

September 8, 2003

Mr. James J. Sheppard
President and Chief Executive Officer
STP Nuclear Operating Company
South Texas Project Electric
Generating Station
P. O. Box 289
Wadsworth, TX 77483

SUBJECT: SOUTH TEXAS PROJECT, UNITS 1 AND 2 - NOTICE OF CONSIDERATION
OF ISSUANCE OF AMENDMENTS TO FACILITY OPERATING LICENSES,
PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION,
AND OPPORTUNITY FOR A HEARING (TAC NOS. MB6169 AND MB6170)

Dear Mr. Sheppard:

Enclosed is a "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," related to the deletion of the antitrust conditions contained in Appendix C of Facility Operating Licenses NPF-76 and NPF-80 for South Texas Project, Units 1 and 2, respectively. The deletion of these antitrust conditions was proposed in the application dated August 20, 2002.

This notice is being forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

David H. Jaffe, Senior Project Manager, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Docket Nos. 50-498 and 50-499

Enclosure: As stated

cc: See next page

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UNITED STATES NUCLEAR REGULATORY COMMISSION

STP NUCLEAR OPERATING COMPANY

DOCKET NOS. 50-498 AND 50-499

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO
FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS
CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR A HEARING

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License (FOL) Nos. NPF-76 and NPF-80, issued to STP Nuclear Operating Company (the licensee), for operation of South Texas Project (STP), Units 1 and 2, respectively. STP, Units 1 and 2, are located in Matagorda County, Texas.

The proposed amendments would delete the antitrust conditions contained in Appendix C to the FOLs for STP, Units 1 and 2. According to the application, the antitrust license conditions attached to the STP, Units 1 and 2, FOLs relate generally to transmission access, market power protection, or unique case-specific matters. In its application, the licensee states primarily that the antitrust license conditions relating to transmission access and market power are no longer necessary because of Texas's adoption of a comprehensive electric restructuring system that guards against anticompetitive practices in the transmission market as well as abuses in generation market power. The licensee also indicates that the changes in the electric industry render unnecessary the application of these antitrust conditions. The licensee maintains that, in addition to being unnecessary, the existing antitrust conditions could operate to thwart the intent and purpose of the Texas restructuring legislation.

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

The Commission has made a proposed determination that the amendments request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, this request will have no impact on the probability or consequences of any type of accident: new, different, or previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions. No actual plant equipment or accident analyses will be affected by the proposed change and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This request involves an administrative change only. The Operating Licenses are being changed to remove unnecessary and outdated antitrust conditions.

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed change will not relax any criteria used to establish safety limits, safety systems settings, or any limiting conditions of operations. Therefore, this request will not impact [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and notes that it does not agree that the requested amendments can properly be characterized as involving only "administrative changes." Nevertheless, based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied notwithstanding its view that the requested amendments do not involve only administrative changes. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration. The staff previously made this conclusion which was published in the Federal Register (67 FR 61685 dated October 1, 2002).

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State

comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area, O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By **October 14, 2003**, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject FOLs and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, Public File Area, O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/doc-collections/cfr>. If there are problems in accessing the document, contact the Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. If a request for a hearing or petition for leave to

intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is

aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 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, by the above date.

Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to Alvin H. Gutterman, Esq., Morgan, Lewis, & Bockius, 1111 Pennsylvania NW., Washington, DC 20004, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 20, 2002, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public 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

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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.

Dated at Rockville, Maryland, this 8th day of September , 2003.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

David H. Jaffe, Senior Project Manager, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

South Texas Project, Units 1 & 2

cc:

Mr. Cornelius F. O'Keefe
Senior Resident Inspector
U.S. Nuclear Regulatory Commission
P. O. Box 910
Bay City, TX 77414

A. Ramirez/C. M. Canady
City of Austin
Electric Utility Department
721 Barton Springs Road
Austin, TX 78704

Mr. L. K. Blaylock
Mr. W. C. Gunst
City Public Service Board
P. O. Box 1771
San Antonio, TX 78296

Mr. C. A. Johnson/A. C. Bakken
AEP Texas Central Company
P. O. Box 289
Mail Code: N5022
Wadsworth, TX 77483

INPO
Records Center
700 Galleria Parkway
Atlanta, GA 30339-3064

Regional Administrator, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011

D. G. Tees/R. L. Balcom
Texas Genco, LP
P. O. Box 1700
Houston, TX 77251

Judge, Matagorda County
Matagorda County Courthouse
1700 Seventh Street
Bay City, TX 77414

A. H. Gutterman, Esq.
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Mr. T. J. Jordan, Vice President
Engineering & Technical Services
STP Nuclear Operating Company
P. O. Box 289
Wadsworth, TX 77483

S. M. Head, Manager, Licensing
Nuclear Quality & Licensing Department
STP Nuclear Operating Company
P. O. Box 289, Mail Code: N5014
Wadsworth, TX 77483

Environmental and Natural Resources
Policy Director
P. O. Box 12428
Austin, TX 78711-3189

Jon C. Wood
Matthews & Branscomb
112 East Pecan, Suite 1100
San Antonio, TX 78205

Arthur C. Tate, Director
Division of Compliance & Inspection
Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, TX 78756

Brian Almon
Public Utility Commission
William B. Travis Building
P. O. Box 13326
1701 North Congress Avenue
Austin, TX 78701-3326

cc:

Susan M. Jablonski
Office of Permitting, Remediation
and Registration
Texas Commission on
Environmental Quality
MC-122
P.O. Box 13087
Austin, TX 78711-3087

Mr. Terry Parks, Chief Inspector
Texas Department of Licensing
and Regulation
Boiler Division
P. O. Box 12157
Austin, TX 78711

Mr. Ted Enos
4200 South Hulen
Suite 630
Ft. Worth, Texas 76109