UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 10, 1996

MEMORANDUM TO: William D. Beckner, Director
Project Directorate IV-1
Division of Reactor Projects III/IV
Office of Nuclear Reactor Regulation

FROM: David B. Matthews, Chief
Generic Issues & Environmental
Projects Branch
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

SUBJECT: FINANCIAL QUALIFICATIONS AND ANTITRUST REVIEW OF PROPOSED ACQUISITION OF ENSERCH CORPORATION BY TEXAS UTILITIES COMPANY (DOCKET NOS. 50-445 & 50-446)

The attached analysis constitutes our financial qualifications and antitrust reviews and input to the SER on the proposal dated September 20, 1996 to the NRC by TU Electric Company (TUEC) for its parent company, Texas Utilities Company (TUC) to implement a corporate restructuring by acquiring ENSERCH Corporation. Subsequent to interim organizational changes, the new company resulting from this acquisition also will be named TUC, which will remain a parent company to TUEC. TUEC is the sole owner/operator of the Comanche Peak Steam Electric Station (CPSES), a two-unit nuclear power facility. Note that a recent revision to NRR procedures requires that the license amendment issued to approve this change must be signed by the Director, Office of Nuclear Reactor Regulation (See memorandum on this subject dated December 28, 1995 from W. