

October 31, 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 - ISSUANCE OF AMENDMENTS
CONCERNING DELETION OF ANTITRUST CONDITIONS (TAC NOS.
MB6169 AND MB6170)

Dear Mr. Sheppard:

The Commission has issued the enclosed Amendment No. 157 to Facility Operating License (FOL) No. NPF-76 and Amendment No. 145 to FOL No. NPF-80 for the South Texas Project, Units 1 and 2, respectively. The amendments consist of changes to the FOLs and Appendix C to the FOLs in response to your application dated August 20, 2002.

The amendments delete antitrust conditions contained in the FOLs, and Appendix C, for South Texas Project, Units 1 and 2.

A copy of our related Safety Evaluation is enclosed. The Notice of Issuance, to be published in the *Federal Register*, is also enclosed.

Sincerely,

/RA/

David 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

Enclosures: 1. Amendment No. 157 to NPF-76
2. Amendment No. 145 to NPF-80
3. Safety Evaluation
4. Notice of Issuance

cc w/encls: See next page

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*See previous concurrences

**Subject to changes

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STP NUCLEAR OPERATING COMPANY

DOCKET NO. 50-498

SOUTH TEXAS PROJECT, UNIT 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 157
License No. NPF-76

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by STP Nuclear Operating Company* acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio (CPS), AEP Texas Central Company, and the City of Austin, Texas (COA) (the licensees), dated August 20, 2002, 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;
 - B. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this license amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

*STP Nuclear Operating Company is authorized to act for Texas Genco, LP, the City Public Service Board of San Antonio, AEP Texas Central Company, and the City of Austin, Texas, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

2. Accordingly, the license is amended by a change to Section C.(3) and Appendix C to the license as indicated in the attachment to this license.
3. The license amendment is effective as of its date of issuance and shall be implemented within 30 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Robert A. Gramm, Chief, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Attachment: Changes to the Facility
Operating License

Date of Issuance: October 31, 2003

STP NUCLEAR OPERATING COMPANY

DOCKET NO. 50-499

SOUTH TEXAS PROJECT, UNIT 2

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No. 145
License No. NPF-80

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by STP Nuclear Operating Company* acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio (CPS), AEP Texas Central Company, and the City of Austin, Texas (COA) (the licensees), dated August 20, 2002, 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;
 - B. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission;
 - C. There is reasonable assurance (i) that the activities authorized by this amendment can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations;
 - D. The issuance of this license amendment will not be inimical to the common defense and security or to the health and safety of the public; and
 - E. The issuance of this amendment is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied.

*STP Nuclear Operating Company is authorized to act for Texas Genco, LP, the City Public Service Board of San Antonio, AEP Texas Central Company, and the City of Austin, Texas, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

2. Accordingly, the license is amended by a change to Section C.(3) and Appendix C to the license as indicated in the attachment to this license.
3. The license amendment is effective as of its date of issuance and shall be implemented within 30 days from the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Robert A. Gramm, Chief, Section 1
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

Attachment: Changes to the Facility
Operating License

Date of Issuance: October 31, 2003

ATTACHMENT TO LICENSE AMENDMENT NOS. 157 AND 145

FACILITY OPERATING LICENSE NOS. NPF-76 AND NPF-80

DOCKET NOS. 50-498 AND 50-499

Replace the following pages of the Facility Operating Licenses with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

FACILITY OPERATING LICENSE NO. NPF-76

REMOVE

Page 4
Page 9
Appendix C

INSERT

Page 4
Page 9

FACILITY OPERATING LICENSE NO. NPF-80

REMOVE

Page 4
Page 7
Appendix C

INSERT

Page 4
Page 7

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
RELATED TO AMENDMENTS NOS. 157 AND 145 TO
FACILITY OPERATING LICENSES NOS. NPF-76 AND NPF-80
STP NUCLEAR OPERATING COMPANY, ET AL.
SOUTH TEXAS PROJECT, UNITS 1 AND 2
DOCKET NOS. 50-498 AND 50-499

1.0 INTRODUCTION

By application dated August 20, 2002, STP Nuclear Operating Company (the licensee, STPNOC), requested changes to the Facility Operating Licenses (FOLs) and Appendix C to the FOLs.

The proposed changes would delete the antitrust conditions contained in the FOLs, and Appendix C, for South Texas Project, Units 1 and 2 (STP). These antitrust conditions apply to: 1) Texas Genco LP; 2) Central Power and Light Company; 3) City Public Service Board of San Antonio; 4) City of Austin Texas; and 5) STPNOC.

