

ENCLOSURE 2

CONFORMING LICENSE AMENDMENT

ENERGY GULF STATES, INC.

AND

ENERGY OPERATIONS, INC.

DOCKET NO. 50-458

RIVER BEND STATION, UNIT 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-47

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by Entergy Operations, Inc.* (the licensee) dated May 29, 2007, as supplemented by letters dated August 30 and September 19, 2007, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I;
 - B. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this license amendment will not be inimical to the common defense and security or to the health and safety of the public; and

* Entergy Operations, Inc. is authorized to act as agent for Entergy Gulf States, Inc., and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

- E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.
- 2. Accordingly, the license is amended as indicated in the attachment to this license amendment.
- 3. The license amendment is effective as of its date of issuance and shall be implemented within 60 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

J. E. Dyer, Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Facility
Operating License No. NPF-47

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NO. _____

FACILITY OPERATING LICENSE NO. NPF-47

DOCKET NO. 50-458

Replace the following pages of the Facility Operating License No. NPF-47 and Appendix C of the Facility Operating License No. NPF-47 with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

Facility Operating License

<u>Remove</u>	<u>Insert</u>
1	1
2	2
3	3
4	4

Facility Operating License, Appendix C

<u>Remove</u>	<u>Insert</u>
1	1
2	2
3	3
4	4

ENCLOSURE 3
SAFETY EVALUATION FOR
TRANSFER OF LICENSE
AND CONFORMING LICENSE AMENDMENT

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

DIRECT TRANSFER OF FACILITY OPERATING LICENSE NO. NPF-47

FROM ENERGY GULF STATES, INC., TO

ENERGY GULF STATES LOUISIANA, LLC

AND CONFORMING AMENDMENT

ENERGY OPERATIONS, INC.

RIVER BEND STATION, UNIT 1

DOCKET NO. 50-458

1.0 INTRODUCTION

By application dated May 29, 2007 (Agencywide Documents and Access Management System (ADAMS) Accession No. ML071560529), as supplemented by letters dated August 30, 2007 (ADAMS Accession No. ML072470715), and September 19, 2007 (ADAMS Accession No. ML072640088) (collectively, hereafter referred to as the application, unless otherwise noted), Entergy Gulf States, Inc. (EGS) and Entergy Operations, Inc. (EOI) (or collectively hereafter referred to as the licensee), requested approval of the transfer of Facility Operating License No. NPF-47 for the River Bend Station, Unit 1 (RBS) to the extent held by EGS to Entergy Gulf States Louisiana, LLC (EGS-LA), and approval of a conforming amendment pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Sections 10 CFR 50.80, "Transfer of Licenses," and 10 CFR 50.90, "Application for Amendment of License, Construction Permit, or Early Site Permit." The license transfer involves the transfer of EGS's 100 percent undivided ownership interest in RBS to EGS-LA. EOI will continue to operate RBS. EGS currently holds authority to possess RBS under the license. The supplemental letters dated August 30 and September 19, 2007, provided additional information that clarified the application, and did not expand the scope of the application as originally noticed in the *Federal Register* on July 9, 2007 (72 FR 37266).

2.0 BACKGROUND

EGS is the current licensed owner of RBS, a commercial nuclear power reactor located in St. Francisville, Louisiana that is operated by EOI. Both EGS and EOI are direct subsidiaries of Entergy Corporation. EGS is a Texas corporation. As described in the application, EGS will undergo a proposed restructuring that will be accomplished in a series of steps. EGS will form Entergy Texas, Inc. (ETI) as a Texas corporation, and EGS will own the stock of ETI. EGS will then distribute its common stock of ETI to Entergy Corporation, making ETI a wholly-owned subsidiary of Entergy Corporation. Next, Entergy Corporation will form EGS Holdings, Inc.

(EGS Holdings) as a new Texas corporation, and Entergy Corporation will own all of the issued and outstanding shares of common stock for EGS Holdings. Entergy Corporation will then contribute all of its shares of ETI to EGS Holdings. Lastly, EGS Holdings will form EGS-LA and then EGS will merge into EGS-LA, where EGS-LA will own all of the Louisiana assets of EGS.

EGS-LA will serve current EGS retail customers in Louisiana and current EGS wholesale customers, and ETI will serve current EGS retail customers in Texas. The retail utility operations of EGS-LA will be subject to the jurisdiction of the Louisiana Public Service Commission (LPSC).

The application states that the proposed license transfer is necessary because of the utility unbundling required by Texas and Louisiana. On April 26, 2007, EGS filed its jurisdictional separation plan for separating EGS into two companies, each of which would service their customers in their respective states. On January 31, 2007, the LPSC approved EGS's plan.

