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September 13, 1996

C. Lance Terry
Group Vice President

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D.C. 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION
DOCKET NOS. 445 AND 446
TEXAS UTILITIES COMPANY ACQUISITION OF
ENSERCH CORPORATION

Gentlemen:

In accordance with NRC Administrative Letter 96-02, TU Electric Company (TUEC) is submitting the enclosed information to the Nuclear Regulatory Commission (NRC) concerning the proposed acquisition of ENSERCH Corporation (ENSERCH) by Texas Utilities Company (TUC), the holding company parent of TUEC. TUEC holds NRC licenses Nos. NPF-87 and NPF-89 to own and operate the Comanche Peak Steam Electric Station Units 1 and 2 (CPSES).

For the reasons stated in the enclosure, TUEC does not believe that any NRC action is required in connection with TUC's acquisition of ENSERCH, a natural gas company which is not engaged in nuclear activities. TUEC is making this submittal for informational purposes in order to keep the NRC informed about this acquisition.

The acquisition of ENSERCH will be accomplished through the merger transactions contemplated by the Amended and Restated Agreement and Plan of Merger between TUC and ENSERCH. Upon the consummation of these transactions, TUC and ENSERCH will become wholly owned subsidiaries of TUC Holding Company, a new Texas corporation. TUC's existing shareholders will hold approximately 94% of the issued and outstanding shares of common stock of Texas Utilities Company. TUEC will remain a wholly owned subsidiary of TUC.

The consummation of the proposed merger transactions associated with this acquisition will depend upon the receipt of various regulatory and shareholder approvals. Assuming all required regulatory and shareholder approvals are obtained by November 15, 1996, TUC and ENSERCH plan to consummate these transactions as soon as possible thereafter.

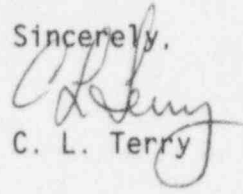
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In the event the NRC has any questions about the proposed acquisition of ENSERCH by TUC or wishes to obtain any additional information about the proposed merger transactions, please contact me or my staff.

Sincerely,


C. L. Terry

RDW/grp
Attachment

c - Mr. J. L. Callan, Region IV
Mr. T. J. Polich, NRR
Resident Inspector, CPSES
Mr. J. I. Tapia, Region IV

INFORMATION CONCERNING
PROPOSED ACQUISITION OF ENSERCH
CORPORATION BY TEXAS UTILITIES COMPANY

BACKGROUND INFORMATION RELATED TO TUC AND ENSERCH

Texas Utilities Company (TUC) is a Texas corporation which is a public utility holding company. TUC's principal subsidiary, TU Electric Company (TUEC), is an operating public utility company engaged in the generation, purchase, transmission, distribution and sale of electric energy in the north central, eastern and western portions of Texas. TUEC holds NRC License Nos. NPF-87 and NPF-89 authorizing TUEC to own and operate the Comanche Peak Steam Electric Station Units 1 and 2 (CPSES).

Two other subsidiaries of TUC are engaged directly or indirectly in public utility operations: (1) Southwestern Electric Service Company, which is engaged in the purchase, transmission, distribution and sale of electric energy in ten countries in the eastern and central parts of Texas, and (2) Texas Utilities Australia Pty. Ltd., which in 1995 acquired the common stock of Eastern Energy Limited, a company engaged in the purchase, distribution and sale of electric energy in the Melbourne area of Australia. TUC also has seven other wholly owned subsidiaries which perform specialized functions within the TUC system.

ENSERCH Corporation is a Texas corporation which is an integrated energy company engaged in natural gas and oil exploration and production, natural gas pipeline gathering, processing and marketing, and natural gas distribution and power generation. ENSERCH is engaged in (1) exploring for, developing, producing and marketing natural gas and oil primarily in the United States (a segment of the business which will be spun off to the ENSERCH shareholders), (2) owning and operating interconnected natural gas transmission lines, underground storage reservoirs, compressor stations and related properties in Texas; gathering and processing natural gas to remove impurities and extract liquid hydrocarbons for sale in Texas, and the wholesale and retail marketing of natural gas in several areas of the United States, (3) owning and operating local gas utility distribution systems in Texas, and (4) developing, financing and operating cogeneration facilities.

