



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 1, 2012

Mr. Dennis L. Koehl  
President and CEO/CNO  
STP Nuclear Operating Company  
South Texas Project  
P.O. Box 289  
Wadsworth, TX 77483

SUBJECT: SOUTH TEXAS PROJECT, UNITS 1 AND 2 - REQUEST FOR THRESHOLD  
DETERMINATION UNDER 10 CFR 50.80 (TAC NOS. ME9166 AND ME9167)

Dear Mr. Koehl:

By letter dated August 1, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12228A380), as supplemented by letters dated August 28 and October 3, 2012 (ADAMS Accession Nos. ML12261A334 and ML12292A387, respectively), STP Nuclear Operating Company (STPNOC), acting on behalf of NRG South Texas LP, requested the U.S. Nuclear Regulatory Commission (NRC) staff to make a threshold determination that a proposed merger between NRG Energy, Inc. (NRG Energy), and GenOn Energy, Inc. (GenOn Energy), would not involve a direct or indirect transfer of control of NRG South Texas LP's licenses for South Texas Project, Units 1 and 2, and, therefore, require approval pursuant to Section 50.80, "Transfer of licenses," of Title 10 of *Code of Federal Regulations* (10 CFR).

Based on the information provided by STPNOC, the NRC staff has completed its evaluation of the request and determined that the proposed merger between NRG Energy and GenOn Energy will not constitute direct or indirect transfer of control of the licenses for South Texas Project, Units 1 and 2, and, therefore, NRG Energy, Inc. does not require the NRC's approval under Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 in connection with the proposed merger between NRG Energy and GenOn Energy.

D. Koehl

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The NRC's related staff evaluation is enclosed. If you have any questions, please contact me at 301-415-3016 or via e-mail at [Balwant.Singal@nrc.gov](mailto:Balwant.Singal@nrc.gov).

Sincerely,



Balwant K. Singal, Senior Project Manager  
Plant Licensing Branch IV  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosure:  
As stated

cc w/encl: Distribution via Listserv



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

STAFF EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

REQUEST FOR THRESHOLD DETERMINATION UNDER 10 CFR 50.80

PROPOSED MERGER BETWEEN NRG ENERGY, INC., AND GENON ENERGY, INC.

STP NUCLEAR OPERATING COMPANY

SOUTH TEXAS PROJECT, UNITS 1 AND 2

DOCKET NOS. 50-498 AND 50-499

1.0 INTRODUCTION

By letter dated August 1, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12228A380), as supplemented by letters dated August 28 and October 3, 2012 (ADAMS Accession Nos. ML12261A334 and ML12292A387, respectively), STP Nuclear Operating Company (STPNOC), acting on behalf of NRG South Texas LP (NRG South Texas), requested the U.S. Nuclear Regulatory Commission (NRC) staff to make a threshold determination that a proposed merger between NRG Energy, Inc. (NRG Energy), and GenOn Energy, Inc. (GenOn Energy), would not involve a direct or indirect transfer of control of NRG South Texas LP's Facility Operating License Nos. NFP-76 and NFP-80 for South Texas Project (STP), Units 1 and 2, respectively, and, therefore, require approval pursuant to Section 50.80, "Transfer of licenses," of Title 10 of *Code of Federal Regulations* (10 CFR).

NRG Energy is the ultimate parent company of NRG South Texas, which is the owner licensee of 44 percent of STP, Units 1 and 2, and STPNOC is the licensed operator of STP, Units 1 and 2.

2.0 EVALUATION

The NRC staff reviewed STPNOC's request for a threshold determination that the proposed merger between NRG Energy and GenOn Energy, will not involve a direct or indirect transfer of control of the operating licenses for STP, Units 1 and 2 that would require approval pursuant to 10 CFR 50.80. The regulation at 10 CFR 50.80(a) states:

No license for a production or utilization facility (including, but not limited to, permits under this part and part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), 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 gives its consent in writing.

Enclosure

On July 20, 2012, NRG Energy and its direct wholly owned subsidiary, Plus Merger Corporation (Plus Merger), and GenOn Energy reached a definitive merger agreement by which NRG Energy would acquire GenOn Energy in an all-stock transaction. The Agreement and Plan of Merger (the Merger Agreement) dated July 20, 2012, is publicly available and was filed with the U.S. Securities and Exchange Commission (SEC).<sup>1</sup>

The proposed merger will be effected by the merger of Plus Merger with and into GenOn Energy, with GenOn Energy being the surviving Corporation.<sup>2</sup> As a result of the proposed merger, each shareholder of GenOn Energy will receive a 0.1216 share of NRG Energy common stock in exchange for each GenOn Energy share of common stock. Upon completion of the merger, GenOn Energy shareholders will own approximately 29 percent of the shares of NRG Energy, and the NRG Energy shareholders will continue to own approximately 71 percent of the shares of NRG Energy.

