

ENCLOSURE 3

SAFETY EVALUATION FOR

INDIRECT LICENSE TRANSFERS AND CONFORMING LICENSE AMENDMENTS

NON-PROPRIETARY VERSION

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

REGARDING ACQUISITION OF TXU CORP. BY

TEXAS ENERGY FUTURE HOLDINGS LIMITED PARTNERSHIP AND

INDIRECT TRANSFER OF FACILITY OPERATING LICENSES

FOR COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2

DOCKET NOS. 50-445 AND 50-446

1.1 INTRODUCTION

By application dated April 18, 2007, as supplemented by letter dated July 20, 2007, TXU Generation Company LP (TXU Power), acting on behalf of Texas Energy Future Holdings Limited Partnership (Texas Energy LP) and itself, requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of control of TXU Power's licenses to possess and operate the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES). TXU Corp., which indirectly owns 100 percent of TXU Power, and Texas Energy LP have entered into an agreement for Texas Energy LP to acquire all of the outstanding equity of TXU Corp.

TXU Power will continue to own and operates CPSES. Through the acquisition of TXU Corp. by Texas Energy LP, TXU Power will become part of a privately held enterprise. Through the investment by and involvement of the proposed controlling private equity investors, this enterprise anticipates focusing on long-term solutions to the challenges posed by the State of Texas' evolving energy needs. TXU Power intends to change its name from TXU Generation Company LP to Luminant Generation Company LLC, and has requested amendments to the licenses to reflect that name change.

The application was filed pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (AEA), as well as Sections 50.80 and 50.90 of Title 10 of the *Code of Federal Regulations* (10 CFR).

1.2 BACKGROUND

CPSES is composed of two 1,150 Megawatts Electric (MWe) nuclear power units, each consisting of a Westinghouse four-loop pressurized water reactor and associated plant equipment, and related site facilities. CPSES is located in Somervell County, approximately 4 miles north of Glen Rose, Texas.

An organizational chart depicting the current corporate structure of TXU Corp. was provided in the application, and listed as Figure 1 in the application. TXU Power, the licensed owner and

operator of CPSES, is itself owned and controlled by a partnership between TXU Generation Management Company LLC and TXU Energy Investment Company LLC. In turn, TXU Generation Management Company LLC and TXU Energy Investment Company LLC are direct wholly-owned subsidiaries of TXU Energy Company LLC which is 99 percent owned by TXU US Holdings Company and 1 percent owned by TXU Energy Holdings Company (a direct wholly-owned subsidiary of TXU US Holdings Company). Finally, TXU US Holdings Company is a direct wholly-owned subsidiary of TXU Corp., the top parent company.

On February 25, 2007, Texas Energy LP, Texas Energy Future Merger Sub. Corp (Merger Sub), and TXU Corp. entered into an agreement and plan of merger pursuant to which Merger Sub, a State of Texas corporation and wholly-owned subsidiary of Texas Energy LP, will merge with and into TXU Corp., with TXU Corp. continuing as the surviving entity and becoming a subsidiary of Texas Energy LP. In the merger, shares of common stock of TXU Corp. will be converted into the right to receive cash consideration. As a result of this transaction, Texas Energy LP will become the parent of TXU Corp. Also, a new intermediate parent of TXU Power will be established under TXU Corp., identified as Luminant Holdco in the application.

In addition, the applicant states that under the laws of Texas, TXU Power will convert from a Limited Partnership to a Limited Liability Company without dissolving TXU Power as a business entity. As stated above, TXU Power intends to change its name from TXU Generation Company LP to Luminant Generation Company LLC, and pursuant to 10 CFR 50.90 requests amendments to the licenses for a name change.

3.0 REGULATORY EVALUATION

The applicant's request for approval of the indirect transfer of the licenses for CPSES discussed in this Safety Evaluation is made pursuant to 10 CFR 50.80. Section 50.80(a) of 10 CFR states "no license for a production utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing."