DESCRIPTION OF THE PROPOSED ACQUISITION

The acquisition of ENSERCH will offer significant strategic and financial benefits to TUC by creating a stronger company with expertise in both electric and gas utility operations that is able to offer its customers enhanced service options, maintain competitive rates, efficiently pursue non-utility

operations, and take advantage of complementary operational functions as well as reduced administrative costs, in order to participate effectively in the increasingly competitive utilities industry.

The acquisition of ENSERCH will be accomplished through the merger transactions contemplated by the Amended and Restated Agreement and Plan of Merger between TUC and ENSERCH, dated as of April 13, 1996. The relevant transactions involve (1) the formation of a new Texas corporation, TUC Holding Company, and two new subsidiaries of TUC Holding Company (i.e., TUC Merger Corp. and ENSERCH Merger Corp.), (2) the merger of TUC Merger Corp. with and into TUC with TUC being the surviving corporation, and (3) the merger of ENSERCH Merger Corp. with and into ENSERCH with ENSERCH being the surviving company. Upon the consummation of these transactions, TUC and ENSERCH will both become wholly owned subsidiaries of TUC Holding Company and TUC Holding Company will change its name to Texas Utilities Company. Shares of common stock of TUC and ENSERCH will be converted into shares of common stock in the new Texas Utilities Company in connection with these transactions.

IMPACT OF THE ACQUISITION ON TUEC AND CPSES

The acquisition of ENSERCH will have no impact on the management and operation of TUEC or TUEC's ownership and control of its NRC licenses. After consummation of the merger transactions:

- (1) The current shareholders of TUC will become shareholders of Texas Utilities Company and hold approximately 94% of the issued and outstanding shares of common stock of Texas Utilities Company;
- (2) The common stock of Texas Utilities Company will remain widely held;
- (3) All of the directors and officers of Texas Utilities Company, TUC and TUEC will be U.S. citizens and none of Texas Utilities Company, TUC, or TUEC will be owned, controlled, or dominated by any alien, foreign corporation or foreign government;
- (4) The directors of Texas Utilities Company will consist of the current directors of TUC, and the Chairman and Chief Executive Officer of Texas Utilities Company will be the current Chairman and Chief Executive Officer of TUC;
- (5) TUEC will remain a wholly owned subsidiary of TUC and the officers and directors of TUEC will remain unchanged;
- (6) TUEC will remain the sole owner of CPSES and will remain exclusively entitled to the entire power output from CPSES;
- (7) There will be no change in the management or technical qualifications of TUEC's nuclear organization and TUEC will continue to own and operate CPSES in accordance with the terms and conditions of NRC Licenses Nos. NPF-87 and NPF-89; and

- (8) TUEC will continue to be an "electric utility" within the meaning of 10 CFR § 50.2 subject to regulation by the Texas Public Utility Commission and there will be no change in TUEC's source of funds or in its ability to obtain funds to support the operation and decommissioning of CPSES.

REQUIRED REGULATORY APPROVALS

The principal regulatory approvals required in connection with the acquisition of ENSERCH by TUC include review by the Department of Justice and the Federal Trade Commission under the Hart Scott Rodino Antitrust Improvements Act (HSR Act), the approval of the Securities and Exchange Commission (SEC) under the Public Utility Holding Company Act of 1935 (PUHCA), and review by Texas Railroad Commission.