Pursuant to the Merger Agreement, upon consummation of the proposed merger, the NRG Energy Board will be comprised of 16 directors, all of whom will be U.S. citizens. Twelve of the existing 14 directors of NRG Energy will continue to serve as directors of NRG Energy, including Mr. Howard E. Cosgrove, who will continue to serve as Chairman of the Board and Mr. David Crane, who will continue to serve as a director as well as President and Chief Executive Officer (CEO). The four additional directors will come from the existing GenOn Energy Board, including GenOn Energy's Chairman and CEO Edward R. Muller, who will join the NRG Energy Board as Vice-Chairman. In STPNOC's letter dated October 3, 2012, NRG Energy identified the four additional directors from the GenOn Energy Board of Directors who will join the existing NRG Energy Board of Directors post-merger, all of whom are U.S. citizens.

The proposed corporate structure that will exist after the merger will not change the existing chain of ownership with respect to NRG South Texas and its 44 percent ownership interest in STP, Units 1 and 2. NRG Energy's shareholders will constitute a majority of the NRG Energy shareholders after the merger, and the existing NRG Energy Board members will constitute a majority of the NRG Energy Board after consummation of the proposed merger. In addition, the proposed merger will not involve the creation of any intermediary holding company or affect any of the existing intermediary holding companies in the chain of ownership of NRG South Texas. Furthermore, there will be no changes in the operation or management of STP, Units 1 and 2, as a result of the proposed merger between NRG Energy and GenOn Energy since STPNOC will remain the licensed operator of STP, Units 1 and 2.

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<sup>1</sup> Merger Agreement - [http://sec.gov/Archives/edgar/data/1013871/000110465912050257/a12-16819\\_1ex2d1.htm](http://sec.gov/Archives/edgar/data/1013871/000110465912050257/a12-16819_1ex2d1.htm).

<sup>2</sup> See the Simplified Organization Chart for NRG South Texas LP Post-Merger included as an Enclosure to STPNOC's letter dated August 1, 2012.

### 3.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

The analysis regarding the existence of foreign ownership, control, or domination (FOCD) is separate from the analysis regarding the threshold for review under 50.80, and will be made without regard to the threshold finding. Section 103d of the Atomic Energy Act of 1954, as amended, provides, in relevant part, that

No license may be issued 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. In any event, no license may be issued to any person within the United States if, in the opinion of the Commission, the issuance of a license to such person would be inimical to the common defense and security or to the health and safety of the public.

The NRC's regulation 10 CFR 50.38, "Ineligibility of certain applicants," contains language to implement this statutory prohibition.

As previously stated, as a result of the proposed transaction, the NRG Energy Board of Directors will have 16 members, all of whom will be U.S. citizens. Both NRG Energy and GenOn Energy are Delaware corporations that are publicly traded companies, each with securities that are traded on the New York Stock Exchange and are widely held.

In addition, NRG Energy reviewed public records to identify any potential foreign shareholders. Section 13(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78m(d), requires that a person or entity that owns or controls more than 5 percent of the securities of a company must file notice with the SEC. Based upon these filings with the SEC, NRG Energy stated it is aware of one alien, foreign corporation, or foreign government that held or may have held more than 5 percent of the securities of NRG Energy as of December 31, 2011, or that owns more than 5 percent of GenOn Energy.

#### 3.1 Orbis Investment Management Ltd and Orbis Asset Management Ltd

In its letter dated August 28, 2012, STPNOC provided additional information to the NRC regarding FOCD as it relates to NRG Energy and GenOn Energy. Orbis Investment Management (U.S.), LLC (OIMUS), a Delaware limited liability company, has reported shares held by OIMUS and two Bermuda-based affiliated companies, Orbis Investment Management Ltd (OIML) and Orbis Asset Management Ltd. (OAML) (together, Orbis). As of June 30, 2012, Orbis held 3.9 percent of the shares of NRG Energy and 7.8 percent of the shares of GenOn Energy. According to NRG Energy, assuming that Orbis retained all of the shares of NRG Energy and GenOn Energy that it held on June 30, 2012, through the date of the proposed merger, Orbis's shares of NRG Energy and GenOn Energy would be diluted to approximately 5 percent of the voting common stock of NRG Energy following the proposed merger. In addition, Orbis does not have, and after the merger Orbis will not have, any rights to appoint any manager or director of NRG Energy. According to NRG Energy, Orbis does not have and will not have any special voting rights beyond those held by all other voting shareholders of NRG Energy. Moreover, the SEC Schedule 13G filings specifically certify that Orbis did not acquire its shares for the purpose of or with the effect of changing or influencing the control of NRG Energy or GenOn Energy.



As part of its review the license renewal application for STP, Units 1 and 2, the NRC staff reviewed the potential FOCD concerns regarding Orbis, and by letter dated May 22, 2012 (ADAMS Accession No. ML12143A031), the NRC staff issued a request for additional information (RAI) to address FOCD concerns regarding Orbis. In response to the NRC staff's RAI, by letter dated May 31, 2012 (ADAMS Accession No. ML12163A334), STPNOC stated that Orbis has the same shareholder voting rights with respect to these shares of common stock as NRG Energy's other shareholders. Further, Orbis has no right to participate in matters affecting the management or operation of STPNOC and Orbis has no rights to nominate any Director(s) to STPNOC's Board of Directors. In addition, the applicant also stated that Orbis does not have any shareholder rights in NRG Energy that could result in Orbis participating in decisions concerning nuclear safety or security; obtaining responsibility for special nuclear material; or gaining access to restricted data through its status as an NRG shareholder.