2.0 REGULATORY EVALUATION

The U. S. Nuclear Regulatory Commission (NRC, Commission) staff finds that the licensee in Section 3.0 of its submittal identified the applicable regulatory requirements. The regulatory requirements for which the NRC staff based its acceptance for deletion of the antitrust license conditions imposed by the NRC are contained in Section 105 of the Atomic Energy Act of 1954, as amended (AEA).

STPNOC states in its letter that changes in Texas law encouraging competition and the efforts of the Public Utility Commission of Texas (PUCT) to implement that policy, plus the conclusions reached by the NRC staff at the time the licenses were issued for STP, and the current state of competition in the Texas electric utility industry (as reported by the PUCT in its January 2001 report to the Texas legislature), are all reasons to delete the antitrust license conditions.

In addition, according to STPNOC, the Texas Electric Restructuring Legislation, which mandates compliance with the PUCT Substantive Rules and the Protocols of the Electric Reliability Council of Texas (ERCOT), renders the STP antitrust license conditions to be unnecessary. See Texas Utilities Code § 39.151 (j) (essential organizations).

Antitrust license conditions are imposed by the NRC under Section 105 of AEA if the NRC staff finds that, based on an antitrust review prescribed by Section 105, the granting of a license would create or maintain a situation inconsistent with the antitrust laws specified in Section 105.

Antitrust license conditions are generally specific to a particular entity and its conduct in the marketplace and are distinguishable from other types of license conditions that govern the safe operation of the plant.

The Commission has determined that it has the authority to amend a license at the request of a licensee to modify, suspend, or revoke its antitrust conditions. See *Ohio Edison Company* (Perry Nuclear Power Plant, Unit 1), CLI-92-11, 36 NRC 47, 59 (1992), *Kansas Gas and Electric Company* (Wolf Creek Generating Station, Unit 1), 49 NRC 441, 466 (1999). The NRC staff is required to evaluate whether the antitrust license conditions for STPNOC are no longer warranted.

In January 2001, the PUCT issued a report to the 77th Texas Legislature on the *Scope of Competition in Electric Markets in Texas* (Report). The PUCT indicated that it intends to create an “environment in which there are many producers and sellers of electricity, receptive customers, clear commercial rules, and the infrastructure to permit vibrant competition.” The Report notes that the legislature's decision in 1995 to introduce competition in the sale of electricity at wholesale has yielded billions of dollars in investment in new, efficient generating facilities in Texas. In the report, the PUCT acknowledges that a key factor in encouraging the building of new generation facilities is the ability to interconnect with a transmission network and that such network enables customers and suppliers to reach each other. To accomplish the goal the PUCT has issued a number of rules designed to accomplish this purpose.

3.0 TECHNICAL EVALUATION

The NRC staff has reviewed the licensee's regulatory and technical analyses in support of its proposed license amendments which are described in Sections 3.0 and 4.0 of the licensee's submittal. The detailed evaluation below supports the conclusion that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

The antitrust conditions contained in Appendix C to both FOLs consist of 11 separately numbered provisions, some with additional sub-parts. These provisions have been grouped into three general categories by the licensee in its application for discussion purposes:

- (1) Transmission access, operations, and planning;
- (2) Protection against market power or market power abuses; and

(3) Other special matters.

In addition, Section C.(3) of the FOLs, which incorporates Appendix C into the FOLs, contains a separate antitrust condition.

STPNOC shall not market or broker power or energy from South Texas Project Unit 1(2). The Owners are responsible and accountable for the actions of STPNOC to the extent that said actions affect the marketing or brokering of power or energy from South Texas Project Unit 1 (2) and, in any way, contravene the antitrust conditions of this paragraph or Appendix C of this license.

The above requirement is addressed in Section 3.4, herein.

3.1 Transmission Access, Operations, and Planning

FOL, Appendix C, Conditions 2, 3, 4, 6, 7, and 9, impose requirements to provide access to transmission facilities, for coordination of operations and planning related to providing such access, and to ensure that the fundamental objective of open access to transmission could be achieved under the particular circumstances that existed at the time the Appendix C conditions were imposed in 1980. Specifically, FOL, Appendix C, Condition 2 requires that, as long as the owners of STP are members of the Texas Interconnected Systems (TIS) or other such organization, it shall support reasonable requests by Entities in the South Texas Area having generation capacity for membership in the TIS, or other such organizations. FOL, Appendix C, Condition 3 states that the owners of STP shall participate in and facilitate the exchange of bulk power by transmission facilities between or among two or more Entities in the South Texas Area with which owners of STP are connected and FOL, Appendix C, Condition 4 states that Houston Lighting and Power Company (HLP) shall include in its planning and construction programs sufficient transmission capacity as required for the transactions referred to by other Entities in the South Texas Area.* FOL, Appendix C, Condition 6 states that HLP shall not disconnect from or refuse to connect its then-existing or proposed facilities with the facilities of any Entity used or proposed to be used for the transmission of electric energy. FOL, Appendix C, Condition 7 states that HLP agrees to use its best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with FOL, Appendix C, Condition 6. FOL, Appendix C, Condition 9 has the owners of STP agreeing that the reliability of power delivered into TIS-ERCOT over DC