As provided in the application, EOI operates RBS pursuant to an Operating Agreement with EGS. EOI will continue to operate RBS (i.e., there is no proposed transfer of licensed operating authority) and the current Operating Agreement will be amended to reflect the proposed new owner of the plant, EGS-LA. The proposed transfer of possession authority to EGS-LA will not affect EOI.

The purpose of the proposed restructuring of EGS, as stated in the application, "... is to provide more flexibility in resource planning for the separated utilities and for each to be better positioned to optimize its resource planning portfolio. In addition, customers in both Texas and Louisiana will benefit because the jurisdictional allocation issues attendant to each regulatory jurisdiction will no longer exist."

3.0 REGULATORY EVALUATION

In the application, EOI requested the approval of the direct transfer of the operating license for the reactor unit (to the extent held by EGS regarding possession authority) from EGS to EGS-LA, pursuant to 10 CFR 50.80. As stated in 10 CFR 50.80(a), "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 the transfer of control of the license to any person, unless the [Nuclear Regulatory] Commission shall give its consent in writing."

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Under 10 CFR 50.80(b), an application for a license transfer shall include as much of the information described in 10 CFR 50.33, "Contents of Applications; General Information," and 10 CFR 50.34, "Contents of Construction Permit and Operating License Applications; Technical Information," "... with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license." Pursuant to 10 CFR 50.80(c), "... the Commission will approve an application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto."

4.0 TECHNICAL EVALUATION

4.1 Technical Qualifications

EOI will continue to operate RBS as the licensed operator after the proposed restructuring of EGS and transfer of the license from EGS to EGS-LA, just as it now does prior to the restructuring of EGS. According to the application, the proposed restructuring involves no change to either the management organization or technical personnel (of EOI) currently responsible for operating RBS and the restructuring will have no impact on the ability of EOI personnel to continue to safely operate RBS. Since the application for the transfer of the license does not propose a new operator, transfer of operating authority, or change of operating personnel, a technical qualifications review is not applicable in connection with this application.

4.2 Financial Qualifications

Section 50.33(f) of 10 CFR requires that, except for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 10 CFR 50.22, "Class 103 Licenses; for Commercial and Industrial Facilities," each application shall state "...information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought."

The requirement in 10 CFR 50.2, "Definitions," 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 application states that EGS currently recovers 70 percent of the costs of operating and maintaining RBS (associated with 70 percent of the plant's output) through rates that are established by the LPSC. The remaining 30 percent capacity and energy of RBS are subject to life-of-unit Power Purchase Agreements (PPAs) with Entergy Louisiana, LLC, and Entergy New Orleans, Inc. The LPSC and the Council of the City of New Orleans (the retail regulators) have approved the recovery of the costs of the energy and capacity purchases from RBS via rate riders that provide for the recovery of RBS's costs billed in accordance with the System Service Agreement Schedule MSS-4 approved by the Federal Energy Regulatory Commission.

After the restructuring, EGS-LA will continue to recover the costs of operating and maintaining RBS through rates established by the LPSC (70 percent of costs) and Schedule MSS-4 (30 percent of costs) and, therefore, will be an electric utility as defined in 10 CFR 50.2. As an electric utility, EGS-LA is exempt from further financial qualifications review under 10 CFR 50.33(f), and is presumed financially qualified to hold the RBS license to the extent now held by EGS.

4.3 Decommissioning Funding Assurance

The U.S. Nuclear Regulatory Commission (NRC) has determined that the requirement to provide reasonable assurance of decommissioning funding is necessary to ensure the adequate protection of public health and safety. The regulations in 10 CFR 50.33(k) require that an application for an operating license for a production or utilization facility contain

information on how reasonable assurance will be provided that funds will be available to decommission the facility.

The application states that the existing mechanisms that provide financial assurance for decommissioning RBS will not change as a result of the proposed restructuring. EGS-LA will provide decommissioning funding assurance through an external sinking fund as EGS is doing now. Funds for decommissioning will continue to be collected through rates established by the LPSC and payments to EGS-LA from ETI under the MSS-4 PPA, and they will be held in an external trust established for the purpose of decommissioning the plant. The amount of funds held by the trust will not be reduced as a result of the license transfer. As of December 31, 2006, the RBS decommissioning trust had a balance of \$344.6 million. In addition, the existing Trust Agreement will not change other than an amendment to reflect the new owner.

