by the Investment Funds and Management.

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 authority of STPNOC to operate STP, (2) the physical aspects of STP, (3) STP operations, and (4) STPNOC management.

### 3.0 REGULATORY FRAMEWORK

The applicants request NRC's consent pursuant to the provisions of 10 CFR 50.80, "Transfer of licenses." To conduct a safety evaluation analysis under the requirements of 10 CFR 50.80, the requirements of 10 CFR 50.33, "Contents of applications; general 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 concludes that the proposed transfers represent sufficient change constituting an indirect transfer of the STP licenses to the extent held by the participating owners.

### 4.0 EVALUATIONS

#### 4.1 Financial Qualifications

In analyzing indirect license transfers, the NRC 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. Section 50.2 of 10 CFR states 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 necessary funds to cover estimated operating costs

for the first five years of facility operation (following the completion of the actions proposed in the application) and indicate the source(s) of funds to cover these costs.

The application notes that, as discussed in the application dated October 12, 2004, as supplemented, Texas Genco possesses or has reasonable assurance of obtaining the funds necessary to cover its pro rata share of the estimated operation expenses of STP. The application dated October 12, 2004, as supplemented, provided detailed financial qualifications information, including a projected income statement for a five year period showing that the anticipated net income from the sale of power output of STP by Texas Genco provides reasonable assurance of an adequate source of funds to meet Texas Genco's share of its ongoing operation costs. Additionally, the application dated October 12, 2004, as supplemented, and the June 28, 2005, application, state that Texas Genco and Texas Genco LLC have a support agreement under which Texas Genco LLC will provide up to \$120 million to satisfy the need for any additional funding of operation and maintenance expenses that may be incurred by Texas Genco for its pro rata share of STP.

The June 28, 2005, application states that: (1) the proposed Reorganization would not affect the financial qualifications of Texas Genco in that there will be no material effect on the financial information as presented in the application dated October 12, 2004, as supplemented; (2) the introduction of the intermediary parent companies will not affect the current arrangements for the sale of Texas Genco's share of power output from STP; and (3) the proposed Reorganization will not affect the support agreement in place with Texas Genco LLC, nor will it impact the ability of Texas Genco LLC to meet that obligation.

The support agreement and the additional assurance provided by it are particularly important for Texas Genco because the ultimate entities expected to continue to own most of Texas Genco are a limited group of investment funds rather than a traditional utility organization. Therefore, the NRC staff notes that both: (1) the ongoing commitment regarding the 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; and (2) the condition of the Order dated April 4, 2005, regarding this support agreement, both of which are incorporated by reference in the June 28, 2005, application, shall remain in force as stated in April 4, 2005, Order.

Based upon its review of information in the application dated October 12, 2004, as supplemented, and in the June 28, 2005, application, the NRC staff has determined that the proposed corporate structure changes resulting in the indirect transfer of control of the licenses to the extent held by Texas Genco will not affect Texas Genco's financial qualifications to hold the STP licenses to the extent now held.

#### 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, pursuant to 10 CFR 50.75.

The application states that the applications dated October 12 and October 21, 2004, as supplemented, address decommissioning funding assurance for Texas Genco's ownership interest in STP. The June 28, 2005, application also states that this funding assurance for STP

will not be affected by the proposed transactions and that 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). According to the June 28, 2005, application, the transactions would not affect: (1) the currently collected funds; (2) ongoing funds collections from ratepayers associated with the decommissioning of Texas Genco's 30.8 percent interest acquired from CenterPoint Energy (as described in the application dated October 12, 2004, as supplemented); or (3) the non-bypassable STP decommissioning funding charge maintained with respect to Texas Genco's 13.2 percent interest acquired from AEP Texas Central Company, as described in the October 21, 2004, application, as supplemented.

The application states that, in accordance with 10 CFR 50.75, reasonable assurance will remain that Texas Genco has or will obtain the funds necessary to cover its share of STP-estimated decommissioning costs at the time of expected permanent termination of licensed operation. Based on the foregoing, the staff finds that the proposed transactions will not affect the decommissioning funding arrangements with respect to Texas Genco's ownership share of STP, which had previously been determined to be adequate in connection with the license transfers approved in April 2005.

