

December 21, 2001

Mr. C. Lance Terry
Senior Vice President &
Principal Nuclear Officer
TXU Electric Company
Attn: Regulatory Affairs Department
P. O. Box 1002
Glen Rose, TX 76043

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES), UNITS 1 AND 2 -
ORDER APPROVING THE DIRECT TRANSFER OF OWNERSHIP INTERESTS
AND OPERATING AUTHORITY, AND CONFORMING AMENDMENTS (TAC
NOS. MB2203 AND MB2204)

Dear Mr. Terry:

The enclosed order and supporting Safety Evaluation are in response to your application dated June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80. TXU Electric Company (TXU Electric) requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfer of control of TXU Electric's operating authority and 100-percent ownership interest in the Comanche Peak Steam Electric Station, Units 1 and 2, to a newly formed generating company, TXU Generation Company LP. The partners of TXU Generation Company LP will be indirect wholly-owned subsidiaries of TXU Corporation, the parent of TXU Electric. TXU Electric also requested approval of conforming amendments, pursuant to 10 CFR 50.90 and 10 CFR 2.1315.

The enclosed Order approves the transfer, subject to conditions described therein. The Order also approves conforming license amendments, which will be issued and made effective at the time the transfer is completed.

Enclosures 3 and 4 contain nonproprietary and proprietary versions, respectively, of the NRC staff's safety evaluation related to this action. The nonproprietary version of the safety evaluation will be placed in the NRC public document room and added to the Agencywide Documents Access and Management System's Publicly Available Records System

C.L. Terry

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(ADAMS PARS) Library. The Order is being forwarded to the Office of the Federal Register for publication. If you have any questions regarding this matter, please contact me at 301-415-1439.

Sincerely,

/RA/

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

Docket Nos. 50-445 and 50-446

Enclosures: 1. Order
 2. Conforming Amendments to NPF-87 and NPF-89
 3. Safety Evaluation (nonproprietary)
 4. Safety Evaluation (proprietary)

cc w/o Encl. 4: See next page

C.L.Terry

-2-

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

Docket Nos. 50-445 and 50-446

Enclosures: 1. Order
2. Conforming Amendments to DPR-53, DPR-69 and SNM-2505
3. Safety Evaluation (nonproprietary)
4. Safety Evaluation (proprietary)

cc w/o Encl. 4: See next page

Distribution: See next page

PROPRIETARY INFORMATION

SE Proprietary Version: ML013060345

Package: ML013060353

ACCESSION NOS.: Order: ML013060305

*See previous concurrence

OFFICE	PM:PDI-IV*	LA:PDI-IV*	TECH ED*	SC:IOLB*	BC:REXB*	SC:PDIV-1
NAME	DJaffe	DJohnson	PKleene	DTrimble	AMcKeigney for PMadden	RGramm
DATE	12/19/01	12/19/01	10/29/01	10/4/01	12/19/01	12/19/01
OFFICE	D:PDIV	D:DLPM	OGC*	OGC*	ADPT:NRR	D:NRR
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DATE	12/20/01	12/21/01	12/21/01	12/20/01	12/21/01	12/21/01

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DISTRIBUTION FOR LETTER DATED: December 21, 2001

ORDER APPROVING THE DIRECT TRANSFER OF OWNERSHIP INTERESTS AND
OPERATING AUTHORITY, AND CONFORMING AMENDMENTS

DISTRIBUTION (w/o Encl. 4)

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RidsRgn4MailCenter (KBrockman)

Comanche Peak Steam Electric Station

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ENCLOSURE 1

ORDER APPROVING

TRANSFER OF LICENSES

AND CONFORMING AMENDMENTS

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	Docket Nos. 50-445 and 50-446
)	
TXU ELECTRIC COMPANY)	License Nos. NPF-87 and NPF-89
)	
Comanche Peak Steam Electric Station)	
Units 1 and 2)	

ORDER APPROVING TRANSFER OF LICENSES
AND CONFORMING AMENDMENTS

I.

TXU Electric Company (TXU Electric or the licensee) is the holder of Facility Operating License Nos. NPF-87 and NPF-89, which authorize operation of Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES). The facilities are located at the licensee's site in Somervell and Hood Counties, Texas. The operating licenses authorize TXU Electric to possess, use, and operate CPSES.

II.

By application dated June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001 (collectively, the application), TXU Electric requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) consent to the direct transfer of control of TXU Electric's operating authority for and 100-percent ownership interest in CPSES, to a newly formed generating company, TXU Generation Company LP. The partners of TXU Generation Company LP will be indirect wholly-owned subsidiaries of TXU Corporation, the parent of TXU Electric. The application proposed no physical changes to the facilities or changes to their manner of operation.

