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July 26, 2020

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

References: (1) Letter from Craig G. Erlanger, Director Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation, to Adrian J. Rodriguez, Interim Chief Executive Office, General Counsel, and Assistant Secretary, El Paso Electric Company (dated July 17, 2020, the "Request for Additional Information") (ML20196L721)

(2) *El Paso Elec. Co.* (Palo Verde Nuclear Generating Station, Units 1, 2 & 3, and Independent Spent Fuel Storage Installation), Docket Nos. 50-528, 50-529, 50-530 & 72-44; NRC-2019-0214, Application for Order Approving Indirect Transfer of Control of Renewed Facility Operating License Nos. NPF-41, NPF-51, and NPF-74 (filed Aug. 13, 2019, the "Application") (ML19225D197)

(3) U.S. Nuclear Regulatory Commission (NRC), Order Approving Indirect Transfer of Licenses, Docket Nos. 50-528, 50-529, 50-530 & 72-44; NRC-2019-0214 (dated Mar. 5, 2020, the "Approval Order") (ML20038A206)

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 Generation Station Units 1, 2, and 3

Dear Sir or Madam,

Attached please find a response to the Request for Additional Information. The Request for Additional Information seeks information confirming the finding that the transaction proposed by the Application ("Proposed Transaction") and approved by the Approval Order does not raise foreign ownership, control or domination ("FOCD") issues. As further demonstrated in the attached response to the Request for Additional Information, the Proposed Transaction does not raise any FOCD issues. Please note, that on July 22, 2020, the Federal Energy Regulatory Commission issued an "Order Accepting Proposed Mitigation and Addressing Arguments Raised

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on Rehearing”¹ which is the last regulatory approval required to consummate the Proposed Transaction. As a result, in accordance with the provisions of the Agreement and Plan of Merger attached to the Application as Attachment 3, EPE expects shortly to be issuing the notice of consummation required to be delivered under the Approval Order not later than two days prior to the closing of the Proposed Transaction.

There are no new regulatory commitments associated with this letter.

If there are any questions please contact Nadia Powell at (915) 543-2284, or by email at nadia.powell@epelectric.com.

I declare under penalty of perjury that I am familiar with the content of the foregoing response to request for additional information as it relates to El Paso Electric Company; and that the matters set forth therein are true and correct to the best of my knowledge and belief.

Executed this 26th day of July, 2020.



Adrian J. Rodriguez
Interim Chief Executive Officer, General Counsel
and Assistant Secretary

[additional signature on next page]

¹ *El Paso Elec. Co.*, 172 FERC ¶ 61,083 (2020).

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I declare under penalty of perjury that I am familiar with the content of the foregoing response to request for additional information as it relates to IIF US Holding 2 LP; and that the matters set forth therein are true and correct to the best of my knowledge and belief.

Executed this 25th day of July, 2020.



Amanda Wallace
Authorized Signatory for IIF US Holding 2 LP

Enclosure 1: Response to Request for Additional Information Regarding Foreign Ownership

cc: Scott Morris
Regional Administrator, NRC Region IV
U.S. Nuclear Regulatory Commission

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Jeremy L. Wachutka
NRC Office of General Counsel
U.S. Nuclear Regulatory Commission

ENCLOSURE 1

**RESPONSE TO REQUEST
FOR
ADDITIONAL INFORMATION
REGARDING
FOREIGN OWNERSHIP**

Response to Request for Additional Information Regarding Foreign Ownership

In demonstrating the lack of foreign ownership, control or domination (“FOCD”), the Application represented that following the close of the Proposed Transaction¹ (i) El Paso Electric Company (“EPE”) will have its own board of directors and principal officers all of whom will be U.S. citizens, and (ii) 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. Those representations were true when made, remain true as of the date of this letter, and will be true as of the date of closing of the transaction.

The NRC assesses FOCD pursuant to its Standard Review Plan on foreign ownership and control issues (the “SRP”) issued in 1999.² The SRP and NRC practice demonstrates that the key inquiry is whether the “the will of one party [the NRC licensee] is subjugated to the will of another [the foreign entity]” and that “Congressional intent was to prohibit such relationships where an alien has the power to direct the actions of the licensee.”³ As a result, the primary test is whether the foreign owner will have the power to direct the actions of the licensee, with a primary focus on actions related to the licensee’s obligations with respect to its nuclear operations. With respect to foreign investors holding passive limited partnership interests in infrastructure investment funds, which as here, are under the exclusive control of U.S. general partners and convey no ability for the passive investor to direct the management or control the activities of the investment fund or its subsidiaries, the NRC has frequently found that such passive interests do not result in impermissible FOCD.⁴

Because the Proposed Transaction does 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, the Proposed Transaction does not, and cannot, result in any FOCD.