The HSR Act and the rules and regulations thereunder provide that the merger transactions associated with the acquisition of ENSERCH may not be consummated until certain information has been submitted to the Antitrust Division of the Department of Justice (Antitrust Division) and the Federal Trade Commission (FTC) and the specified HSR Act waiting period requirements have been satisfied. TUC and ENSERCH submitted respective Premerger Notifications pursuant to the HSR Act on July 1, 1996. On July 30, 1996, TUC and ENSERCH each received a request for additional information regarding the mergers from the Antitrust Division, and the mergers may not be consummated until 20 days after both TUC and ENSERCH have substantially complied with all such requests. TUC and ENSERCH expect to have substantially complied with these information requests by the end of September, 1996.

The Company is required to obtain SEC approval under Section 9(a)(2) of PUHCA in connection with the mergers. Section 9(a)(2) of PUHCA requires an entity owning, directly or indirectly, 5% or more of the voting securities of a public utility company to obtain the approval of the SEC prior to acquiring a direct or indirect interest in 5% or more of the voting securities of another public utility company. In the mergers, the new Texas Utilities Company will acquire all of the outstanding voting securities of TUC which holds all of the outstanding voting securities of TUEC and SESCO, each of which is a public utility company for purposes of PUHCA, as well as all of the outstanding voting securities of ENSERCH, which is also a public utility company for purposes of PUHCA. An application for approval of the mergers and an order confirming that Texas Utilities Company will be a holding company exempt from all provisions of PUHCA, except Section 9(a)(2) thereof, will be filed with the SEC by Texas Utilities Company. TUC expects to receive the approval of the SEC Staff before the end of September 1996.

The Texas Railroad Commission which has jurisdiction over gas utilities in the State of Texas, has indicated that it has no opposition to the ENSERCH acquisition, that it will rely on existing authority and resources to protect the public interest and ratepayers subject to its jurisdiction, including ratepayers who are customers of ENSERCH, and that there is no hindrance under Texas natural gas utility regulatory law to the consummation of the ENSERCH acquisition.

TUEC's FINANCIAL QUALIFICATIONS

As specified in its NRC license, TUEC is licensed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended (AEA), and 10 CFR Part 50, to own and operate CPSES. "Electric utilities" licensed pursuant to Section 103 of the AEA are exempt from the requirement to demonstrate financial qualifications. Moreover, TUEC is and will remain an "electric utility" within the meaning of 10 CFR § 50.2 following consummation of the merger transactions, in that it will remain an "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 business of TUEC will remain essentially unchanged upon consummation of the mergers and it will continue to be regulated by the Texas Public Utility Commission.

The merger transactions, therefore, will not adversely affect TUEC's ability to obtain the funds necessary to cover its share of costs for the safe operation, maintenance, repair, decontamination and decommissioning of CPSES. TUEC's liability for such costs and for its obligations under 10 CFR Part 140 and 10 CFR § 50.54(w) will not be affected by the merger transactions.

TUEC'S TECHNICAL QUALIFICATIONS

The proposed acquisition of ENSERCH will not result in any change in the design or operation of CPSES, nor any change in the terms and conditions of TUEC's existing licenses or technical specifications. The directors, officers and other personnel at TUEC having control over licensed activities at CPSES will not change as a result of the merger transactions. There will also be no other changes in the management or operation of TUEC or CPSES as a result of the merger transactions.

ANTITRUST CONSIDERATIONS

As noted above, TUEC is licensed, pursuant to Section 103 of the AEA, to own and operate CPSES. Upon the consummation of the merger transactions, TUEC will remain the sole licensed owner and operator of CPSES and remain exclusively entitled to the power output of CPSES. The merger transactions

will therefore not affect the ownership of any nuclear generating facility, or entitlement to the power output from such a facility, or otherwise involve any significant change in the competitive environment in which such a facility operates. The merger transactions are subject to separate antitrust reviews by other federal agencies addressing the potential effect of the mergers on competition. As noted above, the parties filed appropriate notifications to the FTC and DOJ under the HSR Act and are filing an application for SEC approval under Section 9(a)(2) of PUHCA.