The application also requested the approval of conforming license amendments to replace references to TXU Electric in the licenses with references to TXU Generation Company LP, as appropriate, and to make other administrative changes to reflect the proposed direct transfer. TXU Electric also proposed license amendments to delete the Antitrust Conditions in Appendix C of the CPSES, Facility Operating Licenses, which is the subject of a separate review.

TXU Electric requested that the NRC consent to the license transfers in accordance with Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR) and approve the conforming administrative amendments pursuant to 10 CFR 50.90 and 10 CFR 2.1315. Notice of the request for approval and an opportunity for a hearing was published in the *Federal Register* on August 20, 2001 (66 FR 43594). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC consents in writing. After reviewing the information in the application from TXU Electric and other information before the NRC, and relying upon the representations and agreements contained in the application, the NRC staff has determined that TXU Generation Company LP is qualified to be the holder of the licenses and that the transfer of the licenses to TXU Generation Company LP is otherwise consistent with applicable provisions of law, regulations, and orders issued by the NRC, subject to the conditions set forth below. The NRC staff has further found that (1) 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 NRC's rules and regulations set forth in 10 CFR Chapter I; (2) the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the NRC; (3) 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 NRC's regulations; (4) the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and (5) the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the NRC's regulations, and all applicable requirements have been satisfied.

The foregoing findings are supported by a safety evaluation dated December 21, 2001.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act; 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the transfer of the licenses, as described herein to TXU Generation Company LP, is approved, subject to the following conditions:

- (1) TXU Generation Company LP shall, prior to completion of the subject transfers, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that TXU Generation Company LP has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the NRC's regulations.
- (2) The TXU Generation Company LP Decommissioning Master Trust Agreement for CPSES, at the time the license transfers are effected and thereafter, is subject to the following:
 - (a) The decommissioning trust agreement will be in a form acceptable to the NRC.
 - (b) With respect to the decommissioning trust funds, except for investments tied to market indices or other non-nuclear sector mutual funds, investments in the securities or other obligations of TXU Generation Company LP, or its affiliates, successors, or assigns, or investments in any entity owning one or more nuclear power plants are prohibited.

- (c) The appropriate section of the decommissioning trust agreement shall state that investments made in trust by the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to investment guidelines 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 costs, no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first provided 30 days prior written notice of such disbursement or payment to the NRC and the trustee has not received prior written notice of 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 first providing 30 days prior written notice to the Director, Office of Nuclear Reactor Regulation.
- (3) TXU Generation Company LP shall provide decommissioning funding assurance, to be held in decommissioning trusts for CPSES, upon the direct transfer of the CPSES licenses to TXU Generation Company LP, in an amount equal to or greater than the balance in the CPSES decommissioning trusts immediately prior to the transfer. In addition, TXU Generation Company LP shall ensure that all contractual arrangements referred to in the application to obtain necessary decommissioning funds for CPSES 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.

- (4) TXU Generation Company 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) TXU Generation Company LP shall inform the Director, Office of Nuclear Reactor Regulation, of the date of the closing of the direct transfers no later than 7 business days prior to such date. If the transfer of the licenses is not completed by January 1, 2002, this Order shall become null and void; however, upon written application and for good cause shown, such date may be extended in writing.
- (6) TXU Generation Company LP and its subsidiaries agree to 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 TXU Generation Company LP subsidiaries to its proposed 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 TXU Generation Company LP's book of accounts.
- (7) If the license transfers 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), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and shall be made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001, and the safety evaluation dated December 21, 2001, which are available for public inspection at the NRC's Public Document Room, at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically through 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>.

Dated at Rockville, Maryland, this 21st of December 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

ENCLOSURE 2

LICENSE AMENDMENTS

TXU ELECTRIC

DOCKET NO. 50-445

COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 1

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-87

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by TXU Electric dated June 19, 2001, as supplemented by letters dated August 15, 2001, August 31, 2001, November 20, 2001, and December 17, 2001, 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.

2. Accordingly, the license is amended as indicated in the attachment to this license amendment.
3. The license amendment is effective as of January 1, 2002, and shall be implemented within 7 days of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Facility Operating License

Date of Issuance:

TXU ELECTRIC

DOCKET NO. 50-446

COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 2

AMENDMENT TO FACILITY OPERATING LICENSE

Amendment No.
License No. NPF-89

1. The Nuclear Regulatory Commission (the Commission) has found that:
 - A. The application for amendment by TXU Electric dated June 19, 2001, as supplemented by letters dated August 15, 2001, August 31, 2001, November 20, 2001, and December 17, 2001, 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.