¹ Defined terms used herein and not otherwise defined herein shall have the meaning set forth in the Application.

² *Final Standard Review Plan on Foreign Ownership, Control, or Domination*, 64 Fed. Reg. 52,355 (Sept. 28, 1999).

³ *General Elec. Co.*, 3 AEC 99, 101 (1966).

⁴ *See, e.g.*, Safety Evaluation Related to Transfer of Licensed Authority and Transfer of Ownership for Crystal River Unit 3 Nuclear Generating Plant, Docket Nos. 50-302 & 72-1035, dated Apr. 17, 2020 (ML20101G583), at 13-15; Safety Evaluation Related to Direct and Indirect Transfers of Control and Licensed Authority for Vermont Yankee Nuclear Power Station, Docket Nos. 50-271 and 72-59, dated Oct. 11, 2018 (ML18242A639), at 18; Safety Evaluation for Conforming Amendments for Comanche Peak Nuclear Power Plant, Units 1 & 2, Resulting from Transfer of Ownership Interests, Docket Nos. 50-445 & 50-446, dated May 6, 2016 (ML16096A266), Encl. 4 at 11-13; Safety Evaluation for Indirect Transfer of Facility Operating Licenses for Zion Nuclear Power Station, Units 1 & 2, Docket Nos. 50-295 & 50-304, dated May 8, 2013 (ML13122A058), at 8-10; Safety Evaluation Regarding Acquisition of TXU Corp. by Texas Energy Future Holdings Ltd Partnership and Indirect Transfer of Facility Operating Licenses for Comanche Peak Steam Electric Station Units 1 & 2, Docket Nos. 50-445 & 50-446, dated Aug. 1, 2007 (ML072130249), at 10-13.

I. THE APPLICATION'S REPRESENTATIONS OF NO FOCD ARE CONSISTENT WITH EPE'S RESPONSE TO FCC FORM 603 QUESTION 101(A).

The Request for Additional Information inquires as to the consistency between the representations made by IIF US 2 in footnote 3 of the Application and Sun Jupiter Holdings LLC's ("Sun Jupiter") response to Question 101a of Form 603 filed with the FCC in connection with the Proposed Transaction.

Footnote 3 to the Application provides certain representations regarding the geographic scope and passive non-controlling nature of the limited partnership interests held by the investors in IIF US 2.⁵ More specifically, footnote 3 provides:

³ 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.

Question 101a of FCC Form 603 addresses the scope of direct and indirect foreign ownership or control of the "capital stock" of IIF US 2 as the upstream parent of Sun Jupiter, the designated "Assignee" on the FCC Form 603 and the wholly owned IIF US 2 subsidiary that will directly own 100% of the interests in EPE post-closing.⁶ Question 101(a) provides:

⁵ The general partner of IIF US 2 is vested under the IIF US 2 partnership agreement with the absolute and sole right, power and discretion to manage the business and affairs of IIF US 2, to make all decisions affecting the business and affairs of the IIF US 2, to act for and on behalf of the IIF US 2, and to take such actions on behalf and in the name of IIF US 2 as it deems necessary or appropriate to accomplish the purposes for which IIF US 2 was formed. Conversely, the passive limited partner investors are expressly prohibited from participating or taking part in the management or control of IIF US 2's business and have no power or authority to act for or on behalf of, or to bind, IIF US 2. Further, as is typical for investment funds the limited partner investor's rights are limited to those necessary for them to assess the economic performance of the fund and meet their fiscal and legal reporting obligations. These include the right to receive a summary of the fund's investments, and information regarding annual and quarterly financial performance of the fund, including tax information, necessary to allow the limited partner investors to prepare their financial statements. Notably, the limited partner investors have no right to receive any information regarding the performance of IIF US 2's subsidiaries and no right to access or review the activities or properties of IIF US 2's subsidiaries (in each case, including EPE or with respect to its interests in Palo Verde Units 1, 2, and 3). In addition, the limited partner consent rights under the IIF US 2 partnership agreement are limited to approving amendments to the IIF US 2 partnership agreement (provided that, among other things, the IIF US 2 general partner may make amendments that it believes, in good faith, are not materially adverse to any limited partner), revoking an existing limited partner consent to J.P. Morgan Chase & Co. acting as a broker for IIF US 2 and for the other side of a transaction, and to elect to continue the partnership in the event of a removal or withdrawal of the IIF US 2 general partner. The limited partners have no right under the IIF US 2 partnership agreement to remove the IIF US 2 general partner.

