

inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 21, 2005.

**Joseph T. Rannazzisi,**

*Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E5-6592 Filed 11-28-05; 8:45 am]

BILLING CODE 4410-09-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

#### 1. Emerald Coal Resources, LP

[Docket No. M-2005-072-C]

Emerald Coal Resources, LP, Three Gateway Center, 401 Liberty Avenue, Suite 1340, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (Weekly examination) to its Emerald No. 1 Mine (MSHA I.D. No. 36-05466) located in Greene County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the use of air monitoring stations to monitor the longwall tailgate airflow in lieu of traveling the entry in its entirety. The petitioner asserts that due to deteriorating roof conditions, traveling the entry in its entirety would be unsafe. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

#### Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail: [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov); Fax: (202) 693-9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before December 29, 2005. Copies of these

petitions are available for inspection at that address.

Dated at Arlington, Virginia this 22nd day of November 2005.

**Rebecca J. Smith,**

*Acting Director, Office of Standards, Regulations, and Variances.*

[FR Doc. E5-6674 Filed 11-28-05; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

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

### STP Nuclear Operating Company, et al.; South Texas Project, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under section 50.80 of Title 10 of the Code of Federal Regulations (10 CFR) approving the indirect transfer of Facility Operating License No. NPF-76 and Facility Operating License No. NPF-80 for the South Texas Project, Units 1 and 2 (STP), respectively, to the extent currently held by Texas Genco, LP (Texas Genco). The City Public Service Board of San Antonio, and the City of Austin, Texas, co-own the units with Texas Genco but are not involved in this proposed action. STP Nuclear Operating Company (STPNOC) is authorized to act for the owners, and has exclusive responsibility and control over the physical construction, operation, and maintenance of STP.

STP Nuclear Operating Company, acting on behalf of Texas Genco and NRG Energy, Inc. (NRG Energy), has requested that the Commission consent to the indirect transfer of control of Texas Genco's 44 percent interest in STP. NRG Energy and Texas Genco LLC have entered into a definitive agreement for NRG Energy to acquire all of the outstanding equity of Texas Genco LLC, which indirectly owns 100 percent of Texas Genco. Texas Genco and NRG Energy seek NRC consent to the indirect transfer of control of the licenses to the extent held by Texas Genco that will result from NRG Energy's acquisition of Texas Genco LLC.

In addition to its 44 percent undivided ownership interests in STP, Texas Genco holds a corresponding interest in STPNOC, a not-for-profit Texas corporation, which is the licensed operator of STP. Approval of the indirect transfer of control of the licenses to the extent held by STPNOC

is also requested to the extent such approval is necessary. No physical changes to STP or operational changes are being proposed in the application.

Pursuant to 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. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C "Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)-(viii).

Requests for a hearing and petitions for leave to intervene should be served upon counsel for STPNOC, Mr. John E. Matthews at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004 (tel: 202-739-5524; fax: 202-739-3001; e-mail: [jmatthews@morganlewis.com](mailto:jmatthews@morganlewis.com)); counsel

for NRG Energy, Dr. William R. Hollaway at Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, Washington, DC 20005 (tel: 202-371-7819; fax: 202-371-7939; e-mail: [whollawa@skadden.com](mailto:whollawa@skadden.com)); and counsel for Texas Genco, Mr. Nicholas S. Reynolds at Winston and Strawn, LLP, 1700 K Street, NW., Washington, DC 20006-3817 (tel: 202-282-5717; fax: 202-282-5100; e-mail: [nreynolds@winston.com](mailto:nreynolds@winston.com)); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (e-mail address for filings regarding license transfer cases only: [OGCLT@NRC.gov](mailto:OGCLT@NRC.gov)); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated October 14, 2005, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (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 21st day of November 2005.

For The Nuclear Regulatory Commission.

**Mohan C. Thadani,**

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

[FR Doc. E5-6634 Filed 11-28-05; 8:45 am]

**BILLING CODE 7590-01-P**

## **PENSION BENEFIT GUARANTY CORPORATION**

### **Approval of Amendment to Special Withdrawal Liability Rules for Service Employees International Union Local 25 and Participating Employers Pension Trust**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of approval.

**SUMMARY:** The Service Employees International Union Local 25 and Participating Employers Pension Trust requested the Pension Benefit Guaranty Corporation ("PBGC") to approve a plan amendment providing for special withdrawal liability rules for employers that maintain the Plan. PBGC published a Notice of Pendency of the Request for Approval of the amendment on July 6, 2005 (70 FR 38983) ("Notice of Pendency"). In accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), PBGC is now advising the public that the agency has approved the requested amendment.

**FOR FURTHER INFORMATION CONTACT:** Frank Anderson, Attorney, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; Telephone 202-326-4020 (For TTY/TDD users, call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under section 4201 of ERISA, an employer who completely or partially withdraws from a defined benefit multiemployer pension plan becomes liable for a proportional share of the plan's unfunded vested benefits. The statute specifies that a "complete withdrawal" occurs whenever an employer either permanently (1) ceases to have an obligation to contribute to the plan, or (2) ceases all operations covered under the plan. See ERISA section

4203(a). Under the second test, therefore, an employer who closes or sells its operations will incur withdrawal liability. Under the first test, an employer who remains in business but who no longer has an obligation to contribute to the plan also is liable. The "partial withdrawal" provisions of sections 4205 and 4206 impose a lesser measure of liability upon employers who greatly reduce, but do not eliminate, the operations that generate contributions to the plan. The withdrawal liability provisions of ERISA are a critical factor in maintaining the solvency of these pension plans and reducing claims made on the multiemployer plan guaranty fund maintained by PBGC. Without withdrawal liability rules, an employer who participates in an underfunded multiemployer plan would have a powerful economic incentive to reduce expenses by withdrawing from the plan.

Congress nevertheless allowed for the possibility that, in certain industries, the fact that particular employers go out of business (or cease operations in a specific geographic region) might not result in permanent damage to the pension plan's contribution base. In the construction industry, for example, the work must necessarily take place at the construction site; if that work generates contributions to the pension plan, it does not much matter which employer does the work. Put another way, if a construction employer goes out of business, or stops operations in a geographic area, pension plan contributions will not diminish if a second employer who contributes to the plan fills the void. The plan's contribution base is damaged, therefore, only if the employer stops contributing to the plan but continues to perform construction work in the jurisdiction of the collective bargaining agreement.

This reasoning led Congress to adopt a special definition of the term "withdrawal" for construction industry plans. Section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, but the employer nevertheless performs previously covered work in the jurisdiction of the collective bargaining agreement anytime within five years after the employer ceased its contributions.<sup>1</sup> There is a parallel rule

<sup>1</sup> Section 4203(c)(1) of ERISA applies a similar definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. No plan has ever requested PBGC to