2. Accordingly, the license is amended as indicated in the attachment to this license amendment.
3. The license amendment is effective as of January 1, 2002, and shall be implemented within 7 days of the date of issuance.

FOR THE NUCLEAR REGULATORY COMMISSION

Brian W. Sheron, Acting Director
Office of Nuclear Reactor Regulation

Attachment: Changes to the Facility Operating License

Date of Issuance:

ATTACHMENT TO LICENSE AMENDMENT NOS. _____ AND _____
FACILITY OPERATING LICENSE NOS. NPF-87 AND NPF-89
DOCKET NOS. 50-445 AND 50-446

Replace the following pages of the Unit 1 Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>REMOVE</u>	<u>INSERT</u>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
Appendix B cover page	Appendix B cover page
Appendix C cover page	Appendix C cover page

Replace the following pages of the Unit 2 Facility Operating License with the attached revised pages. The revised pages are identified by amendment number and contain marginal lines indicating the areas of change.

<u>REMOVE</u>	<u>INSERT</u>
1	1
2	2
3	3
4	4
5	5
6	6
7	7
Appendix B cover page	Appendix B cover page
Appendix C cover page	Appendix C cover page

ENCLOSURE 3

SAFETY EVALUATION FOR LICENSE AMENDMENTS

NONPROPRIETARY VERSION

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION
PROPOSED DIRECT TRANSFER OF OWNERSHIP INTERESTS
AND OPERATING AUTHORITY
FOR COMANCHE PEAK STEAM ELECTRIC STATION TO TXU GENERATION COMPANY LP
COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2
FACILITY OPERATING LICENSE NOS. NPF-87 AND NPF-89
DOCKET NOS. 50-445 AND 50-446

1.0 INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act (AEA) of 1954, as amended, and Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR 50.80), TXU Electric Company (TXU Electric), by application dated June 19, 2001, as supplemented by letters dated August 15, August 31, November 20, and December 17, 2001 (collectively, the application), requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) consent to the direct transfer of control of TXU Electric's operating authority and 100% ownership interest in Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, to a newly formed generating company, named TXU Generation Company LP. TXU Electric also proposed license amendments to delete the Antitrust Conditions in Appendix C of the CPSES, Facility Operating Licenses, which is the subject of a separate NRC review.

The application also requested the approval of conforming license amendments to reflect the proposed transfer. The supplemental information did not expand the scope of the request as originally noticed in the *Federal Register* (66 FR 43594, published August 20, 2001).

2.0 BACKGROUND

The partners of TXU Generation Company LP will be indirect, wholly-owned subsidiaries of TXU Corporation (TXU), the parent of TXU Electric. The restructuring of TXU Electric is being undertaken for various tax, regulatory, and business reasons, and to comply with Texas law requiring the restructuring of the electric utility industry. Under the Business Separation Plan filed with the Public Utility Commission of Texas (PUCT), TXU Generation Company LP will own the majority of the current electric generating assets of TXU Electric, including CPSES, Units 1 and 2.

Facility Operating License Nos. NPF-87 and NPF-89 for CPSES, Units 1 and 2, respectively, are held by TXU Electric, which is also the licensed operator of the units. CPSES consists of two 1150 Megawatts Electric (MWe) Westinghouse Electric Company four-loop pressurized-water reactors located in Somervell and Hood Counties, Texas.

TXU Electric is currently an electric utility engaged in the generation, purchase, transmission, distribution, and sale of electric energy wholly within the State of Texas. TXU Electric is subject to the jurisdiction of PUCT with respect to electric rates. TXU Electric is a wholly-owned subsidiary of TXU, a public utility holding company.

As a significant component of the transition to customer choice, Texas has adopted restructuring legislation that requires regulated electric utility operations to be separated into at least three separate business activities: power generation, transmission and distribution, and retail electric service. The restructuring proposed by TXU Electric is the first step of the required transition. TXU Electric's plans for meeting the restructuring requirements are detailed in its Business Separation Plan (Attachment 9 to the June 19, 2001, application).

After completion of the restructuring, TXU will remain a public utility holding company. TXU Generation Company LP will be an indirect, wholly-owned subsidiary of TXU, and an indirect subsidiary of several intermediate holding companies. Approximately 15,000 MWe of TXU Electric's generating assets, including CPSES, will be transferred to TXU Generation Company LP, which will seek exempt wholesale generator status from the Federal Energy Regulatory Commission (FERC). Figure 1 of the June 19, 2001, application is a simplified organizational diagram for TXU Generation Company LP.