In addition, the requirements of 10 CFR 50.80(b) and (c) apply. Section 50.80(b) states that an application for a license transfer shall include as much information described in 10 CFR 50.33 and 10 CFR 50.34 "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the applications were for an initial license." Section 50.80(c) states that "the Commission will approve an application for the transfer of a license, if the Commission determines: (1) that the proposed transferee is qualified to be the holder of the license; and (2) that transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto." For indirect license transfers, the Commission has held, with respect to the first determination, that it will approve an application if the Commission determines that the proposed indirect transfer of control of the license will not affect the qualifications of the licensee to hold the license.

Additionally, pursuant to 10 CFR 50.90, the applicant requests conforming amendments to the CPSES licenses NPF-87 and NPF-89 to replace references to the name "TXU Generation Company LP" with "Luminant Generation Company LLC."

4.0 PROPOSED TRANSACTION

The following information is derived from the application, which provides additional details also relied upon by the staff but not repeated here.

In the proposed transaction, Texas Energy LP would acquire 100 percent ownership of TXU Corp. An organizational chart depicting the post-closing ownership structure of TXU Corp., including Texas Energy LP, was provided in the application as Figure 2.

Texas Energy LP is a Delaware limited partnership, which was recently formed for the purpose of acquiring TXU Corp. As stated in the application, Texas Energy LP is owned and controlled in equal parts by certain investment fund entities affiliated with Kohlberg Kravis Roberts & Company L.P. (KKR) and certain investment funds advised by TPG Capital, L.P. Other investors will make equity investments in Texas Energy LP on or before the closing date of the acquisition of TXU Corp. by Texas Energy LP. The authority to control the actions of the licensee and its parent entities will be vested in investment funds affiliated with KKR and TPG Capital, L.P., and entities affiliated with the Goldman Sachs Group, Inc. and Lehman Brothers Holdings Inc., as well as independent directors appointed by the new ownership group, according to the application.

The applicant further states that Merger Sub has received a debt commitment letter from a group of lenders to provide approximately \$24.6 billion in order to finance the transaction. TXU Energy Company LLC, a current subsidiary of TXU Corp., is expected to incur a substantial majority of this debt, secured by substantially all of the assets of TXU Energy Company LLC and its subsidiaries, including TXU Power. A portion of this debt is going to be unsecured debt that will reside at the TXU Corp. level. Additionally, the debt commitments provide for funds to repay some outstanding debt of TXU Corp. and its subsidiaries, and to pay fees and expenses incurred in connection with the proposed transaction. Additional borrowing facilities, e.g., lines of credit, will be made available to TXU Energy Company LLC and Texas Electric Delivery Company, a current subsidiary of TXU Corp.

Texas Energy LP expects to reorganize TXU Corp.'s power generation, wholesale power, development, and construction businesses into an independently managed business within the TXU Corp. structure, associated with the new name "Luminant." Those TXU Corp. subsidiaries, the Luminant subsidiaries, including TXU Power, will be governed by a common board of at least five managers/directors, the Luminant managers. A new holding company subsidiary, Luminant Holdco, governed by the Luminant managers, is proposed to be formed to directly or indirectly own and control the Luminant subsidiaries. Luminant Holdco will be a wholly-owned subsidiary within the TXU Corp. structure, indirectly controlled by TXU Corp. (See Figure 2 of the application).

The sole general partner of Texas Energy LP is Texas Energy GP, which owns a nominal portion of the equity interest of Texas Energy LP and acts as its sole general partner. Texas Energy GP exercises exclusive control over the actions of Texas Energy LP. Texas Energy GP is a Delaware limited liability company that was formed for the purpose of acquiring TXU Corp. The controlling interests in Texas Energy GP are currently owned by an investment vehicle affiliated with KKR and TPG and an investment vehicle affiliated with TGP Capital, L.P., with possible future ownership shared with investment vehicles affiliated with

the Goldman Sachs Group, Inc. (Goldman Sachs) and Lehman Brothers Holdings Inc. (Lehman Brothers) as well as other investment vehicles affiliated with KKR and TPG Capital, L.P., and passive minority interest owners. Upon the consummation of the transaction, the preceding investment vehicles will collectively have the right to cause Texas Energy LP to appoint all of the members of the board of directors of TXU Corp. and thereby through Texas Energy GP will control the management of TXU Corp. and its subsidiaries, including TXU Power. In addition, the investment vehicles affiliated with KKR, TPG Capital L.P., and Goldman Sachs will be entitled to consent rights over extraordinary transactions by TXU Corp. and its subsidiaries, such as change of control, initial public offerings, or voluntary bankruptcy. The applicant states that the acquisition of membership interests in Texas Energy GP by investment vehicles affiliated with Goldman Sachs and Lehman Brothers and by passive minority interest owners is subject to the satisfaction of certain conditions. However, it is assumed that those conditions will be satisfied.

4.1 THE KKR FUNDS

The investment vehicles affiliated with KKR (KKR Funds) are indirectly controlled by domestic business entities that are controlled by the two leading principals of KKR, both of whom are U.S. citizens. The current governance structure of the KKR Funds is illustrated in Figure 3 of the application. Over the past 30 years, KKR and its investment fund affiliates have invested in approximately 150 transactions with a total value of over \$260 billion. KKR has experience investing in the energy sector, with investments in ITC Holdings, DPR Inc., Texas Genco, and Union Texas petroleum. Depending upon certain unresolved issues among all of the potential investors, KKR Funds will own between 25 percent and 65 percent of the membership interests of Texas Energy GP.

4.2 THE TPG FUNDS

The investment vehicles affiliated with TPG Capital, L.P. (TPG Funds) are indirectly controlled by domestic business entities that are controlled by the principals of TPG Capital, L.P. (Texas Pacific Group), who are U.S. citizens. The current governance structure of the TPG Funds is illustrated in Figure 4 of the application. Texas Pacific Group is a private investment partnership that was founded in 1992 and currently has more than \$30 billion of assets under its management. Texas Pacific Group and its investment fund affiliates invest in companies across a broad range of industries and geographies, having previous investments that include Denbury Resources and Texas Genco. Depending upon their actual investment upon consummation of the transaction, the TPG Funds will own between 17 percent and 54 percent of the membership interests of Texas Energy GP.

4.3 THE GOLDMAN FUNDS

The investment vehicles affiliated with Goldman Sachs (Goldman Funds) are indirectly controlled by Goldman Sachs, a publicly traded Delaware corporation. The current governance structure of the Goldman Funds is illustrated in Figure 5 of the application. The Goldman Funds were formed for the purpose of investing in equity, equity-related, and debt securities. Pursuant to an agreement with KKR 2006 Fund, affiliated with KKR, and TPG V Fund, affiliated with Texas Pacific Group, certain Goldman Funds have committed to invest up to a certain amount of equity to acquire up to 28 percent of TXU Corp. Any investment made by the

Goldman Funds towards the acquisition of an interest in TXU Corp. will proportionately reduce the investments and membership interests in Texas Energy GP, of the KKR Funds and the TPG Funds.

4.4 THE LEHMAN ENTITIES

The investment vehicles affiliated with Lehman Brothers (Lehman Entities) are indirectly controlled by Lehman Brothers, a publicly traded Delaware Corporation. The current governance structure of the Lehman Entities is illustrated in Figure 6 of the application. Lehman Brothers is a financial services firm whose activities include investment banking, and its headquarters is located in New York. Pursuant to an agreement with KKR 2006 Fund and TPG V Fund, the Lehman Entities have committed, subject to satisfaction of certain conditions, to invest up to a certain amount of equity in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon the consummation of transaction, the Lehman Entities will own up to approximately 12 percent of the membership interest in Texas Energy GP. Any investment made by the Lehman Entities towards the acquisition of TXU Corp. will proportionately reduce the investments and membership interests in Texas Energy GP, of the KKR Funds and the TPG Funds.

