

actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

b. JLS&A will document the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised QA Program Plan and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

2. JLS&A will use only JLS&A's staff, contractors, and sub-contractors, trained in the NTCAP, the revised QAPP and implementing procedures for conducting the inspections listed in the above condition; and,

3. JLS&A will not make the initial shipment without certification by the independent auditor that the two conditions listed above have been completed. JLS&A will provide NRC with this certification prior to any shipment.

By its letter of December 11, 2001, JLS&A consented to issuance of this Confirmatory Order granting interim relief from the July 2001 Order subject to the commitments, (as described in Section IV below), agreed that this Confirmatory Order is to be effective upon issuance, and agreed to waive its right to a hearing on this action. Implementation of these commitments will provide assurance that sufficient resources will be applied to the QA program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that JLS&A's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that JLS&A's commitments be confirmed by this Confirmatory Order. Based on the above and JLS&A's consent, this Confirmatory Order is effective immediately upon issuance.

#### IV

Accordingly, pursuant to Sections 62, 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Section 2.202 and 10 CFR Parts 71, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT THE JULY 3, 2001, ORDER IS RELAXED TO GRANT INTERIM RELIEF TO ALLOW A SHIPMENT TO, AND A SHIPMENT FROM, SURRY POWER STATION IN 20 WC PACKAGES IN ACCORDANCE WITH JLS&A'S NTCAP, AS

REQUESTED BY LETTERS DATED DECEMBER 7 and 11, 2001, PROVIDED:

1. a. JLS&A will use the implementing procedures for the 1995 QA program plan, as revised, and the NTCAP to complete an inspection of the 20WC packages involved in the Surry shipment. The inspection will confirm that the packages are in conformance with 49 CFR 178.362, "Specification 20WC Wooden Protective Jacket." Each inspection will include, at a minimum, actual physical measurements, and visual inspections for damage, corrosion, or other potentially unacceptable conditions;

b. JLS&A will document the results of each inspection in separate reports approved by the QA Administrator and prepared in accordance with the revised QAPP and implementing procedures. The report will include the list of attributes verified, the acceptance criteria, and the results for each attribute;

2. JLS&A will use only JLS&A's staff, contractors, and sub-contractors, trained in the NTCAP, the revised QAPP and implementing procedures for conducting the inspections listed in the above condition; and,

3. JLS&A will not make the initial shipment without certification by the independent auditor that the two conditions listed above have been completed. JLS&A will provide NRC with this certification prior to any shipment.

The Director, Office of Enforcement or Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind this Confirmatory Order upon demonstration of good cause by the Approval Holder.

#### V

In accordance with 10 CFR section 2.202, any person, other than JLS&A, adversely affected by this Confirmatory Order may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards

at the same address, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, and to the Approval Holder. If such person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR section 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Confirmatory Order without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received. A request for hearing shall not stay the immediate effectiveness of this confirmatory order.

Dated this 13th day of December, 2001.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

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#### NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498 and 50-499; License Nos. NPF-76 and NPF-80]

#### South Texas Project Nuclear Operating Company et al., (South Texas Project Electric Generating Station, Unit Nos. 1 and 2); Order Approving Transfer of Licenses and Conforming Amendments

#### I

Reliant Energy Incorporated (Reliant),<sup>1</sup> the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and the City of Austin, Texas (COA) are the licensed owners, and South Texas Project Nuclear Operating Company (STPNOC)

<sup>1</sup> Reliant was formerly known as Houston Lighting & Power Company (HL&P). HL&P changed its name to Reliant Energy Incorporated in 1999.

is the exclusive licensed operator, of South Texas Project Electric Generating Station, Units 1 and 2 (STPEGS), and in regard thereto, hold Facility Operating License Nos. NPF-76 and NPF-80. STPEGS (the facility) is located in Matagorda County, Texas.

