



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

December 21, 2010  
NOC-AE-10002626  
10CFR54  
10CFR50.38  
STI: 32799301

U. S. Nuclear Regulatory Commission  
Attention: Document Control Desk  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

South Texas Project  
Units 1 and 2  
Docket Nos. STN 50-498, STN 50-499  
Response to Request for Additional Information  
Related to Part 1, Administrative Information,  
of the South Texas Project License Renewal Application

- Reference: 1. Letter dated October 25, 2010, from G. T. Powell, STPNOC, to NRC Document Control Desk, "License Renewal Application," (NOC-AE-10002607)  
2. South Texas Project RAI 1.1.4-1, Concerning Foreign Ownership or Control, STPEGS LRA Acceptance (ML103490335)

By Reference 1, STP Nuclear Operating Company (STPNOC) submitted the License Renewal Application (LRA) for South Texas Project (STP) Units 1 and 2. By Reference 2, the NRC staff requested additional information needed to continue their review of the STP LRA.

STPNOC's response to the request for additional information is included in the Enclosure to this letter.

There are no regulatory commitments in this letter.

Should you have any questions regarding this letter, please contact Ken Taplett, our License Renewal Project Regulatory point-of-contact at (361) 972-8416.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 12-21-2010  
Date

G. T. Powell  
Vice President,  
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KJT

Enclosure: Response to Request for Additional Information Related to Part 1, Administrative Information, of the South Texas Project License Renewal Application

A035  
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**RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION**  
**RELATED TO PART 1, ADMINISTRATIVE INFORMATION,**  
**OF THE LICENSE RENEWAL APPLICATION FOR THE**  
**SOUTH TEXAS PROJECT, UNITS 1 AND 2**

**NRC Request for Information RAI 1.1.4-1**

**Background:**

The Request for Additional Information pertains to Section 1 of the License Renewal Application for the South Texas Project, Units 1 and 2.

Section 103d. of the Atomic Energy Act prohibits the NRC from issuing a license to:

“an alien or 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.”

Section 50.38 of 10 CFR is the regulatory provision that implements this statutory prohibition.

Guidance regarding foreign ownership, control or domination and associated negation action plans is provided in the NRC's Final Standard Review Plan on Foreign Ownership, Control, or Domination; 64 FR 52355 (September 28, 1999).

**Issue:**

On page 1.1-6 the application lists a non-U.S citizen, Mr. Mauricio Gutierrez as the Executive Vice President and Chief Operating Officer of NRG Energy, Inc. Further the application lists Mr. Gutierrez as the Vice President of Texas Genco GP on page 1.1-9.

**Request:**

In light of these facts, please describe, in sufficient detail for the staff to make a determination, how South Texas plans to mitigate foreign control or influence over activities licensed by the NRC, including, but not limited to, matters relating to nuclear safety and security and responsibility for special nuclear material.

**For the following questions, the term "organization" should include all owners, operators, applicants, parent companies of South Texas Unit 1 and 2.**

- a) List any non-U.S. citizens who serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials and indicate the dates and terms of their appointments.**
- b) Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions responsible for NRC licensed activities, including nuclear safety and security, of your organization?**
- c) Does any foreign person have the power to control or cause the direction of any decisions related to activities licensed by the NRC of your organization?**
- d) Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?**
- e) Describe any unanimous consent issues (issues where a foreign person's vote has effective veto power) which would potentially include foreign board members, quorum provisions, and other pertinent operational issues which may be subject to foreign control, either indirect or direct.**

STP Response

STP Nuclear Operating Company (STPNOC) is a not for profit Texas corporation that is controlled by a board of four directors, three members of which are appointed by the City of Austin (Austin), CPS Energy, and NRG South Texas LP, an indirect wholly owned subsidiary of NRG Energy. These three directors choose the fourth director, who then also serves as the Chief Executive Officer. Austin and CPS Energy are governmental organizations in the State of Texas that are controlled by city councils elected by the citizens of these U.S. cities. NRG Energy is a publicly traded, widely held U.S. corporation, and it is not under foreign ownership, control or domination (FOCD).

Pursuant to Article VI of STPNOC's Restated Articles of Incorporation, Austin, CPS Energy and NRG South Texas LP appoint the three "Participant Directors" of STPNOC. Notably, NRG South Texas LP is the successor to "Texas Genco LP," which is the entity named in the Restated Articles of Incorporation dated April 27, 2005. The three Participant Directors elect a fourth CEO/Director by a unanimous vote of all three. As such, all of the STPNOC directors are U.S. citizens appointed by organizations that are under U.S. control. The STPNOC directors control STPNOC pursuant to Article V of the Restated Articles of Incorporation, which provides that STPNOC "is to have no members," i.e., it has no owners, but rather "its affairs are managed by a Board of Directors."