The application states "No physical changes will be made to CPSES as a result of this transfer, and there will be no changes in the day-to-day operation or management of CPSES."

3.0 FINANCIAL QUALIFICATIONS ANALYSIS

Pursuant to 10 CFR, 50.33(f), an electric utility as defined in 10 CFR 50.2 is not required to demonstrate its financial qualifications. As defined in 10 CFR 50.2, an electric utility is "... any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority." TXU Electric currently meets the definition of an "electric utility." After the restructuring, TXU Generation Company LP will be seeking exempt wholesale generator status from FERC and will not meet the definition of an electric utility, but the application maintains that TXU Generation Company LP will be financially qualified to own and operate CPSES for the remaining term of the CPSES, Units 1 and 2, licenses.

As both a newly formed entity and a non-electric utility applicant for a license to own and to operate a nuclear power plant, TXU Generation Company LP is subject to a more detailed NRC financial qualifications review than an established electric utility. Specifically, TXU Generation Company LP must meet the requirements of 10 CFR 50.33(f) by providing information which shows the following:

- (1) As a non-electric utility applicant for operating licenses, it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the licenses. It shall submit estimates for total annual operating costs for the first five years of facility operations and indicate the source of funds to cover these costs.
- (2) As a newly formed entity organized for the primary purpose of operating a nuclear power plant, it must include: (a) the legal and financial relationships it has or proposes

to have with its stockholders or owners, (b) its financial ability to meet any contractual obligation to the entity which they have incurred or propose to incur, and (c) any other information considered necessary by the Commission to enable it to determine the applicant's financial qualification.

In addition, 10 CFR 50.33(k)(1) requires that TXU Generation Company LP must provide information as described in 10 CFR 50.75, indicating reasonable assurance that funds will be available to decommission the facilities. TXU Generation Company LP's proposals for decommissioning funding assurances are discussed in Section 4.0 of this safety evaluation (SE).

At the time of the June 19, 2001, application, TXU Electric planned to transfer substantially all of its more than 21,000 MWe of electric generating assets to TXU Generation Company LP; however, in a supplement to the application dated August 15, 2001, TXU Electric revised its original plans.

TXU Electric now plans to sell or lease up to 6,000 MWe of fossil generating assets to an unaffiliated entity, rather than transfer those assets to TXU Generation Company LP. The supplement included revised financial statements showing the projected revenues from the more than 15,000 MWe of electric generating assets which, TXU Electric claims, will provide substantial assurance that TXU Generation Company LP will have funds available to meet anticipated operating and maintenance expenditures for CPSES, Units 1 and 2, including a six-month outage of both units.

The August 15, 2001, supplement to the application provides a projected income statement for TXU Generation Company LP's entire capacity of more than 15,000 megawatts (Table 1). The statement includes TXU Generation Company LP's 100% ownership interest in CPSES. TXU Generation Company LP has no other nuclear generating capacity.

TABLE 1

TXU Generation Company LP
Projected Income Statement
Over 15,000 Megawatts of Capacity
(in \$ millions)

Fiscal Year	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Revenue:					
Power	[\$]	[\$]	[\$]	[\$]	[\$]
Ancillary Services	[\$]	[\$]	[\$]	[\$]	[\$]
Other	[\$]	[\$]	[\$]	[\$]	[\$]
Total Revenue:	[\$]	[\$]	[\$]	[\$]	[\$]
Expenses:					
Fuel	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Ancillary Services	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Operations & Maintenance	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Taxes Other than Income	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Depreciation	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Decommissioning	()	()	()	()	()
Total Expenses:	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Earnings Before Interest and Tax:	[\$]	[\$]	[\$]	[\$]	[\$]
Interest Expense	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Income Tax: (35%)	[(\$)]	[(\$)]	[(\$)]	[(\$)]	[(\$)]
Net Income:	[\$]	[\$]	[\$]	[\$]	[\$]

In the projected income statement in Table 2 below (provided in the August 31, 2001, supplemental letter), TXU Generation Company LP shows nuclear capacity independently. The projected income statement in Table 1 includes both nuclear as well as fossil capacity.

TABLE 2

Comanche Peak Steam Electric Station
Projected Income Statement
(in \$ millions, unless otherwise noted)

<u>Fiscal Year</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Capacity Factor:	[]	[]	[]	[]	[]
Capacity (MW)	2,300	2,300	2,300	2,300	2,300
Generation (GWh)	[]	[]	[]	[]	[]
Volume Weighted Wholesale Power Price (\$/MWh)	[]	[]	[]	[]	[]
Revenue (\$M):					
Power	[]	[]	[]	[]	[]
Other	[]	[]	[]	[]	[]
Total Revenue:	[]	[]	[]	[]	[]
Expenses (\$M)					
Fuel	[()]	[()]	[()]	[()]	[()]
Operations & Maintenance	[()]	[()]	[()]	[()]	[()]
Taxes Other than Income	[()]	[()]	[()]	[()]	[()]
Decommissioning	[()]	[()]	[()]	[()]	[()]
Total Expenses:	[()]	[()]	[()]	[()]	[()]
Net	[]	[]	[]	[]	[]

The NRC staff evaluated the estimated wholesale power prices and found them to be reasonably consistent with current rates. The applicant also submitted additional financial information indicating that if the price of a megawatt-hour of electricity were to drop by an arbitrary 10%, the average decrease in net income would be approximately [\$] million per year. The NRC staff notes that the projected CPSES capacity factors for the years 2002 through 2006 are in the same range as for the past three years and are thus reasonable. The NRC staff has also evaluated the estimated operations and maintenance costs and has found that they are reasonably consistent with past performance. Further, the applicant projects a sufficient margin of revenues over expenses to reasonably assure that sufficient funds for safe operation will exist even if expenses increase or revenues drop significantly.

The NRC has reviewed the statements of projected revenues and expenses for TXU Generation Company LP and for CPSES alone. The financial information submitted with the

application and supplements to the application confirms that TXU Generation Company LP will possess, or have reasonable assurance of obtaining, the funds necessary to cover the estimated operating costs of CPSES, Units 1 and 2, for the period of the licenses in accordance with 10 CFR 50.33(f)(2) and NUREG-1577, Rev. 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance." TXU Electric has prepared a projected revenues and expenses statement for CPSES, Units 1 and 2, and a projected income statement and opening balance sheet for TXU Generation Company LP (including more than 15,000 MWe of generating assets) for the five-year period from January 1, 2002, until December 31, 2006. Copies of these statements and related schedules are contained in Enclosure 4 of the August 15, 2001, supplement to the application.

The NRC staff finds that the projected income statement for TXU Generation Company LP shows that the anticipated revenues from sales of capacity and energy from CPSES and other generating assets provide reasonable assurance of an adequate source of funds to meet CPSES's ongoing operating expenses. Until January 2002, TXU Generation Company LP or TXU Electric will recover its costs through traditional ratemaking mechanisms under the rates in effect for TXU Electric. After January 1, 2002, TXU Generation Company LP will sell its generation in the wholesale power markets. The projected income statement through 2006 shows that anticipated revenues from sales of capacity and energy from all of TXU Generation Company LP's approximately 15,000 megawatts of generating capacity will average an estimated [\$] billion per year, and provides assurance that TXU Generation Company LP will have an adequate source of funds to meet CPSES's ongoing operating expenses.

As stated in the application, TXU Generation Company LP will be a Texas limited partnership, and the partners of TXU Generation Company LP will be indirect, wholly-owned subsidiaries of TXU, the parent of TXU Electric. TXU Generation Management Company LLC and the TXU Generation Investment Company LLC will be Delaware limited liability corporations. TXU Generation Management Company LLC will be responsible for management of the partnership and all of its activities. The limited partner will have no role in the operation of the company. The senior management of TXU Generation Management Company LLC and any intermediate companies will be drawn from the officers and management of TXU and TXU Electric. The names of the members of the senior executive management of TXU Generation Management Company LLC and other intermediate companies are provided in the December 17, 2001, supplement to the application.

Based on the above information, the NRC staff finds that the application has fulfilled the regulatory requirements of 10 CFR 50.33(f) to provide information that TXU Generation Company LP has reasonable assurance of having the financial resources to maintain and operate CPSES, Units 1 and 2, as a non-electric utility and as a newly-formed entity, and to obtain the funds necessary to cover the estimated operating costs for the period of the licenses.

4.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide assurance of decommissioning funding and provision of an adequate amount of decommissioning funding are necessary to ensure the adequate protection of public health and safety.

To ensure the adequate protection of public health and safety, the NRC requires licensees to provide assurance of adequate decommissioning funding of the licensees' nuclear power

plants. The regulation in 10 CFR 50.33(k) requires that an application for an operating license for a utilization facility contain information on how reasonable assurance will be provided that funds will be available to decommission the facility.