⁶ FCC File No. 0008737430— Sun Jupiter Holdings LLC, Reference Copy Question 101a (Aug. 13, 2019, as amended Nov. 13, 2019), consented to on Dec. 4, 2019, <https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11807958>; FCC File No. 0009063597—El Paso Electric Company Request for Extension of Time, Reference Copy (May 1, 2020), granted on May 4, 2020, <https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=12071726>.

101a) Is the Assignee/Post-Transfer Licensee directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock 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?

(Y) Yes No

Footnote 3's assertion that no single limited partner investor individually or in the aggregate with such limited partner investor's affiliates owns or controls 10% or more of the limited partnership interests in IIF US 2 is not inconsistent with Question 101a's acknowledgement that more than 25% of the "capital stock" of Sun Jupiter is "owned of record or voted by aliens or their representatives."

The FCC has decided that for purposes of the Communications Act of 1934, as amended, the term "capital stock" includes both voting interests and non-controlling passive interests, including limited partnership interests. *See Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8468 (1995) ("non-voting preferred stock 'owned' by alien interests must be counted toward evaluating the benchmark, even if that stock possesses 'none of the indicia normally associated with equity ownership'") (citation omitted); *Sacramento RSA Ltd. P'ship*, 9 FCC Rcd 3182 (1994) (applying foreign ownership of capital stock standard to limited partnership interests).

Footnote 3 acknowledges that the passive interests held by limited partner investors are geographically broadly held (*i.e.*, are held by both domestic and foreign investors)⁷ and convey no ability for any of the limited partner investors individually or in the aggregate to direct the management or control the activities of IIF US 2 or its subsidiaries. Footnote 3 also acknowledges that no single limited partner investor (domestic or foreign) individually or in the aggregate with such limited partner investor's affiliates owns or controls 10% or more of the limited partnership interests in IIF US 2. Conversely, the "yes" response to FCC Form 603 question 101a simply acknowledges that more than 25 % of the interests held by passive limited partner investors (*i.e.*, "capital stock") in Sun Jupiter in the aggregate are indirectly held by foreign passive limited partner investors—not a single foreign entity, but rather a diverse group of unaffiliated foreign entities. Both statements can be, and are, true (*i.e.*, although more than 25% of the passive limited partner investor interests are in the aggregate indirectly held by foreign entities, no *single* limited partner investor, foreign or domestic, itself or through its affiliates, indirectly owns 10% or more of Sun Jupiter through its limited partner investment interest).⁸

II. THE VIRGINIA CORPORATION WITH THE NAME SUN MERGER SUB, INC. IS COMPLETELY UNRELATED TO IIF US 2 AND THE PROPOSED TRANSACTION

The Request for Additional Information also inquired about Sun Merger Sub, Inc., a Virginia corporation ("Sun Merger Sub, Inc. (VA)"), and whether it was connected to IIF US 2 and the Proposed Transaction. IIF US 2 has no knowledge of, or relationship with, Sun Merger

⁷ Approximately 61 % of the passive limited partner investors are U.S. (~21%), Canadian (~13%), and U.K. (~27%) entities. The remaining passive limited partner investors are distributed in the aggregate by region as follows: Europe excluding the UK (~18%), Japan (~8%), Middle East (~6%), Australia (~4%), Asia excluding Japan (~2%), and all "Other" regions (<1%). The foregoing aggregate percentages are as of the date hereof, as the fund is open-ended, these aggregate percentages are subject to change as investors enter and exit the fund.

⁸ In fact, no single foreign passive limited partner investor in holds more than 5% limited partnership interest.

Sub, Inc. (VA) and it is not in any way connected with the Proposed Transaction. Simply put, this is a completely unrelated entity with a similar name. Further, according to the SEC filings referenced in the Request for Additional Information, Sun Merger Sub, Inc. (VA) appears to have been merged out of existence in 2013 in connection with the acquisition of Smithfield Foods, Inc. by a Chinese Company, Shuanghui International Holdings Limited. Sun Merger Sub, Inc. (VA) has no relation to Sun Merger Sub Inc., a Texas corporation formed in 2019 by IIF US 2 for purposes of the Proposed Transaction.