STPNOC is subject to U.S. control, and it will exercise authority over nuclear safety and security matters free from any potential for foreign domination or control over its decision making in any area of concern to the NRC under the Atomic Energy Act of 1954, as amended. In particular, STPNOC is and will remain free from any foreign control or domination with regard to security matters, and STPNOC is subject to ongoing U.S. government oversight regarding foreign ownership, control or influence. STPNOC maintains a Facility Security Clearance, and it has individual employees who maintain U.S. government security clearances. In connection with ongoing oversight of these security clearances, STPNOC periodically updates a "Certificate Regarding Foreign Interests" using Standard Form 328 (SF 328), which provides for disclosures regarding potential foreign ownership, control or influence.

The SF 328 includes various questions regarding a range of potential areas of foreign influence, including debt, foreign source income, foreign directors and executive personnel, contracts and agreements with foreigners, etc. Material changes to answers to any questions in the SF 328 are reported to NRC in accordance with 10 CFR 95.17(a)(1). Submittals to U.S. government security officials include the Department of Energy's forms identifying owners, officers, directors and executive personnel (OODEPs), and their citizenship. These OODEPs are submitted and periodically updated for STPNOC, as well as Austin, CPS Energy and the NRG Energy entities in the chain of control of NRG South Texas LP. The most recent update was submitted by STPNOC letter number NOC-AE-10002606, dated September 27, 2010. Austin, CPS Energy and NRG South Texas LP do not "own" STPNOC, but they are treated like owners in connection with the government's security reviews, because they have the right to appoint the STPNOC Participant Directors.

The owner licensees for STP 1&2 (Austin, CPS Energy and NRG South Texas LP) have certain rights and decision making authority regarding financial and other matters pursuant to the terms of the Amended and Restated Participation Agreement effective November 17, 1997 (the "Participation Agreement"). However, STPNOC is the licensee responsible for operation pursuant to the STP 1&2 licenses. As such, throughout the operation of STP 1&2, STPNOC has and will have sole responsibility with respect to matters involving nuclear safety, quality, security or reliability, including responsibility for special nuclear material and compliance with all NRC nuclear safety and security requirements (STPNOC's "Sole Authority"). This includes denying unauthorized persons access to security information and assuring compliance with U.S. government requirements governing access to restricted data.

Notably, Section 3.2(2) of the Standard Review Plan on Foreign, Ownership, Control and Domination specifically provides that further consideration is to be given to "whether the applicant is seeking authority to operate the reactor." STPNOC is the entity that is licensed as the operator, and its role as a U.S. controlled entity that will be responsible for nuclear safety and security throughout the operating life of STP 1&2 should be given great weight in evaluating FOCD issues.

Based upon the above information, there is no reason to believe that the licensees for STP 1 & 2 are or will be owned, controlled, or dominated by any alien, foreign corporation, or foreign government. The following responds to the specific NRC questions:

a) The only non-U.S. citizen who serves in such a position is Mr. Mauricio Gutierrez, who serves as Executive Vice President and Chief Operating Officer of NRG Energy, Inc., the indirect parent of NRG South Texas LP. Mr. Gutierrez was elected to this position in July 2010. Officers of NRG Energy, Inc. are elected for a term of one year. Mr. Gutierrez also was Vice President of Texas Genco GP, but no longer serves as an officer of Texas Genco GP.

b) As explained above, no foreign person has such power. In particular, Mr. Gutierrez does not have the power, direct or indirect, to control the election, appointment, or tenure of members of the Board of Directors of STPNOC, NRG South Texas LP or NRG Energy, or other management positions responsible for NRC licensed activities, including nuclear safety and security, of STPNOC. As Executive Vice President and Chief Operating Officer of NRG Energy, Inc, Mr. Gutierrez oversees NRG's Plant Operations, Commercial Operations, Environmental Compliance, as well as the Engineering, Procurement and Construction division. These responsibilities do not include any responsibility for STP Units 1 & 2; STPNOC has full responsibility for all operation, maintenance, environmental compliance, engineering, procurement and construction for STP Units 1 & 2. Mr. Gutierrez is not a Participant Director of STPNOC and does not have the power, direct or indirect, to control or influence the actions of the STPNOC Board of Directors or of any member of STPNOC management.

The Participant Director of STPNOC appointed by NRG South Texas LP is Mr. John Ragan, who is a citizen of the U.S. Mr. Ragan has been Executive Vice President and Regional President, Texas since his election by the NRG Energy Board of Directors in July 2010. In his capacity as Executive Vice President and Regional President, Texas, Mr. Ragan is responsible for managing NRG's power generation portfolio in Texas and NRG's retail electric provider, Reliant Energy. Mr. Ragan and Mr. Gutierrez each reports and is responsible directly to Mr. David Crane, the President and Chief Executive Officer of NRG Energy, Inc.

c) No foreign person has the power to control or cause the direction of any decisions related to NRC-licensed activities by STPNOC.

d) STPNOC has various contracts and agreements with foreign entities for goods and services in connection with the maintenance and operation of STP Units 1 & 2, and the design, licensing and construction of proposed STP Units 3 & 4. None of these contracts gives any foreign entity control over STPNOC or its decisions concerning NRC-licensed activities.

e) There are no unanimous consent issues which would potentially include foreign board members, quorum provisions, or other operational issues which may be subject to foreign control, either indirect or direct.