

STPNOC, and that the indirect transfer of the licenses as held by STPNOC, to the extent effected by the proposed indirect transfer of control of Texas Genco to Texas Genco LLC, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below.

The findings set forth above are supported by a safety evaluation dated

### III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers related to the proposed acquisition is approved, subject to the following conditions:

1. Texas Genco shall take no action to cause Texas Genco LLC, or its successors and assigns, to void, cancel, or modify its \$120 million contingency commitment to Texas Genco, as represented in the application, or cause it to fail to perform or impair its performance under the commitment, or remove or interfere with Texas Genco's ability to draw upon the commitment, without the prior written consent of the Director of the Office of Nuclear Reactor Regulation. An executed copy of the Support Agreement shall be submitted to the NRC no later than 30 days after completion of the indirect license transfers. Also, Texas Genco shall inform the NRC in writing any time that it draws upon the \$120 million commitment.

2. Should the proposed acquisition of control of Texas Genco by Texas Genco LLC not be completed within one year from date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 12, 2004, and supplemental letters dated December 13 and 22, 2004, and February 23 and March 1, 2005, and the safety evaluation dated April 4, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who

do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 4th day of April, 2005.

For the Nuclear Regulatory Commission.

**J. E. Dyer,**

*Director, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-498 and 50-499]**

### **In the Matter of Texas Genco, LP; City Public Service Board of San Antonio; AEP Texas Central Company; STP Nuclear Operating Company (South Texas Project, Units 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments**

#### **I.**

STP Nuclear Operating Company (STPNOC), and owners Texas Genco, LP (Texas Genco), the City Public Service Board of San Antonio (CPS), AEP Texas Central Company (TCC), and the City of Austin, Texas (COA) are holders of Facility Operating License Nos. NPF-76 and NPF-80, which authorize the possession, use, and operation of the South Texas Project, Units 1 and 2 (the facility or STP). STPNOC is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to operate STP. The facility is located at the licensees' site in Matagorda County, Texas.

#### **II.**

By letter dated October 21, 2004, STPNOC submitted an application requesting approval of direct license transfers that would be necessary in connection with the proposed transfer of TCC's 25.2 percent undivided ownership interest in the facility to STP current co-owners Texas Genco and CPS. The transfer of TCC's interest may occur under one of several alternative scenarios described in the application. Supplemental information was provided by letters dated December 13 and 22, 2004, and February 23 and March 1, 2005. Hereinafter, the October 21, 2004, application and supplemental information will be referred to collectively as the "application." STPNOC also requested approval of conforming license amendments that would remove TCC from the facility

operating licenses. After completion of the proposed transfers under any proposed scenario, Texas Genco, CPS, and COA would be the sole owners of the facility; the role of STPNOC would be unchanged. The application also requested NRC approval, as necessary, of any indirect transfer of the licenses as held by STPNOC that would be effected by the transfer of TCC's ownership interest in STP under any proposed scenario.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by STPNOC pursuant to 50.80 and 50.90 of Title 10 of the Code of Federal Regulations (10 CFR). Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on December 20, 2004 (69 FR 76019). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Texas Genco and CPS are qualified to hold the ownership interest in the facility previously held by TCC under the alternative scenarios described in the application, and that the transfer of TCC's 25.2 percent undivided ownership interest in the facility to Texas Genco and/or CPS under the alternative scenarios described in the application is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments 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. The facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and

security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. The NRC staff has also found that to the extent that the transfer of TCC's interest as described herein will effect an indirect transfer of the licenses as held by STPNOC, such transfer of TCC's interest will not affect the qualifications of STPNOC as a holder of the licenses, and such indirect transfer of the licenses as held by STPNOC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The findings set forth above are supported by NRC safety evaluation dated \_\_\_\_\_.