*HLP changed its name to Reliant Energy Incorporated. The NRC, by letter dated December 20, 2001, approved Reliant Energy Incorporated's transfer of interest under the licenses to Texas Genco, LP. In connection with that transfer, Texas Genco, LP became subject to the conditions as they applied to HLP. This means that those references in Appendix C of the FOL to HLP are to be construed as referring to Texas Genco, LP.

asynchronous connections shall not be treated differently for the purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT.

According to the applicant, these conditions are no longer necessary because wholesale transmission open access has been a requirement under Texas law since 1995. (Texas Utilities Code § 35.004) and retail open access has been required since January 1, 2002, with the commencement of retail competition under the Texas legislation (Texas Utilities Code § 39.203). All buyers and sellers of electricity have nondiscriminatory open access to the transmission systems now run by the owners of STP. The PUCT continues to exercise jurisdiction over the ERCOT transmission grid, including those portions of the grid operated by the four owners of STP. The PUCT Substantive Rules require transmission service providers to interconnect with electric utilities and non-utility generators alike. Further, the PUCT has adopted a Standard Generation Interconnection Agreement to be used for new generators. Additionally, ERCOT Protocol § 3.5, addresses the interconnection of new generation resources to the ERCOT transmission grid, and provides protection for entities desiring to interconnect.

Wholesale transmission rates will continue to be regulated by the PUCT, whose Substantive Rules contain terms and conditions for the provision of transmission service, including the planning and construction of facilities. These rules require transmission utilities to consider a customer's load in transmission system planning and construction of facilities. ERCOT Protocols and PUCT Substantive Rules require transmission utilities to plan, construct, operate, and maintain their systems in accordance with good operating practice as defined by PUCT Substantive Rule § 25.5(31).

The NRC staff finds that the Texas legislation, the PUCT Substantive Rules, and the ERCOT Protocols ensure nondiscriminatory transmission access to buyers and sellers of electricity in the wholesale market. Therefore, the FOL Appendix C conditions that pertain to transmission access are no longer necessary and their elimination is acceptable.

3.2 Protection Against Market Power or Market Power Abuses

According to the applicant, FOL, Appendix C, Conditions 5 and 6 impose requirements to guard against market power or the potential abuse of that power. FOL, Appendix C, Condition 5 compels Central Power and Light Company (CPL) to enter into arrangements for the sale of full and partial requirements bulk power pursuant to a filed tariff to any requesting Entity. FOL, Appendix C, Condition 6 further states, *inter alia*, that HLP shall not enter into certain agreements or understandings with any other Entity to refuse to deal with any other (third) Entity.

Texas electric restructuring legislation delegates new authority to the PUCT and creates mandatory mechanisms to protect against the abuse of market power. As discussed before, a comprehensive regulatory structure guards against anticompetitive practices in

the transmission market. The legislation also includes a comprehensive statutory framework to protect against generation market power abuses in the new competitive environment. Beginning on January 1, 2002, a Power Generation Company (PGC) is prohibited from owning and controlling more than 20 percent of the installed generation capacity within a power region. (Texas Utilities Code § 39.154). For the purposes of this calculation, the statute includes the ERCOT generation capacity of the PGC's affiliates, collectively. Moreover, the legislation contains provisions for monitoring generation market power, mandatory capacity auctions, and remedial actions to mitigate generation market power, if discovered. See Texas Utilities Code §§ 39.153, 39.156, 39.157, and 39.158(a).

According to the applicant, the Texas Legislature granted the PUCT the authority and responsibility to monitor market power associated with the generation, transmission, distribution, and sale of electricity in Texas. This authority applies to the two licensees to which antitrust conditions 5 and 6 apply. Should the PUCT find that market power abuses have occurred, the PUCT must require reasonable mitigation by:

- (1) Ordering the construction of additional transmission or distribution facilities;
- (2) Seeking an injunction or civil penalties;
- (3) Imposing administrative penalties; or
- (4) Suspending, revoking, or amending a Retail Electric Provider's certificate or a PGC's registration.