In consideration of the above, the NRC staff finds that EGS-LA will provide adequate decommissioning funding assurance in accordance with 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning," conditioned upon the following:

At the time of the closing of the transfer of ownership of River Bend, Unit 1 and license from Entergy Gulf States, Inc. to Entergy Gulf States Louisiana, LLC, the River Bend, Unit 1 decommissioning trust agreement(s) shall be amended to reflect Entergy Gulf States Louisiana, LLC as the owner of all the decommissioning trust funds accumulated as of the date of the closing.

4.4 Antitrust Review

The Atomic Energy Act of 1954, as amended (AEA), does not require or authorize antitrust reviews of post-operating license transfer applications. See *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99, 49 NRC 441 (1999). Therefore, because the transfer application postdates the issuance of the RBS operating license, no antitrust review is required or authorized.

EGS is currently subject to antitrust license conditions. The application includes proposed administrative changes to substitute EGS-LA for EGS in the antitrust conditions. No substantive changes to the conditions are being proposed. After the merger of EGS into EGS-LA, EGS-LA will own all of the EGS's transmission and distribution facilities in Louisiana, and EGS-LA will thereby be able to comply with the antitrust license conditions. The staff finds the administrative changes consistent with the proposed license transfer, and thus acceptable.

4.5 Foreign Ownership, Control, or Domination

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's regulation, 10 CFR 50.38, "Ineligibility of Certain Applicants," contains language to implement this prohibition.

EGS Holdings will be a Texas corporation with its principal place of business to be in Woodland, Texas. The directors and principal officers of EGS Holdings have not been

determined at this time, but the application states that they will all be citizens of the United States. The application further states that EGS Holdings will not be owned, controlled, or dominated by an alien, foreign corporation, or foreign government.

EGS-LA will be a Louisiana limited liability company with its principal place of business in Baton Rouge, Louisiana. EGS-LA will be a wholly-owned subsidiary of EGS Holdings. The application states that the proposed managers and principal officers of EGS-LA, all of whom are citizens of the United States, will be the same as the current directors and officers of EGS, with the exception of one who will be a director, president and chief executive officer of ETI. The directors and principal officers of EOI will not change as a result of the proposed restructuring. The application states that EGS-LA will not 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.

4.6 Nuclear Insurance and Indemnity

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," require that the current indemnity agreement be modified to reflect EGS-LA as the new owner of RBS.

In accordance with the Price-Anderson Act, EGS-LA will be required to provide primary insurance and participate in the secondary retrospective insurance pool. It will also be required to maintain property insurance as specified in 10 CFR 50.54(w). EGS-LA, as an electric utility, is presumed to be able to satisfy applicable insurance requirements of the NRC and the Price-Anderson Act, consistent with the underlying basis of the NRC's financial qualifications regulation at 10 CFR 50.33.

Consistent with NRC practice, the NRC staff will require EGS-LA to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended license reflecting the new licensee. Because the issuance of the amended license is directly tied to completion of the license transfer, the order approving the transfer will be conditioned as follows:

Prior to completion of the transfer of ownership of and the license for RBS, EGS-LA shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

5.0 CONFORMING AMENDMENT

5.1 Background

The applicants have requested approval of a conforming amendment to the operating license for RBS. The requested changes reflect the proposed transfer of ownership of RBS to EGS-LA, deleting references to EGS in the license and substituting EGS-LA as appropriate.

No physical or operating changes to the facility are requested and thus there are no changes to the license in this regard. Supplemental information received after the initial application that was not specifically referenced in the *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315, "Generic Determination Regarding License Amendments to Reflect Transfers."

5.2 Discussion

The changes to be made to the RBS Operating License do no more than accurately reflect the approved transfer action, which is subject to certain conditions set forth in the Order approving the transfer that were identified and discussed earlier in this safety evaluation. The amendment involves no safety questions and is administrative in nature. Accordingly, the proposed amendment is acceptable.

5.3 Conclusions - Evaluation of the Conforming Amendment

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 amendment will not be inimical to the common defense and security or to the health and safety of the public.

5.4 State Consultation

In accordance with the Commission's regulations, the NRC notified the official of the State of Louisiana, Ms. Nan Calhoun, of the proposed issuance of the amendment. The State official had no comments.

6.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of the transfer of a license issued by the NRC and approval of a conforming amendment. 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 CONCLUSIONS

In view of the foregoing, the NRC staff finds that, subject to the conditions discussed herein, EGS-LA is qualified to hold the license for RBS to the extent now held by EGS, and the transfer of license as proposed in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributor: R. Uleck, NRR/PFPB

Date: October 26, 2007