



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

July 17, 2020

Mr. Adrian J. Rodriguez  
Interim Chief Executive Officer, General  
Counsel, and Assistant Secretary  
El Paso Electric Company  
P.O. Box 982  
El Paso, TX 79960-0982

SUBJECT: REQUEST FOR INFORMATION PURSUANT TO TITLE 10 OF THE *CODE OF FEDERAL REGULATIONS* SECTION 50.54(f) ON FOREIGN OWNERSHIP, CONTROL, OR DOMINATION OF PALO VERDE NUCLEAR GENERATING STATION, UNITS 1, 2, AND 3

Dear Mr. Rodriguez:

Pursuant to Section 161c of the Atomic Energy Act of 1954, as amended (the Act), and the U.S. Nuclear Regulatory Commission (NRC, the Commission) regulation at Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.54(f), the El Paso Electric Company (EPE) is required to submit, as specified in 10 CFR 50.4, "Written communications," written statements, signed under oath or affirmation, to enable the NRC to determine whether or not EPE's NRC licenses for the Palo Verde Nuclear Generating Station should be modified, suspended, or revoked. Specifically, the NRC needs this information in the administration or enforcement of the provisions of the Act (i.e., Section 103d) and its regulations (i.e., 10 CFR 50.38) related to the foreign ownership, control, or domination (FOCD) of NRC utilization facility licenses.

By application dated August 13, 2019 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML19225D197), EPE, acting for itself and on behalf of IIF US Holding 2 LP (IIF US 2) (together, the applicants), requested consent from the NRC to the indirect transfer of control to IIF US 2 of EPE's possession-only, non-operating interests in Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74, Docket Nos. STN 50-528, STN 50-529, and STN 50-530, for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde), respectively, and the general license for the Palo Verde independent spent fuel storage installation (ISFSI), Docket No. 72-44. The applicants requested this licensing action pursuant to 10 CFR 50.80, "Transfer of licenses," for the three utilization facility licenses and pursuant to 10 CFR 72.50, "Transfer of license," for the ISFSI general license. The applicants requested this licensing action in anticipation of a proposed transaction in which IIF US 2 would indirectly acquire 100 percent of the shares of EPE, a utility that trades on the New York Stock Exchange under symbol EE.

As indicated in the application, EPE is a 15.8-percent co-owner (tenant-in-common) of the NRC utilization facility licenses for Palo Verde and the NRC general license for the Palo Verde ISFSI, with no operating rights. The remaining 84.2-percent ownership is held by six other co-owners, as follows: 29.1 percent by Arizona Public Service Company (APS), which holds both possession and operating rights in the NRC licenses for Palo Verde; 17.49 percent by Salt River

Project Agricultural Improvement and Power District; 15.8 percent by Southern California Edison Company; 10.2 percent by Public Service Company of New Mexico; 5.91 percent by Southern California Public Power Authority; and 5.7 percent by Los Angeles Department of Water and Power. The proposed transaction would not involve, or result in, changes to rights and obligations of APS or any of the possession-only co-owners under any of the NRC licenses for Palo Verde and the ISFSI. Moreover, the proposed transaction would not result in changes to the role of APS as the sole licensed operator for Palo Verde and the ISFSI.

As indicated in the application, the purpose of the proposed transaction was for IIF US 2 to take private ownership of EPE. The transaction would replace public shareholders of EPE with private ownership of EPE by Sun Merger Sub, Inc., a wholly-owned subsidiary of Sun Jupiter Holdings, LLC, which, in turn, is a wholly-owned subsidiary of IIF US 2. The proposed transaction would affect only the indirect change in control of EPE's possession-only rights in the NRC licenses. The proposed transaction would not involve any changes in EPE's generating facilities or their operation, including Palo Verde and its ISFSI.

For such indirect transfers of control of utilization facility licenses, the NRC must make a determination with regard to FOCD. This is consistent with Section 103d of the Act, which provides, in part, that no utilization facility license may be issued to the following:

[A]ny 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 at 10 CFR 50.38, "Ineligibility of certain applicants," is the regulatory provision that implements the FOCD provisions of the Act. The NRC staff evaluates utilization facility license transfer applications in a manner that is consistent with the guidance provided in the "Final Standard Review Plan on Foreign Ownership, Control, or Domination" (Volume 64 of the *Federal Register*, page 52355 (64 FR 52355); September 28, 1999), to determine whether the transferee will be owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

With regard to FOCD, the application submitted to the NRC for the indirect transfer of control to IIF US 2 of EPE's interests in the Palo Verde licenses stated the following:

As demonstrated more fully below, the Proposed Transaction:

...will not result in foreign ownership, control or domination over EPE or any of the NRC Licenses or other [Palo Verde] NRC licensees [(see Note)]...

[Note:] While the limited partnership interests in IIF US 2 are geographically broadly held, we note that: (i) such limited partnership interests are passive and convey no ability to the limited partners to direct the management or control the activities of IIF US 2 or its subsidiaries; and (ii) no limited partner of IIF US 2 holds 10% or more of the limited partnership interests in IIF US 2, either individually or in the aggregate with its affiliates.

...

#### IV. FOREIGN OWNERSHIP OR CONTROL

The Proposed Transaction will not result in EPE or its interests in [Palo Verde] Units 1, 2, or 3, and their NRC Licenses becoming owned, controlled, or dominated by an alien, foreign corporation or a foreign government. As demonstrated above, following closing of the Proposed Transaction EPE will retain its own board of directors and principal officers all of whom are currently expected to be U.S. citizens. Further, all of EPE's upstream owners will be U.S. entities controlled by U.S. citizens that are ultimately controlled by the IIF US 2 GP Owners, all of whom are U.S. citizens.