4.5 THE PASSIVE OWNERS

In addition to the KKR Funds, TPG Funds, Goldman Funds, and Lehman Entities (Controlling Owners), the applicant requests the NRC's approval to the inclusion among the members of Texas Energy GP of a limited number of other investors with membership interests subject to the following limitations (Passive LLC Owner). These membership interests would not entitle these investors to any right to manage, direct, or otherwise control the activities of Texas Energy GP, Texas Energy LP, TXU Corp., or any TXU Corp. subsidiary, and no such Passive LLC Owner will be permitted to own 5 percent or more of the total membership interest of Texas Energy GP. In addition, according to the applicant, the governing agreements of Texas Energy GP will provide that only the Controlling Owners will have the right to appoint the directors of TXU Corp. and otherwise control the activities of Texas Energy LP, and thus indirectly TXU Corp. and its subsidiaries, including TXU Power. KKR Funds, TPG Funds, and Goldman Funds also will have certain negative consent rights over extraordinary actions by TXU Corp. and its subsidiaries.

While the Passive LLC Owners' membership interests in Texas Energy GP will be voting interests to the extent all members are required to vote on any matter pursuant to law, or otherwise, in fact as a contractual matter all right to manage, direct, or otherwise control the activities of Texas Energy GP, Texas Energy LP, TXU Corp., or TXU Corp.'s subsidiaries, including TXU Power, will reside with the Controlling Owners. The Passive LLC Owners will have minimal consent rights over amendments to the governing agreements of Texas Energy GP, to be exercised based on their pro rata ownership of the membership interests, which will be less than 5 percent for each Passive LLC Owner. Those consent rights will be limited to matters directly related to the Passive LLC Owners' economic and other specified rights in Texas Energy GP. In particular, the consent of the members would be required for any amendment to the governing agreements of Texas Energy GP that would impose new transfer restrictions on membership interests or restrict the members' right to participate in extraordinary events, such as tag-along sales, that are provided under the

agreements. In addition, the consent of any member would be required for any amendment to the governing agreements for Texas Energy GP that by its express terms would have a disproportionate material adverse effect on the rights, obligations, powers, or interests of that member relative to other members in their capacities as such.

At the present time, in addition to the KKR Funds, TPG Funds, Goldman Funds, and Lehman Entities, only three financial entities have entered into agreements committing them to invest in the transaction to acquire TXU Corp. and thus obtain corresponding membership interests of less than 5 percent each in Texas Energy GP: (1) Citigroup Global Markets Inc., a broker-dealer subsidiary of the Citigroup Incorporated financial services enterprise; (2) J. P. Morgan Ventures Corporation, an equity investment arm of the J. P. Morgan Chase & Company financial services enterprise; and (3) Morgan Stanley & Company Incorporated, the broker-dealer subsidiary of Morgan Stanley, a publicly traded financial services enterprise.

4.6 TEXAS ENERGY LP LIMITED PARTNERS

Texas Energy LP currently has two limited partners, and before the closing date of the transaction, additional limited partners will be added. The current and currently anticipated limited partners of Texas Energy LP are (as identified on pages 23 and 24 of the application) KKR Funds, TPG Funds, Goldman Funds, Lehman Entities, Citigroup Global Markets Inc. and affiliates, J. P. Morgan Ventures Corporation and affiliates, Morgan Stanley & Co. Inc. and affiliates, and others.

4.7 THE PASSIVE LP OWNERS

Other than the KKR Funds, TPG Funds, Goldman Funds, and Lehman Entities, the limited partner investors would acquire passive limited partnership interests in Texas Energy LP. These Passive LP Owners may acquire such limited partnership interests directly in Texas Energy LP or indirectly through investments formed to hold such limited partnership interests. Some of the Passive LP Owners also may be Passive LLC Owners, or may hold passive ownership interests in the various investment funds that own limited partnership interests in Texas Energy LP.

The limited partnership interests held by Passive LP Owners will be essentially economic interests only and as such passive. Under the Limited Partnership Agreement of Texas Energy LP, the Passive LP Owners will have no voting or governance rights over Texas Energy LP. The Passive LP Owners will have minimal consent rights over amendments to the Limited Partnership Agreement, to be exercised based on their pro rata ownership of the limited partnership interests. Those rights will be limited to matters necessary to protect the limited partners' economic and other specified rights in Texas Energy LP. In particular, the consent of the limited partners would be required for any amendment to the Limited Partnership Agreement that would impose new transfer restrictions on limited partnership interests or restrict the limited partners right to participate in extraordinary events. In addition, the consent of any limited partner would be required for any amendment to the Limited Partnership Agreement that by its express terms would have a disproportionate material adverse effect on the rights, obligations, powers, or interests of such limited partner relative to the other limited partners.