An external sinking fund is an allowable method to provide reasonable assurance for decommissioning funding by a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by cost of service or similar ratemaking regulation (10 CFR 50.75(e)(1)(ii)(A)), or by a licensee whose source of revenue for the external sinking fund is a nonbypassable charge if the total amount will provide the funds needed for decommissioning (10 CFR 50.75(e)(1)(ii)(B)). As set forth in 10 CFR 50.2, nonbypassable charges are defined as:

... those charges imposed over an established time period by a Government authority that affected persons or entities are required to pay to cover costs associated with the decommissioning of a nuclear power plant. Such charges include, but are not limited to, wire charges, stranded cost charges, transition charges, exit fees, other similar charges, or the securitized proceeds of a revenue stream.

TXU Electric is currently providing financial assurance for decommissioning CPSES, Units 1 and 2, through external sinking funds (decommissioning trusts) in which deposits are made at least annually. In the biennial decommissioning fund status report dated March 30, 2001, TXU Electric reported the market values of the funds as of December 31, 2000, as \$142.3 million for CPSES, Unit 1 and \$124.8 million for CPSES, Unit 2. The status report also gave the schedule of the annual amounts remaining to be collected over the respective lives of the plants based on the collection rates authorized in the PUCT Final Order dated January 28, 1994.

Upon the license transfers, TXU Electric will transfer the decommissioning trusts to TXU Generation Company LP. The June 19, 2001, application states that, "... Pursuant to the Texas utility restructuring legislation, TXU Generation Company LP will have access to funds from ratepayers in the form of a nonbypassable decommissioning charge collected by the distribution utility, TXU T&D Electric Co., TXU Generation Company LP and TXU T&D Electric Co. will enter into an agreement whereby TXU T&D Electric Co. will collect the revenues required for decommissioning funding for TXU Generation Company LP. The funds collected will be transferred to TXU Generation Company LP, for deposit in the nuclear decommissioning trust funds. These decommissioning funding arrangements are reflected in the PUCT's Interim Order of June 5, 2001." The NRC staff concludes that, given the intercompany agreement between TXU Generation Company LP and TXU T&D Electric Co. that obligate such payments, TXU Generation Company LP is providing decommissioning funding assurance in the form of external sinking funds tied to a "nonbypassable charge" pursuant to 10 CFR 50.75(e)(1)(ii)(B).

However, in light of TXU Generation Company LP being an unregulated utility not subject to traditional state controls on decommissioning funding, the following conditions must be incorporated as conditions of approval, as well as license conditions, essentially as follows:

The TXU Generation Company LP Decommissioning Master Trust Agreement for CPSES, Units 1 and 2, at the time the license 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, except for investments tied to market indices or other non-nuclear sector mutual funds, investments in the securities or other obligations of TXU Generation Company LP or its affiliates, successors, or assigns, or investments in any entity owning one or more nuclear power plants shall be prohibited.
- c) 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 provided 30 days prior written notice of such disbursement or payment to the NRC and the trustee has not received written notice of objection from the Director, Office of Nuclear Reactor Regulation...;
- d) The Decommissioning Master Trust Agreement must provide that the agreement may not be modified in any material respect without first providing 30 days prior written notice to the Director, Office of Nuclear Reactor Regulation; and
- e) The appropriate section of the decommissioning trust agreement shall state 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 PUCT (e.g., 16 Texas Administration Code 25.301).

Other prerequisites that must be incorporated as conditions of approval of the license transfers as well as license conditions are that the balance of the decommissioning trust funds immediately prior to the transfer will be, at a minimum, the beginning balance of decommissioning trust funds after the transfer, and that the contracts under which the funds for decommissioning will be provided through non-bypassable charges will be executed and maintained. The following language is appropriate:

TXU Generation Company LP shall provide decommissioning funding assurance, to be held in decommissioning trusts for CPSES, Units 1 and 2, upon the direct transfer of the CPSES licenses to TXU Generation Company LP, in an amount equal to or greater than the balance in the CPSES decommissioning trusts immediately prior to the transfer. In addition, TXU Generation Company LP shall ensure that all contractual arrangements referred to in the application to obtain necessary decommissioning funds for CPSES, Units 1 and 2, 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.

In addition, in order to ensure that the decommissioning trusts are maintained consistent with the NRC staff's action on the June 19, 2001, application, as supplemented, essentially the following should be included as a condition of the direct transfer approval and as a conforming condition in the CPSES, Units 1 and 2, licenses:

TXU Generation Company LP shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance or consistent with the application, the requirements of the Order approving the transfer, and this safety evaluation.