## II

By application dated May 31, 2001, as supplemented by letters dated June 14, August 13, October 16, and November 7, 2001 (collectively the application), STPNOC, on behalf of Reliant, requested the consent of the U.S. Nuclear Regulatory Commission (NRC or Commission) to a proposed indirect transfer of control of the 30.8 percent undivided ownership interest of Reliant in STPEGS under Facility Operating License Nos. NPF-76 and NPF-80, to CenterPoint Energy, Inc., a newly-formed company that will be the new parent holding company of Reliant, and, to the extent an indirect transfer would result, Reliant's 30.8 percent interest in STPNOC, the licensed operator of STPEGS under the licenses, to CenterPoint Energy, Inc. The application also requested the consent of the Commission to a proposed direct transfer of Reliant's 30.8 percent ownership interest in STPEGS to Texas Genco LP, which will be indirectly wholly-owned by CenterPoint Energy, Inc., and to the indirect transfer of Reliant's 30.8 percent interest in STPNOC to Texas Genco LP, to the extent that the transfer of Reliant's ownership interest in STPNOC will result in an indirect transfer of the STPNOC licenses. According to the application, the proposed direct transfer may occur contemporaneously with CenterPoint Energy, Inc. becoming the parent holding company of Reliant or some time thereafter. The application further requested the approval of conforming license amendments to reflect the direct transfer of the licenses.

The proposed conforming license amendments would replace references to HL&P in the licenses with references to Texas Genco LP, as appropriate, and make other administrative changes to reflect the proposed direct transfer.

The application requested approval of the direct transfer of the facility operating licenses, conforming license amendments, and indirect license transfers pursuant to 10 CFR 50.80 and 10 CFR 50.90. The staff published a notice of the request for approval and an opportunity for a hearing in the **Federal Register** on September 28, 2001 (66 FR 49711). The October 16 and November 7, 2001, supplemental information did not expand the scope of the application as originally noticed in the **Federal**

**Register**. The Commission received no comments or requests for hearing pursuant to the notice.

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 relying upon the representations and agreements contained in the application, the NRC staff has determined that the proposed corporate restructuring resulting in CenterPoint Energy Inc. becoming the parent holding company of Reliant will not affect the qualifications of Reliant to hold a 30.80 percent ownership interest in the facility operating licenses for STPEGS or have any effect on the qualifications of STPNOC to the extent held by Reliant, and that the indirect transfer of the licenses for STPEGS and of STPNOC's licenses to the extent effected by the proposed corporate restructuring, is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission, subject to the applicable conditions set forth herein. The NRC staff has also determined that Texas Genco LP is qualified to be a holder of the facility operating licenses for STPEGS, and to the extent that the transfer of Reliant's interest in STPNOC to Texas Genco LP results in an indirect transfer of the STPNOC license, the transfer will not affect the qualifications of STPNOC to be the licensed operator, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission, subject to the conditions set forth herein. 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 facilities 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 findings set forth above are supported by a safety evaluation dated December 20, 2001.

## III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80, it is hereby ordered that the indirect transfer of the licenses as described herein to CenterPoint Energy, Inc., and the direct transfer of the licenses as described herein to Texas Genco LP are approved, subject to the following conditions:

(1) Texas Genco LP shall, prior to the completion of the direct transfer, provide to the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that Texas Genco LP has obtained the appropriate amount of insurance required of licensees under 10 CFR part 140 of the Commission's regulations.

(2) Reliant shall continue to provide decommissioning funding assurance, to be held in decommissioning trusts for STPEGS, from the date of the indirect transfer until the date of any direct transfer to Texas Genco LP. Texas Genco LP shall provide decommissioning funding assurance, to be held in decommissioning trusts for STPEGS upon the direct transfer of the STPEGS licenses to Texas Genco LP, in an amount equal to or greater than the balance in the STPEGS decommissioning trusts immediately prior to the transfer. In addition, Texas Genco LP shall ensure that all contractual arrangements referred to in the application to obtain necessary decommissioning funds for STPEGS through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(3) The master decommissioning trust agreement for STPEGS, at the time the direct transfers are effected and thereafter, is subject to the following:

a. The decommissioning trust agreement must be in a form acceptable to the NRC.