### III.

Accordingly, pursuant to Sections 161b, 161o, and 184 of the Act, 42 U.S.C. 2201(b), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the direct transfer of the licenses as described herein is approved, subject to the following conditions:

1. On the closing date of the transfer of part of TCC's interest in STP to Texas Genco, TCC shall transfer to Texas Genco TCC's decommissioning funds accumulated as of such date, as follows: (1) If TCC transfers a 13.2 percent interest in STP to Texas Genco, TCC shall transfer 52.38 percent (13.2/25.2) of its accumulated decommissioning funds to Texas Genco; (2) if TCC transfers its entire 25.2 percent interest in STP to Texas Genco, TCC shall transfer all of its accumulated decommissioning funds to Texas Genco. In either case, Texas Genco shall ensure the deposit of such funds received from TCC into an external decommissioning trust consistent with the application.

2. On the closing date of the transfer of any part of TCC's interest in STP to CPS, TCC shall transfer to CPS TCC's decommissioning funds accumulated as of such date, as follows: (1) if TCC transfers a 12.0 percent interest in STP to CPS, TCC shall transfer 47.62 percent (12.0/25.2) of its accumulated decommissioning funds to CPS; (2) if TCC transfers its entire 25.2 percent interest in STP to CPS, TCC shall transfer all of its accumulated decommissioning funds to CPS. In either case, CPS shall ensure the deposit of such funds received from TCC into an external decommissioning trust consistent with the application.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosures 2 and 3 to the cover letter forwarding this Order, to conform the licenses to reflect the subject direct license transfers are approved. The amendments shall be issued and made effective at the time

the proposed direct license transfers are completed.

*It is further ordered* that to the extent any indirect transfer of the licenses as held by STPNOC would be effected by reason of the transfer of TCC's interest in STP, such indirect transfer of the licenses is approved.

*It is further ordered* that STPNOC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of the date of closing of the transfer of TCC's interest in STP no later than 5 business days prior to closing. Should the transfer of the licenses not be completed by April 1, 2006, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 21, 2004, as supplemented by letters dated December 13 and 22, 2004, and February 23 and March 1, 2005, and the non-proprietary safety evaluation dated April 4, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 4th day of April 2005.

For the Nuclear Regulatory Commission.

**J. E. Dyer,**

*Director, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50-407]**

### **University of Utah; University of Utah TRIGA Nuclear Reactor Facility; Exemption**

#### **1.0 Background**

University of Utah (the licensee), is the holder of Facility Operating License No. R-126, which authorizes operation

of the University of Utah Nuclear Reactor Facility, an open pool TRIGA fueled research reactor facility, licensed to operate at power levels up to 100 kilowatts, located in Salt Lake City, Utah. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The current operating license expires at midnight on April 17, 2005.

By letter dated April 13, 2005, the licensee requested an exemption from the regulation, 10 CFR 2.109(a). Specifically, the requested exemption allows the University of Utah to have submitted a license renewal application for the research reactor less than 30 days prior to the expiration of the operating license, while maintaining the protection of the timely renewal doctrine contained in 10 CFR 2.109(a). By letter dated March 25, 2005, the licensee applied for renewal of the research reactor license. In the April 13, 2005 letter, the licensee stated it was unable to submit a renewal application 30 days prior to license expiration because: (1) Compliance with 10 CFR 2.109 created an undue hardship not intended by this regulation due to the limited staff (currently only two licensed senior reactor operators) and a change in the Reactor Administrator (administrative change) within the previous calendar year, and (2) misinterpretation of the requirements of 10 CFR 2.109(a). The licensee also in the April 13, 2005 letter, indicated that the exemption from the 30 day rule will not present: (1) an undue risk to the public health and safety and is consistent with the common defense and security, and that the reactor and material would be protected under the current license provisions; (2) the licensee made a good faith effort to comply with the regulation; and (3) there is no good alternatives for divesting the licensee of material held under the license. The licensee indicated that, in light of these and other factors, it could not prepare and file a sufficient license renewal application 30 days prior to the license expiration specified in Title 10 of the Code of Federal Regulations (10 CFR) Part 2, Section 109(a), "Effect of timely renewal application."

#### **2.0 Request/Action**

Section 109(a) of 10 CFR Part 2 states: "Except for the renewal of an operating license for a nuclear power plant under 10 CFR 50.21(b) or 50.22, if, at least 30 days prior to the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new