### 3.2 Blackrock, Inc., and State Street Corporation

NRG Energy identified that in an amended SEC Schedule 13G Filing dated February 13, 2012, Blackrock, Inc., a Delaware corporation, reported that it owned 10.2 percent of the voting common stock of NRG Energy on December 31, 2011, and that an undisclosed number of these shares are held by one or more foreign domiciled subsidiary. According to NRG Energy, based upon more recent August 13, 2012, SEC Schedule 13F Filings, NRG Energy believes that the Blackrock, Inc., and others of its affiliated group, owned approximately 8.3 percent of the outstanding shares of NRG Energy on June 30, 2012. Of these shares, the SEC Schedule 13F Filings indicate that approximately 1.6 percent of the voting shares of NRG Energy are held by two foreign Blackrock, Inc., entities.

State Street Corporation, a Massachusetts corporation, is a financial holding company that has reported in a SEC Schedule 13G dated February 9, 2012, that as of December 31, 2011, it owned 5.3 percent of the voting common stock of NRG Energy and that an undisclosed number of these shares are held by one, or more, foreign domiciled subsidiary. In the October 3, 2012, supplement, STPNOC stated that as of June 30, 2012, State Street Corporation had 5.1 percent of the shares of NRG Energy and 2.2 percent of the shares of GenOn Energy. Assuming that State Street Corporation retained all of the shares of NRG Energy and GenOn Energy that it held on June 30, 2012, through the date of the proposed merger, State Street Corporation's shares of NRG Energy and GenOn Energy would be diluted to approximately 4.3 percent of the voting common stock of NRG Energy following the proposed merger.

According to NRG Energy, item 7 of the State Street Corporation's SEC Schedule 13G dated February 9, 2012, indicates that the reported amount of shares held by State Street Corporation include several subsidiaries identified on Exhibit 1 of the filing. The SEC does not require State Street Corporation to report how many shares each of these subsidiaries might hold. However, the foreign domiciled entities are subsidiaries of State Street, and each is presumably owned and controlled by State Street Corporation, which is a U.S. company.

State Street Corporation has no right to appoint any manager or director of NRG Energy, and it has no special voting rights beyond those held by all other voting shareholders of NRG Energy. STPNOC further states that the SEC Schedule 13 G Filing certifies that State Street Corporation did not acquire its shares for the purpose of or with the effect of changing or influencing the control of NRG Energy.

### 3.3 Nuclear Oversight Subcommittee

Further, regarding FOCD, NRG Energy previously established a Nuclear Oversight Committee of the NRG Energy Board and a Nuclear Oversight Subcommittee, which are made up entirely of U.S. citizens, and Board authority has been delegated to the Nuclear Oversight Subcommittee over any matters that could have implications for compliance with 10 CFR 50.38, "Ineligibility of certain applicants." STPNOC provided the "Charter of the Nuclear Oversight Committee of the Board of Directors of NRG Energy, Inc.," in Attachment 1, and a copy of the delegation of actions to the Nuclear Oversight Subcommittee in Attachment 2 of its letter dated May 31, 2012, which the NRC concludes are acceptable for negation FOCD.

### 3.4 Foreign Ownership, Control, or Domination Conclusion

Based on the forgoing, the Commission does not know or have reason to believe that the subject licensee will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

### 4.0 CONCLUSION

The NRC staff concludes that the proposed merger between NRG Energy and GenOn Energy will not constitute direct or indirect transfer of control of the licenses for STP, Units 1 and 2, and, therefore, NRG Energy does not require the NRC's approval under Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 in connection with the proposed merger between NRG Energy and GenOn Energy.

Principal Contributor: Jo Ann Simpson, IFIB/DIRS/NRR

Date: November 1, 2012

D. Koehl

- 2 -

The NRC's related staff evaluation is enclosed. If you have any questions, please contact me at 301-415-3016 or via e-mail at [Balwant.Singal@nrc.gov](mailto:Balwant.Singal@nrc.gov).

Sincerely,

*/RA by LGibson for/*

Balwant K. Singal, Senior Project Manager  
Plant Licensing Branch IV  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosure:  
As stated

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**ADAMS Accession No.: ML12297A134**

**Memo dated 10/22/2012**

OFFICE	NRR/LPL4/PM	NRR/LPL4/LA	NRR/DIRS/IFIB/BC	OGC	NRR/LPL4/BC	NRR/LPL4/PM
NAME	FLyon for BSingal	JBurkhardt	RTurtill(A)*	SUttal NLO w/chg	MMarkley	LGibson for BSingal
DATE	10/31/12	10/24/12	10/22/12	10/26/12	11/01/12	11/01/12

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