b. With respect to the decommissioning trust funds, investments in the securities or other obligations of CenterPoint Energy, Inc., or its affiliates, successors, or assigns, shall be prohibited. Except for

investments in funds tied to market indices or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

c. The decommissioning trust agreement must provide that the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to the standards for such investments established by the Public Utility Commission of Texas (e.g., 16 Texas Administration Code § 25.301).

d. The decommissioning trust agreement must provide that except for ordinary administrative expenses, no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first given the NRC 30 days prior written notice of such disbursement or payment. The decommissioning trust agreement shall further contain a provision that no disbursements or payments from the trusts shall be made if the trustee receives prior written notice of an objection from the Director, Office of Nuclear Reactor Regulation.

e. The decommissioning trust agreement must provide that the agreement cannot be modified in any material respect without 30 days prior written notification to the Director, Office of Nuclear Reactor Regulation.

(4) Reliant and Texas Genco LP shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the application, the requirements of this Order, and the related safety evaluation.

(5) Texas Genco LP shall provide the Director, Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from CenterPoint Energy, Inc., or its subsidiaries, to a proposed direct or indirect parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on Texas Genco LP's book of accounts.

(6) Texas Genco LP shall inform the Director of the Office of Nuclear Reactor Regulation of the date of the closing of the direct transfer no later than two business days prior to such date. If the direct and indirect transfers of the licenses approved by this Order are not completed by December 31, 2002, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), licensee

amendments that make changes, as indicated in Enclosure 2 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 hereby noted that the staff is also considering approving a transfer of the licenses to the extent held by CPL. Should the transfer of the licenses to the extent held by CPL take place prior to issuance of the amendments in the current case, the amendments approved here should reflect any conforming amendments approved and issued in connection with the CPL transfer.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 31, 2001, the supplemental submittals dated June 14, August 13, October 16, and November 7, 2001, and the safety evaluation dated December 20, 2001, which are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov>.

Dated at Rockville, Maryland this 20th day of December, 2001.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 01-32059 Filed 12-28-01; 8:45 am]

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-361 and 50-362]**

### **In the Matter of Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3); Exemption**

#### **I**

Southern California Edison Company (the licensee) is the holder of Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3, (SONGS) at power levels not to exceed 3438 megawatts thermal. The facility consists of two pressurized-water reactors located at the licensee's site in San Diego County, California. The license provides, among other things, that the

licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

#### **II**

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) part 50 requires each licensee at each site to conduct an exercise of its onsite emergency preparedness plan (EPP) every 2 years and indicates the exercise may be included in the full participation biennial exercise of the offsite EPP required by paragraph 2.c. Paragraph 2.c requires the offsite EPP for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full participation exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee successfully conducted an NRC/FEMA-evaluated full participation exercise for SONGS on October 27, 28, and 29, 1999.

By letter dated September 18, 2001, the licensee requested an exemption from Sections IV.F.2.b and c of Appendix E regarding the conduct of a full participation onsite and offsite exercise originally scheduled for September 12, 2001. Specifically, the licensee requested a one-time exemption, in accordance with 10 CFR 50.12, "Specific exemptions," from the requirements in 10 CFR Part 50, Appendix E, Items IV.F.2.b and c to perform a biennial exercise of the onsite and offsite EPPs with full participation of each offsite authority having a role under the plan (*i.e.*, a full participation EPP exercise), for SONGS. A full participation onsite and offsite exercise had been scheduled for SONGS for September 12, 2001; however, as a result of the national security events occurring in the United States on September 11, 2001, this exercise was canceled. The licensee requested that the biennial exercise for 2001 not be conducted as required by Appendix E, and the next full participation exercise be conducted in 2003 and every two years thereafter.

The licensee has provided the Commission with copies of letters from five local authorities that would participate in the full participation EPP exercise at SONGS, requesting relief from FEMA to cancel the 2001 SONGS full participation exercise. The letters were to the Governor's Office of Emergency Services, State of California, which in its letter dated December 13,