#### 4.3 Antitrust Review

The Atomic Energy Act of 1954, as amended (AEA), does not require or authorize antitrust reviews of post-operating license transfer applications (*Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), 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 AEA 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 regulation at 10 CFR 50.38 contains language to implement this prohibition.

The application states that the proposed transactions would not result in Texas Genco's being owned, controlled, or dominated by any alien, foreign corporation, or foreign government. Significantly, as discussed earlier, the proposed transactions will not result in any change in ultimate control over Texas Genco or STP. The entities exercising ultimate control over the licensee, none of which is owned, controlled, or dominated by foreign entities, will still remain the same four Investment Funds in control of the licensee as cited in the application dated October 12, 2004, as supplemented, and in the NRC Order dated April 4, 2005. Notwithstanding this lack of foreign investment or control, the application states that each Investment Fund's general partner will exercise 100 percent control over the governance of the Investment Funds and that none of the general partners of the Investment Funds is, or is controlled by, a foreign person or entity.

As part of the IPO, the Class A common shares of Texas Genco Inc. are expected to be publicly traded securities on the New York Stock Exchange or the NASDAQ National Market and to be widely held. The Class B common shares will be owned by the owners of the CMUs

in Texas Genco Holdings LLC other than Texas Genco Inc., and these ultimate CMU owners are the four Investment Funds and Management as noted earlier.

The application states that Texas Genco, TGN, Texas Genco LLC, Sponsor, and Texas Genco Inc. will continue to be domiciled in the United States and will continue to be managed by a majority of executive officers or managers who are United States citizens. The application also states that: (1) Holdings LLC, which will be created to implement the IPO, will be domiciled in the United States; and (2) the charter documents for each of the intermediate companies will require that the directors or management committee members, as appropriate, be United States citizens.

Additionally, the stockholder agreement cited earlier will contain specific rights, obligations, and agreements of Sponsor and the Investment Funds as holders of interests of Holdings LLC and holders of Class A and Class B common stock of Texas Genco Inc. In particular, this agreement will provide that each of the four sponsors (i.e., Investment Funds) has the right to appoint up to two nominees to the Board of Directors of Texas Genco Inc. in favor of the election of the director nominees designated by the four Investment Funds, for a total of up to eight nominees. The current number of Directors of Texas Genco Inc. is expected to be 12, such that eight directors would constitute a majority of the Board. The application notes that this feature of the Board's composition serves as an additional protection to mitigate any potential for foreign control over the Board of Directors of Texas Genco Inc. by effectively restricting the ability of any individual Investment Fund or other stockholder to appoint a majority of members to the Board of Texas Genco Inc.

The NRC requests that, within thirty days of the completion of the indirect license transfer, STPNOC provide the NRC staff with a copy of the executed stockholder agreement.

Based upon the applicant's assertion in the application that the proposed transactions would not result in Texas Genco's being owned, controlled, or dominated by any alien, foreign corporation, or foreign government, and review by the NRC staff of the information stated in the current application supporting this assertion, the NRC staff does not know or have reason to believe otherwise.

#### 4.5 Nuclear Insurance and Indemnity

According to the application, the proposed Reorganization and IPO, and resulting indirect license transfers, would have no effect on the existing Price-Anderson indemnity and nuclear insurance for STP. The NRC staff has no reason to believe that the proposed transactions and the resulting indirect license transfers and indirect control of Texas Genco will affect either the existing Price-Anderson indemnity agreement for STP, under which Texas Genco is covered as a licensee, or the insurance and indemnity coverage for Texas Genco as required under Section 170 of the AEA, 10 CFR 140, and 10 CFR 50.54(w). Also, the NRC staff has no reason to believe that the proposed transactions and resulting transfers will affect the ability of Texas Genco to meet its financial obligations for its pro rata share of obligations for retrospective premiums for STP. Therefore, in consideration of the foregoing, the NRC staff concludes that the indirect transfer of control of Texas Genco will not affect its nuclear insurance and indemnity coverage and its ability to meet its nuclear 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.

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 transactions and resulting indirect transfer of control of Texas Genco will not affect the qualifications of Texas Genco as holder of the STP licenses, and that the indirect transfer of control of the licenses as held by Texas Genco, to the extent effected by the proposed transactions discussed above, is otherwise consistent with the applicable provisions of laws, regulations, and Orders issued by the NRC pursuant thereto.

Principal Contributor: A. McKeigney

Date: August 16, 2005

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