In all events, no Passive LLC Owner or Passive LP Owner (or group of affiliated owners) will hold ownership interests entitling such owner and its affiliates to 10 percent or more of the combined direct or indirect economic interests in Texas Energy LP, whether as a Passive LLC Owner, a Passive LP Owner, or both.

5.0 FINANCIAL QUALIFICATIONS

Section 50.33 of 10 CFR provides that each application shall state "[e]xcept for an electric utility applicant for a license to operate a utilization facility of the type described in 10 CFR 50.21(b) or 50.22, information sufficient to demonstrate to the Commission the financial qualification(s) of the applicant to carry out, in accordance with the regulations in this chapter, the activities for which the permit or license is sought."

Section 50.2 of 10 CFR states, in part, that 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."

The applicant does not assert that TXU Power is an "electric utility" as defined in 10 CFR 50.2. Thus, the staff has determined that TXU Power must meet the financial qualifications requirements for a non-electric utility pursuant to 10 CFR 50.33(f). Accordingly, TXU Power must provide information that demonstrates that TXU Power, notwithstanding the indirect transfer of control, possesses or has reasonable assurance of obtaining the necessary funds to cover estimated operation costs for the period of the licenses. In this regard, the applicant shall submit estimates for the total annual operating costs for each of the first five years of the facility operations following the proposed license transfer(s) and indicate the source(s) of funds to cover these costs.

Also, 10 CFR 50.33(k)(1) requires that TXU Power provide information described in 10 CFR 50.75 indicating that there is reasonable assurance that funds will be available to decommission the facility.

The following is a summary of the projected income statement for TXU Power submitted in the application.

TXU POWER
SUMMARY OF PROJECTED INCOME STATEMENT
(In \$ millions)

	<u>FY2008</u>	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
TOTAL REVENUE	\$[]	\$[]	\$[]	\$[]	\$[]
Total Operating Expense:	\$[]	\$[]	\$[]	\$[]	\$[]
Operating Income	\$[]	\$[]	\$[]	\$[]	\$[]
Other Income/Expense Tax:	\$[]	\$[]	\$[]	\$[]	\$[]
NET INCOME AFTER TAX:	\$[]	\$[]	\$[]	\$[]	\$[]

The NRC staff review indicates that the assumptions and supporting data supplied as the basis for this summary projected income statement appear to be reasonable. Based upon the revenues and costs provided above, the NRC staff finds that TXU Power's anticipated revenues will exceed its anticipated operating and maintenance and other costs which include those for CPSES during the 5-year period.

In addition, the NRC staff conducted two scenario analyses assuming a 10 percent decrease in the price of a Megawatt Hour (MWhr) of electricity, and separately, a 10 percent reduction in forecast capacity. The staff found that a 10 percent reduction in the price of electricity would reduce the average annual Net Income after Tax by \$[] million. A 10 percent reduction in forecast capacity would reduce the average annual Net Income after Tax by \$[] million. The staff finds that the potential reduction in revenue would still result in sufficient revenue to cover anticipated maintenance and operation expenses.

The staff also notes that based on the applicant's projected income statement provided for CPSES alone, revenues from the units will be sufficient to cover operation and maintenance costs of CPSES.

The NRC staff has also taken into consideration, as referenced in the application, the support agreement that TXU Power will have from Luminant Investment Company LLC (Luminant Holdco) an indirect subsidiary of TXU Corp. and indirect parent of TXU Power. Luminant Holdco will provide up to \$250 million in funding, if necessary, for TXU Power (to be renamed as Luminant Generation Company LLC) to cover its annual operation and maintenance costs for both units of CPSES. The staff reviewed the information in the application regarding Luminant Holdco's financial qualifications to meet its obligations under the support agreement and found them to be adequate. The staff considers the support agreement as a significant factor in assessing TXU Power's financial qualifications following the proposed transaction, particularly in light of the private equity nature of the proposed ultimate owners of TXU Corp. and TXU Power.