APPLICABILITY OF SECTION 184 OF THE AEA TO THE
PROPOSED ACQUISITION

The merger transactions associated with the acquisition of ENSERCH by TUC does not require any action on the part of the NRC with respect to License Nos. NPF-87 and NPF-89. No direct or indirect transfer of an NRC license, nor any "transfer of control of any license to any person," as contemplated by Section 184 of the AEA, and 10 C.F.R. Section 50.80, will occur as a result of the proposed transactions. There will be no transfer of TUEC's existing NRC licenses, or TUEC's control of these licenses, to any other corporation or other legal entity. TUEC will continue to retain exclusive ownership and control of these licenses and continue to be the sole owner and operator of CPSES after the merger transactions. TUEC itself will also remain a wholly owned subsidiary of TUC after the merger transactions.

The acquisition of another corporation which is not engaged in licensed activities by the existing holding company parent of an NRC licensee does not constitute a direct or indirect transfer of an NRC license, or a "transfer of control of a license" within the meaning of Section 184 of the AEA. This interpretation of Section 184 is consistent with (a) the plain language of Section 184 and the legislative history of this section of the AEA¹ and (b) the position taken by the NRC in the past with respect to other licensees whose holding company parents acquired other non-nuclear utility companies or other non-nuclear utility holding companies.²

¹Section 184 requires NRC consent in connection with any transfer, assignment or disposal of an NRC license "either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person" 42 U.S.C.A. Section 2234 (emphasis added). The phrases "voluntarily or involuntarily" and "directly or indirectly" refer to the "transfer of control of any license to any person." No voluntary or involuntary, or direct or indirect, transfer, assignment or disposal of TUEC's NRC licenses will occur in connection with the proposed acquisition of ENSERCH. Nor will any "transfer of control of any license to any person" occur. As discussed above, TUEC is, and will remain the sole NRC licensee and retain exclusive control over these licenses. Section 184 could arguably be subject to a more expansive interpretation if the prohibition in Section 184 extended to transfers of control of licensees, as well as the licensees themselves. In this regard, it is important to note that, as originally drafted, the prohibition in Section 184 would have applied to any transfer, assignment or disposal of a license resulting from the "transfer of control of any licensee to any person." This word "licensee" was changed to "license" in subsequent versions of the proposed legislation which was ultimately enacted into law as the AEA. See Legislative History of the Atomic Energy Act of 1954, U.S. Atomic Energy Commission (1955), Vols. 1 and 2 at pp. 36, 96, 164, 332, 628, 731, 776, 1339, 1447, 1501, 1553.

²For example, in 1988, the Southern Company, a public utility holding company with several utility subsidiaries holding NRC licenses (i.e., Alabama Power Company, Georgia Power), acquired Savannah Electric & Power Company pursuant to a merger transaction. See Southern Company, Holding Company Act Release No. 24579, 40 SEC Docket No. 6 (CCH) 350 (Feb. 12, 1988). No NRC consent was obtained, or required, in connection with this transaction. In 1991, NRC determined that no action was required in connection with the acquisition of Iowa Southern, Inc., the holding company parent of Iowa Southern Utilities, by IE Industries, Inc., the holding company parent of Iowa Electric Light and Power Company (the owner and operator of Duane Arnold Energy Center) pursuant to a transaction where Iowa Southern, Inc. merged with and into IE Industries, Inc. See letter from T. Murley to L. Liu dated May 6, 1991, NRC Dkt. No. 50-331.

TUEC is aware of NRC's ongoing interest in the restructuring of the electric utility industry and its potential effect on the financial qualifications of its licensees. However, TUEC does not believe that the NRC should subject non-nuclear acquisitions by the holding company parents of its licensees to review and approval under Section 184, particularly in situations where, as here, the acquisition will have no impact on the financial qualification of the licensee or the continuing status of the licensee as an "electric utility" within the meaning of the NRC's financial qualification regulations.