As claimed in the application, Texas Utilities Code § 39.157(a) defines market power abuses as:

[P]ractices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated service. For purposes of this section, 'market power abuses' include predatory pricing, withholding of production, precluding entry and collusion. A violation of the code of conduct provided by subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power.

As stated above, the Texas Legislature put in place a system to regulate competition in the wholesale markets and retail markets in Texas, including an express delegation of authority and responsibility to the PUCT to monitor market power and police against

anticompetitive practices. Therefore, FOL Appendix C conditions that impose requirements to guard against market power or the potential abuse of that power are no longer necessary and their elimination is acceptable.

3.3 Other Special Matters

FOL, Appendix C, Condition 8, affords other entities an opportunity to participate in any future nuclear units built by the licensees. The NRC licensing process for new license applications involves a pre-licensing antitrust review, as the applicant notes. Therefore a determination as to whether participation in a future plant should be afforded will be made at that time, based on current information. In addition, many of the circumstances that existed at the time the antitrust conditions were imposed have changed, as is evident from the discussion earlier in this safety evaluation. Furthermore, no beneficiary of the antitrust conditions has opposed the proposed elimination of the conditions. In light of the foregoing, the deletion of Condition 8 is acceptable.

According to the applicant, the remaining FOL, Appendix C, Conditions 1, 10, and 11 contain provisions that were "unique to a particular issue, that are no longer necessary or have expired on their own terms." Specifically, FOL, Appendix C, Condition 1 afforded participation in STP until 1983, and also contains definitions of the terms used throughout Appendix C; Condition 10 speaks about modifying an Offer of Settlement filed in the Federal Energy Regulatory Commission (FERC) Docket No. EL79-8 and has since expired; and FOL, Appendix C, Condition 11 simply acknowledges applicable Federal, state, and local statutes and regulations. The staff concludes that there is no longer a basis to continue these conditions in the licenses, and that, therefore, their removal is acceptable.

3.4 Deletion of Provisions of Section C.(3) of the FOLs Relating to STPNOC

As stated earlier, Section 3.(C) of the FOLs, which incorporates all of the Appendix C provisions discussed above, also contains a separate antitrust condition that applies specifically to STPNOC, which is the licensed operator of the facility. The purpose of the STPNOC condition, which was added to the FOLs when STPNOC acquired the authority to operate the facility after the initial licensing of the facility, was to ensure that STPNOC did not undertake any actions that would be inconsistent with the main antitrust provisions in Appendix C, which address some or all of the owners of the facility. With the removal of the conditions, the separate STPNOC condition in Section 3.(C) of the FOLs should also be deleted.

3.5 Public Notice and Hearing Requests or Comments by Competitors

Notice of the proposed amendments was published in the *Federal Register* on October 1, 2002 (67 FR 61685) and September 12, 2003 (68 FR 53858). No hearing requests or comments were filed by beneficiaries of the conditions or general members of the

public. The absence of any such filings was taken in consideration by the staff in arriving at its conclusion that the antitrust conditions are no longer necessary.

3.6 Safety Assessment

The proposed license amendments would only change the FOLs with regard to antitrust requirements. The proposed license amendments would not allow changes to any design feature or mode of operation and thus there is no effect on any safety analyses.

4.0 STATE CONSULTATION

In accordance with the Commission's regulations, the Texas State official was notified of the proposed issuance of the amendments. The State official had no comments.

5.0 U.S. DEPARTMENT OF JUSTICE CONSULTATION

By letter dated September 5, 2003, the NRC staff requested that the U.S. Department of Justice (DOJ) provide comments concerning deletion of the antitrust conditions contained in the FOLs, and Appendix C, for South Texas Project, Units 1 and 2. In response, by letter dated September 22, 2003, DOJ indicated that they had no objections to the proposed action.

6.0 ENVIRONMENTAL CONSIDERATION

Pursuant to 10 CFR 51.21, 10 CFR 51.32, and 10 CFR 51.35, an Environmental Assessment and Finding of No Significant Impact was published in the *Federal Register* on September 12, 2003 (68 FR 53760). Accordingly, based upon the Environmental Assessment, the Commission has determined that issuance of the amendments will not have a significant effect on the quality of the human environment.

7.0 CONCLUSION

The Commission has concluded, based on the considerations discussed above, that: (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Principal Contributor: Michael A. Dusaniwskyj
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South Texas Project, Units 1 & 2

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South Texas Project, Units 1 & 2

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South Texas Project, Units 1 & 2

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