Accordingly, the order approving the application and indirect license transfers shall include the following condition:

TXU Power shall enter into the \$250 million support agreement with Luminant Investment Company LLC, as described in the application, no later than the time the proposed transactions and indirect license transfers occur. TXU Power, whether or not converted to a limited liability company and/or renamed, shall take no action to cause Luminant Investment Company LLC, or its successors and assigns, to void, cancel, or modify the support agreement or cause it to fail to perform, or impair its performance under the support agreement, without the prior written consent of the NRC. The support agreement may not be amended or modified without 30 days prior written notice to the Director of the Office of Nuclear Reactor Regulation or his designee. An executed copy of the support agreement shall be submitted to the NRC no later than 30 days after the completion of the proposed transactions and the indirect license transfers. TXU Power, whether or not converted to a limited liability company and/or renamed, shall inform the NRC in writing anytime it draws upon the support agreement.

Based upon the foregoing analysis, the NRC staff finds that TXU Power has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the CPSES licenses, and thus will continue to be financially qualified to hold these licenses, notwithstanding the indirect transfer of control of TXU Power and the CPSES licenses.

6.0 DECOMMISSIONING FUNDING ASSURANCE

The NRC has determined that the requirements to provide reasonable assurance of decommissioning funding are necessary to ensure the adequate protection of public health and safety. The regulation at 10 CFR 50.33(k) requires that an application for an operating license for a utilization facility contain information to demonstrate how reasonable assurance will be provided and that funds will be available to decommission the facility.

According to the applicant, TXU Power will continue to provide financial assurance for decommissioning funding in accordance with 10 CFR 50.75(e)(1)(i) and (ii), using the external sinking fund method with access to non-bypassable charges to retail electric providers. TXU Power currently maintains and will continue to maintain decommissioning trust funds that have been established to provide funding for decontamination and decommissioning for CPSES. These funds total \$208 million for Unit 1 and \$239 million for Unit 2 as of December 31, 2006. TXU Power will continue to maintain these external sinking funds segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1)(i) and (ii).

In addition, TXU Power will continue to receive contributions to those funds pursuant to a non-bypassable charge as described in 10 CFR 50.75(e)(1)(ii)(B). These decommissioning funding arrangements were specifically approved by the Public Utility Commission of Texas (PUCT). The PUCT has authorized contributions of \$7.1 million per year through 2029 for Unit 1 and \$8.1 million per year through 2031 for Unit 2.

These contributions to CPSES trust funds are identical to the arrangements described in TXU Power's 2007 Biennial Decommissioning Funding Report submitted to the NRC on March 31, 2007.

In consideration of the above, the NRC staff finds that the indirect transfer of control of TXU Power to Texas Energy GP will not affect the decommissioning funding arrangements of TXU Power or the reasonable assurance of adequate decommissioning funding for CPSES.

7.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954 as amended (AEA) does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (June 18, 1999). The applicant here postdates the issuance of the operating licenses for units under consideration, and therefore no antitrust review is required or authorized. The original antitrust license conditions for CPSES were deleted from the licenses on March 22, 2002. Accordingly, there are no antitrust-related issues to resolve with respect to proposed conforming license amendments.

8.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

Sections 103d and 104d of the AEA prohibit the NRC from issuing a license for a nuclear power plant to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The NRC's regulation, 10 CFR 50.38, contains language to implement this prohibition.

According to the applicant, 12 of the 13 individuals who will be appointed to TXU Corp.'s Board of Directors upon closing of the transaction are U.S. citizens; the 13th is a citizen of South Africa. The executive officers and management personnel from the existing TXU corporate organization, each of whom Texas Energy LP anticipates will continue in positions of comparable management and operational responsibility following the closing of the transaction, are all U.S. citizens.

Texas Energy LP is a Delaware limited partnership domiciled in the U.S. As discussed earlier in this Safety Evaluation, the business activities of Texas Energy LP are controlled by its general partner, Texas Energy GP, a Delaware limited liability company also domiciled in the U.S. Four of the five officers of Texas Energy GP are U.S. citizens.

