

and Texas Pacific Group (the Investment Funds) and certain members of the management team (Management owners).

As stated in the application, the ultimate owners of Texas Genco are proposing a corporate restructuring such that several new entities would be interposed between (i) the Investment Funds and Management owners and (ii) Texas Genco LLC. This proposed restructuring is in anticipation of a proposed initial public offering of a minority interest in Texas Genco Inc. Texas Genco Inc. was incorporated on May 20, 2005, as a wholly-owned subsidiary of another new entity, Texas Genco Sponsor LLC. Immediately prior to the initial public offering, Texas Genco Sponsor LLC and Texas Genco Inc. will form a new limited liability company, Texas Genco Holdings LLC.

Following certain transactions described in the application, and following the initial public offering, Texas Genco Inc. will become the sole managing member of Texas Genco Holdings LLC, and Texas Genco Holdings LLC will become the sole owner of Texas Genco LLC and the indirect owner of licensee Texas Genco, which shall at all times continue to be a licensed owner of STP. According to the application, the Investment Funds and Management owners would control Texas Genco Inc. through their ownership of a majority of the voting power in Texas Genco Inc., and continue to ultimately control Texas Genco.

Approval of the indirect transfer of the facility operating licenses was requested by STPNOC pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on July 25, 2005 (70 FR 42592). No comments or hearing requests were received.

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 by STPNOC and other information before the Commission, the NRC staff concludes that the proposed transactions and resulting indirect transfer of control of Texas Genco will not affect the qualifications of Texas Genco as a holder of the STP licenses, and that the indirect transfer of control of the licenses as held by Texas Genco, to the extent effected by the proposed transactions discussed above, is otherwise consistent with the applicable provisions of laws, regulations, and

orders issued by the NRC, pursuant thereto.

The findings set forth above are supported by a safety evaluation dated August 16, 2005.

### III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers is approved, subject to the following condition:

Should the proposed indirect license transfer not be completed within one year from the date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 28, 2005, as supplemented by letter dated August 4, 2005, and the safety evaluation dated August 16, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (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 16th day of August 2005.

For the Nuclear Regulatory Commission.  
**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271; License No. DPR-28]

### Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a petition dated July 29, 2004, filed by Mr. Paul Blanch and Mr. Arnold Gundersen, hereinafter referred to as the "Petitioners." The petition was supplemented on December 8, 2004. The petition concerns the operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee).

The petition requested that the NRC issue a Demand for Information requiring Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Entergy or the licensee) to provide information that clearly and unambiguously describes how Vermont Yankee complies with the General Design Criteria (GDC) specified in Title 10 of the Code of Federal Regulations (10 CFR) Part 50 Appendix A, or the draft GDC published by the Atomic Energy Commission in 1967.

As the basis for their request, the Petitioners stated that this information is essential for two NRC regulatory activities at Vermont Yankee: (1) the NRC's review of Entergy's application for an extended power uprate (EPU), and (2) the NRC's engineering assessment. The Petitioners stated that until the design bases are clearly identified, any inspection or assessment is meaningless.

By teleconference on August 26, 2004, the Petitioners discussed the petition with the NRC's Petition Review Board. This teleconference gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the petition.

By letter dated May 13, 2005, the NRC staff requested Entergy provide information related to the petition. Entergy responded by letter dated June 14, 2005, and the information provided was considered by the staff in its evaluation of the petition.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment by letters dated May 17, 2005. The staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to issue a Demand for

Information to the licensee is denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD-05-02), the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

The Director's Decision addresses several issues related to the Vermont Yankee design and licensing basis including: (1) Whether the licensee's designation of Appendix F of the Updated Final Safety Analysis Report (UFSAR) as "historical information" meets the intent of 10 CFR 50.71(e) regarding maintenance of design basis information, and (2) whether a compilation of Vermont Yankee's current design conformance to the draft GDCs is necessary for licensing reviews and inspections.