Based on the information in the June 19, 2001, application, as supplemented, the NRC staff concludes that TXU Generation Company LP's proposed decommissioning funding assurance mechanism meets the requirements of 10 CFR 50.75(e), and as such provides reasonable assurance of decommissioning funding for CPSES, Units 1 and 2.

5.0 TECHNICAL QUALIFICATIONS

5.1 Evaluation

The NRC staff used the following regulations and guidance to complete its evaluation: 10 CFR 50.40 (b), "Common standards;" 10 CFR 50.80, "Transfer of licenses;" 10 CFR 72.50, "Transfer of license;" the Standard Review Plan (SRP) NUREG-0800, Chapter 13, "Conduct of Operations;" SRP Section 13.1.1, "Management and Technical Support Organization;" SRP Section 13.1.2-13.1.3, "Operating Organization;" and American National Standards Institute/American Nuclear Society, 18.1-1971, "Selection and Training of Nuclear Power Plant Personnel," as endorsed by Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants" (April 1987).

The purpose of this evaluation is to ensure that the proposed corporate management will be involved with, informed of, and dedicated to the safe operation of the plant and that sufficient, qualified technical resources will be provided to support safe plant and facility operation and maintenance. Changes to the plant and facility operating organizations that may occur as a result of the license transfers are also evaluated.

5.1.1 Management and Technical Support Organization

The NRC staff reviewed the TXU Electric submittals to determine the acceptability of the corporate management and technical support organization for the proposed transfer. The NRC staff evaluated the applicant's submittals using the applicable acceptance criteria contained in SRP, Chapter 13, "Conduct of Operations," Section 13.1.1, "Management and Technical Support Organization."

In its June 19, 2001, application, as supplemented, TXU Electric stated: "The technical qualifications of TXU [Generation Company] LP to carry out its responsibilities under the existing operating licenses will be the same as those of TXU Electric. The existing nuclear organization located at CPSES, and support organizations in Dallas, [Texas], will remain essentially intact. Substantially all of the TXU Electric (not contractor) employees currently in the nuclear organization will become employees of TXU [Generation Company] LP.... In the aggregate, functions, responsibilities and reporting relationships within and among these organizations, especially as they relate to activities important to the safe operation of CPSES, will continue to be clear and unambiguous, and the functions of these organizations will be unaffected."

The December 17, 2001, supplement to the application provides an organizational chart showing the management structure and reporting relationships for CPSES, Units 1 and 2. The Senior Vice President and Principal Nuclear Officer (PNO) will be responsible for safe, reliable and economic operation and maintenance of CPSES, Units 1 and 2. In addition, the December 17, 2001, supplement indicates that an independent review and audit function will be

provided by the Nuclear Oversight Manager who reports to the Senior Vice President and PNO via the Vice President and Deputy to the Senior Vice President and PNO.

The NRC staff concludes that the proposed TXU Generation Company LP organization is satisfactory for managing and providing offsite technical support for the continued operation of CPSES, Units 1 and 2, under both normal and off-normal conditions after the transfer of operating authority.

5.1.2 TXU Generation Company LP, Operating Organization

The NRC staff reviewed the TXU Electric submittals to determine the acceptability of the operating organization and evaluate changes to the operating organization proposed as a result of the license transfers. The initial operating organization was determined to be acceptable by the initial licensing review. The NRC staff required any subsequent safety-related changes to the operating organization to be evaluated using an appropriate methodology. The NRC staff is aware of no deficiencies with the existing operating organization and, therefore, the existing operating organization remains acceptable.

In its application, as supplemented, TXU Electric states "...The existing CPSES management, operating organization, and technical support organizations will be transferred intact contemporaneously with the ownership transfer." TXU Electric states further: "The overriding philosophy that will govern TXU [Generation Company] LP's management will be to assure that it will continue to manage, operate and maintain CPSES in accordance with the conditions and requirements established by the NRC and with the same high regard for operational and employee safety as demonstrated by TXU Electric."

Based on the foregoing, TXU Electric is proposing a plant operating organization that will involve essentially no change to either the CPSES management or the plant staff responsible for operating and maintaining the plant. Therefore, the staff concludes that the onsite organization established to operate and maintain CPSES will be acceptable.

5.1.3 Technical Qualification Conclusions

The application, as supplemented, adequately addresses the relevant requirements of 10 CFR 50.40(b), 10 CFR 50.80, and 10 CFR 72.50. The applicant has described its corporate level management, technical support organization, and the onsite operating organizations responsible for the operation and maintenance of the CPSES, Units 1 and 2, after the transfer of operating authority. The NRC staff concludes that TXU Generation Company LP will have an acceptable corporate organization, acceptable onsite organization, and adequate resources to provide technical support for the safe operation of the plant under both normal and off-normal conditions after the transfer of operating authority.