Additionally, Attachment 2, "EPE Simplified Organization Chart—Post-Closing of the Proposed Transaction," to the application indicates a primarily vertical organizational structure. The application stated that each subsidiary between IIF US 2 and EPE are newly formed solely for the purpose of owning the next subsidiary and completing the proposed transaction. Furthermore, each of these entities shares the same (U.S.) business address with the proposed ultimate owner, IIF US 2.

Based on its independent analysis of the information provided in the application, the NRC staff concluded during its review of the application that it did not know or have reason to believe that any of the parties related to the indirect license transfer were owned, controlled, or dominated by a foreign interest and that, therefore, the transfer met the FOCD requirement of 10 CFR 50.38. Based, in part, on this conclusion, on March 5, 2020, the NRC staff issued an order approving the application (ADAMS Accession No. ML20038A226). Although the proposed transfer has received NRC staff approval, the indirect license transfer transaction has not yet been consummated.

After issuing the order, the NRC staff identified information from filings with the Federal Energy Regulatory Commission (FERC), the U.S. Securities and Exchange Commission (SEC), and the Federal Communications Commission (FCC) about Sun Merger Sub, Inc., registered in Dallas, TX, that may be relevant to the issue of FOCD with respect to the EPE indirect license transfer transaction. Specifically, according to an SEC filing,<sup>1</sup> Sun Merger Sub, Inc. is seeking to merge with EPE. Sun Merger Sub, Inc. is a wholly-owned subsidiary of Sun Jupiter Holdings, LLC, registered in Wilmington, DE. As provided in an FCC filing<sup>2</sup> related to the EPE merger, more than one-fourth of the capital stock of Sun Jupiter Holdings, LLC is owned of record or voted by aliens or their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country. As provided in documents filed at the El Paso city clerk's office, Ordinance No. 019022, and in response to a FERC Deficiency Letter,<sup>3</sup> Sun Jupiter Holdings, LLC is a wholly-owned subsidiary of IIF US Holding 2 LP. IIF US Holding 2 LP, in turn, is owned by IIF US Holding 2 GP, LLC.

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<sup>1</sup> Agreement and Plan of Merger by and among El Paso Electric Company, Sun Jupiter Holdings LLC and Sun Merger Sub Inc., June 1, 2019.

[https://www.sec.gov/Archives/edgar/data/31978/000114036119010234/ex2\\_1.htm](https://www.sec.gov/Archives/edgar/data/31978/000114036119010234/ex2_1.htm)

<sup>2</sup> Federal Communications Commission Universal Licensing System. 0008737430—Sun Jupiter Holdings LLC. Reference Copy Question 101a.

<https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11807958>

<sup>3</sup> Letter from V. Franco to K. Bose, Secretary, FERC. Response to Deficiency Letter, El Paso Electric Company, et al., Docket No. EC19-120-000, January 6, 2020.

[https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14826158](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14826158)

Another SEC filing<sup>4</sup> appears to indicate that an entity with the same name as the merging corporation, Sun Merger Sub, Inc., is known to be associated with a foreign entity and currently holds \$400 million in bonds that will mature in 2021.<sup>5</sup> While the names are identical, the States of incorporation are different. Specifically, the corporation involved in the EPE merger is incorporated in Texas, while the other is incorporated in Virginia, although the Virginia entity is listed as “inactive” because of a merger. The NRC staff does not have information about the merger that caused the Virginia entity to become inactive.

Based on the foregoing information identified by the NRC staff since the staff’s approval of the EPE indirect license transfer application, the NRC requires that EPE address this information and explain whether there is FOCD, at any percentage or level, of the entities listed in the application and shown in Attachment 2 to the application.

If you have any questions, please contact the Palo Verde Project Manager at (301) 415-1564 or via e-mail to [Siva.Lingam@nrc.gov](mailto:Siva.Lingam@nrc.gov).

Sincerely,

Craig G. Erlanger, Director  
Division of Operating Reactor Licensing  
Office of Nuclear Reactor Regulation

Docket Nos. STN 50-528, STN 50-529,  
STN 50-530, and 72-44

cc: Listserv

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<sup>4</sup> Agreement and Plan of Merger by and among Shuanghui International Holdings Limited, Sun Merger Sub, Inc. and Smithfield Foods, Inc., May 28, 2013.

<sup>5</sup> <https://www.sec.gov/Archives/edgar/data/91388/000119312513239663/d545921dex21.htm>  
Securities and Exchange Commission. Smithfield Foods 8-K Filing. July 31, 2013.  
<https://www.sec.gov/Archives/edgar/data/91388/000009138813000058/sfd07312013ex991.htm>

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**ADAMS Accession No.: ML20196L721**

\*by email

OFFICE	NRR/DORL/LPL4/PM*	NRR/DORL/LPL4/LA*	NMSS/REFS/FAB/BC*	NMSS/DFM/STLB/BC*
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OFFICE	NSIR/DSO/ILTAB/BC(A)*	NRR/DORL/LPL4/BC*	NRR/DORL/D*	NMSS/REFS/D*
NAME	JClark (LEnglish for)	JDixon-Herrity	CErlanger	JTappert (KCoyne for)
DATE	7/14/2020	7/14/2020	7/14/2020	7/14/2020
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NAME	AKock (CRegan for)	SAtack (SLee for)	JDougherty	JWachutka
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OFFICE	NMSS/D*	NSIR/D*	NRR/D*	NRR/DORL/D
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