With respect to the first issue, the NRC staff concluded that the designation of UFSAR Appendix F as historical information is consistent with the applicable industry guidance, and would meet the intent of 10 CFR 50.71(e) regarding maintenance of design basis information, if the relevant information, consistent with the definition of "design bases" in 10 CFR 50.2, is contained in other portions of the UFSAR that are updated to reflect current plant design. Following the licensee's next update of the UFSAR to add the cross references discussed in Section II.A of the Director's Decision, the NRC staff will evaluate if any enforcement action is warranted.

With respect to the second issue, the NRC staff concluded that the NRC licensing review process provides reasonable assurance that the plant continues to meet the intent of the draft GDC and adequate protection of public health and safety is assured. The NRC also concluded that it did not need a compilation of the Vermont Yankee's current conformance to the draft GDC to review the application for an EPU or to conduct the Engineering Team Inspection (inspection was completed in September 2004).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days

after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 16th day of August 2005.

For the Nuclear Regulatory Commission.

**R. William Borchardt,**

*Acting Director, Office of Nuclear Reactor Regulation.*

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## **NUCLEAR REGULATORY COMMISSION**

**[Docket Nos. 50-348 and 50-364]**

### **Southern Nuclear Operating Company, Joseph M. Farley Nuclear Power Plant, Units 1 and 2; Exemption**

#### **1.0 Background**

The Southern Nuclear Operating Company (SNC, the licensee) is the holder of Renewed Facility Operating License Nos. NPF-2 and NPF-8 which authorizes operation of Joseph M. Farley Nuclear Power Plant (FNP), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Houston County, Alabama.

#### **2.0 Request/Action**

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.48, "Fire Protection," requires that each operating nuclear power plant have a fire protection plan that satisfies General Design Criterion (GDC) 3, "Fire Protection," of appendix A to part 50. Section 50.48(b) also references Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," to part 50, which establishes fire protection features required to satisfy GDC 3 with respect to certain generic issues for nuclear power plants licensed to operate before January 1, 1979. On December 29, 1986, the NRC staff granted SNC Exemption Request 1-3, "Service Water Intake Structure—Fire Area 72," from certain requirements of Appendix R, Section III.G.2.c that requires fire detection and fire suppression capabilities and the enclosure of cables, equipment and associated non-safety circuits of one redundant train of safe shutdown equipment in a one-hour rated fire barrier. The Exemption issued on December 29, 1986, listed a total of

ten items specific to Fire Area 72 that were part of Exemption Request 1-3. Exemption Request 1-3 was included in SNC's request, dated March 13, 1985, as supplemented, and is applicable to Fire Area 72 for the Service Water Intake Structure (SWIS) which is common to FNP, Units 1 and 2.

By letters dated August 28, 2003, December 28, 2004, and June 9, 2005, SNC submitted a proposed revision to Exemption Request 1-3. SNC stated in its August 28, 2003, letter that the proposed revisions to Exemption Request 1-3 would clarify FNP's fire protection licensing basis, delete unnecessary attributes of the prior approved exemption, and revise the remaining prior exemption attributes to remove references to one-hour Kaowool fire barrier material. SNC also stated that the proposed revision to Exemption Request 1-3 is part of SNC's comprehensive plan to respond to concerns about Kaowool fire barrier material. SNC's August 28, 2003, letter re-listed the Exemption Request 1-3 items and numbered them as 1 through 9 and "Addendum to Request" for ease of reference. The August 28, 2003, letter also added an item designated as "Other" that was not explicitly addressed in the December 29, 1986, NRC Safety Evaluation. Therefore, a total of 11 items (1 through 9, "Addendum to Request", and "Other") comprise the revised exemption request in SNC's August 28, 2003, letter.

#### **3.0 Discussion**

Pursuant to 10 CFR 50.12, "Specific Exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These special circumstances are described in 10 CFR 50(a)(2)(ii), in that the application of these regulations in this circumstance is not necessary to achieve the underlying purpose of the regulations.

The underlying purpose of Appendix R, Section III.G, "Fire protection of safe shutdown capability," is to provide features capable of limiting fire damage so that: (1) one train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and (2) systems necessary to achieve and maintain cold shutdown from either the control room or emergency control