6.0 ANTITRUST REVIEW

The AEA of 1954, as amended, does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 468 (1999). Therefore, since the transfer application postdates the issuance of the operating license for CPSES, no antitrust review is required or authorized.

7.0 FOREIGN OWNERSHIP, CONTROL OR DOMINATION

The application, as supplemented, states that TXU is a publicly traded company whose securities are traded on the New York Stock Exchange and are widely held. TXU Generation Company LP will be indirectly owned and controlled by TXU. Based on filings with the Securities and Exchange Commission, TXU is not aware of any alien, foreign corporation, or foreign government that holds more than 5% of the securities of TXU.

According to the application, TXU Generation Company LP will be a Texas limited partnership with its principal place of business in Texas. TXU Generation Management Company LLC and TXU Generation Investment Company LLC will be Delaware limited liability corporations that are wholly-owned, indirect subsidiaries of TXU. The senior executive management of TXU Generation Management Company LLC and any intermediate companies will be drawn from the officers and managers of TXU and TXU Electric. The Board of Directors of TXU has 10 members, 9 of whom are U.S. citizens. Only one of the principal executives of TXU, an executive vice president, is not a citizen of the U.S., but is a citizen of the United Kingdom. The application states that based on the information known to the applicant, neither TXU Generation Company LP nor TXU Generation Management Company LLC, which controls TXU Generation Company LP, will be owned, controlled, or dominated by an alien, foreign corporation, or foreign government. The NRC staff does not know or have reason to believe otherwise.

8.0 NUCLEAR INSURANCE

The provisions of the Price-Anderson Act (Section 170 of the AEA of 1954, as amended,) and the Commission's regulations at 10 CFR Part 140 require that TXU Generation Company LP be added to the current indemnity agreement for CPSES. In accordance with the Price-Anderson Act, TXU Generation Company LP will also be required to provide primary insurance and participate in the secondary retrospective insurance pool. These requirements can be met by purchasing insurance policies from the nuclear liability insurance pool, American Nuclear Insurers. TXU Generation Company LP will also be required to maintain property insurance as specified in 10 CFR 50.54(w). The information provided in the application concerning financial qualifications demonstrates that TXU Generation Company LP will be able to pay its share of the \$10 million per unit annual insurance premium in accordance with 10 CFR 140.21(e)-(f).

Consistent with NRC practice, the staff will require TXU Generation Company LP to provide satisfactory documentary evidence that it has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations, prior to the issuance of the amended licenses reflecting TXU Generation Company LP as the licensee.

Because the issuance of the amended licenses is directly tied to the consummation of the proposed transfers, the order approving the transfer of the licenses for CPSES, Units 1 and 2, will be conditioned as follows:

TXU Generation Company LP shall, prior to the completion of the subject transfers, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that TXU Generation Company LP has obtained the appropriated amount of insurance required of licenses under 10 CFR Part 140.

9.0 CONFORMING AMENDMENTS

9.1 Introduction

TXU Electric has requested approval of proposed conforming amendments to the Facility Operating Licenses for CPSES, Units 1 and 2. The requested changes simply replace references to TXU Electric in the operating licenses with references to TXU Generation Company LP, as appropriate, to reflect the proposed license transfers. No physical or operating changes to the facilities are requested. Supplemental information received that was not specifically referenced in the initial *Federal Register* notice did not affect the applicability of the Commission's generic no significant hazards consideration determination set forth in 10 CFR 2.1315.

9.2 Discussion

The changes to be made to the licenses are indicated in Enclosure 2 to the cover letter forwarding the staff's order regarding the subject transfers. The changes do no more than accurately reflect the approved transfer actions, which are subject to the conditions set forth in the Order approving the transfers. The amendments involve no safety questions and are administrative in nature. Accordingly, the proposed amendments are acceptable.

9.3 State Consultation

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

9.4 Conclusion With respect to the Conforming Amendment

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.

10.0 ENVIRONMENTAL CONSIDERATION

The subject application is for approval of a transfer of licenses issued by the NRC and approval of conforming amendments. Accordingly, the actions involved meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)21. Pursuant to 10 CFR 51.22, no environmental impact statement or environmental assessment need be prepared in connection with approval of the application.

11.0 OVERALL CONCLUSION

In view of the foregoing, the NRC staff finds that TXU Generation Company LP is qualified to be the holder of the Facility Operating Licenses for CPSES, Units 1 and 2, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to all of the conditions specified in this SE.

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