The members of Texas Energy GP at the time of the closing of the transaction will be U.S. business entities domiciled in the U.S. with the exception of minority membership interests held by two Goldman Fund limited partnerships formed in the Cayman Islands, one Goldman Fund entity formed in Germany, and one KKR Fund entity formed in Guernsey. The Goldman Fund limited partnerships that are formed and domiciled in foreign nations are controlled by their general partners, which in turn are ultimately controlled directly or indirectly by Goldman Sachs, a Delaware corporation controlled by a majority of U.S. citizen directors. KPE, the KKR Fund entity formed overseas, will own less than 5 percent of the membership interests of Texas Energy GP. Each one of the Goldman Funds formed overseas, if it participates in the transaction, will own less than 7 percent of the membership interests of Texas Energy GP.

Other non-U.S. entities may, after the date of the application, agree and be allowed to invest in Texas Energy GP as Passive LLC Owners. None of these foreign entities, however, will be permitted to own 5 percent or more of the membership interests in Texas Energy GP. Thus, any such foreign Passive LLC Owners will, individually and collectively, have minority membership interests according to the applicant. Such Passive LLC Owners will have none of the contractual governance rights vested in the Controlling Owners, such as the power to designate directors of TXU Corp. The applicant states that as a result of their small ownership interests and lack of contractual governance rights, any foreign Passive LLC Owners that hereafter invest will not have the ability to control Texas Energy GP, Texas Energy LP, TXU Corp., or TXU Corp.'s subsidiaries, including TXU Power.

In addition to such minority, non-controlling direct foreign investments in Texas Energy GP, various foreign entities and other foreign persons will invest in Texas Energy GP indirectly by participating as passive co-investors in the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities. Such indirect foreign investors will hold passive, non-controlling interests in those investment funds. The maximum percentage of passive foreign investment in the domestic KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities respectively are set forth in the table provided in the application partially excerpted below.

<u>Texas Energy GP Members</u>	<u>Foreign Interests in Domestic Funds</u>
KKR Funds*	<44%
Texas Pacific Group Funds	<41%
Goldman Funds*	<21%
Lehman Entities	<3%

*excluding foreign entities discussed in text above (KPE, GS Capital Partners VI Offshore Fund, L.P., GS International Infrastructure Partners I, L.P., and GS Capital Partners VI GmbH & Co. KGG). If KPE and the Goldman Funds formed in foreign nations are added to the domestic entities reflected in this table, then the percentage of foreign investment in the total investment of the KKR funds and the Goldman Funds would be less than 52 percent and less than 46 percent, respectively.

The applicant emphasizes such indirect foreign investment in the transaction is passive.

Citigroup, J. P. Morgan, and Morgan Stanley, which may have indirect foreign co-investors in their respective investment vehicles, each will hold less than 5 percent of the membership interest of Texas Energy GP.

The non-controlling limited partners of Texas Energy LP at the time of the closing of the transaction will be corporations, limited liability companies, and limited partnerships, including limited partnership interests held by the above-mentioned investment funds domiciled in the Cayman Islands, Germany, and Guernsey. Other foreign-domiciled entities also may be allowed to become Passive LP Owners. Such owners of limited partnership interest in Texas Energy LP do not have the right to control the activities of Texas Energy LP or its general

partner, Texas Energy GP; management and control of Texas Energy LP will vest solely in its general partner, Texas Energy GP, and be exercised by the Controlling Owners. Thus, the limited partners of Texas Energy LP that are foreign entities (as well as other Passive LP Owners) do not have the ability to control Texas Energy LP, or indirectly, TXU Power.

The limited partners or other passive investors in the co-investment entities intended to be formed by KKR and the Texas Pacific Group to become limited partners of Texas Energy LP, as described on page 27 of the application, are expected to consist predominately of existing limited partners in the KKR funds and the Texas Pacific Group Funds, and any such co-investment entity will be controlled by KKR and Texas Pacific Group.

In the aggregate, not more than 55 percent of the total economic interest in Texas Energy GP and Texas Energy LP will be held directly or indirectly by foreign entities or other foreign persons investing as Passive LLC Owners, Passive LP Owners, or passive co-investors through the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities or, in the case of Texas Energy LP, one or more co-investment entities. As holders of limited partnership interests in the funds, like other passive co-investors, such foreign investors have no rights to control the business activities of the investment funds and thus no ability to exercise control through them over Texas Energy GP and Texas Energy LP.

Moreover, such direct and indirect foreign investment in Texas Energy GP and Texas Energy LP will be dispersed among a variety of foreign investors, no one of which will represent more than 9 percent of the total economic interest in Texas Energy GP and Texas Energy LP.

Notwithstanding passive foreign investment, Texas Energy GP will exercise 100 percent control over Texas Energy LP and the Controlling Owners of Texas Energy GP (with the exception of KPE and the foreign Goldman Funds) are domestic entities that are controlled by domestic entities and U.S. citizens. Thus, according to the applicant, no foreign person or entity will have the power, direct or indirect, to control or direct matters affecting the management of operations of Texas Energy LP, TXU Corp., or TXU Power.

The applicant states that in order to further negate any issue concerning foreign ownership or control, all of the executive officers of TXU Corp. and the officers of TXU Generation Management Company LLC, the general partner of TXU Power, will be U.S. citizens. The applicant also states that the Luminant Managers who will govern Luminant Holdco will, with possibly one exception, be U.S. Citizens.

According to the application, the transfer of control of TXU Corp. to Texas Energy LP, and the resulting transfer to Texas Energy LP of indirect control of licensee TXU Power, will not result in any foreign ownership, domination, or control of TXU Power within the meaning of the AEA. Based on the review by the NRC staff of the information stated in the application, and the following condition to be incorporated in the order approving the application, the NRC staff does not know or have reason to believe otherwise.

Following the subject indirect transfer of control of the licenses, all of the officers of the general partner or controlling member of the licensee of CPSES shall be U.S. citizens. This condition may be amended upon application by the licensee and approval by the Director of the Office of Nuclear Reactor Regulation.

9.0 TECHNICAL QUALIFICATIONS

According to the applicant, the technical qualifications of TXU Power will not be affected by the proposed indirect transfer of control. There will be no physical changes to CPSES and no changes in the officers, personnel, or day-to-day operations of CPSES. No material changes are expected to affect the organizations at other sites that support CPSES. In the aggregate, functions, responsibilities, and reporting relationships within and among the nuclear organizations, especially as they relate to activities important to safe operation of CPSES, will continue to be clear and unambiguous, and the functions of these organizations will be unaffected.

Based on the above, the staff concludes that the proposed indirect transfer does not raise any technical qualifications issues.

10.0 NUCLEAR INSURANCE and INDEMNITY

The provisions of the Price-Anderson Act (Section 170 of the AEA) and the Commission's regulations at 10 CFR Part 140 require that the current indemnity agreement be modified to reflect the change in the legal name of TXU Power from TXU Generation Company LP to Luminant Generation Company LLC.

In accordance with the Price-Anderson Act, TXU Power will continue to be required to provide primary insurance and participate in the secondary retrospective insurance pool. It will also be required to continue to maintain property insurance as specified in 10 CFR 50.54(w). Information provided in the application demonstrates that TXU Power (to be renamed as Luminant Generation Company, LLC) will be able to satisfy applicable insurance requirements of the NRC and the Price-Anderson Act.

11.0 CONFORMING AMENDMENTS

11.1 Introduction

TXU Power 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 Generation Company LP in the operating licenses with references to Luminant Generation Company LLC, as appropriate, to reflect the proposed name change occurring as part of the indirect 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.

11.2 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.

11.3 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.

11.4 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.

12.0 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.

13.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed indirect transfer of control of TXU Power as described herein will not affect the qualifications of TXU Power as holder of the CPSES licenses, and that the indirect transfer of control of the licenses, to the extent effected by the proposed transaction described in the application, is otherwise consistent with the applicable provisions of laws, regulations, and orders issued by the NRC pursuant thereto, subject to the conditions described herein.

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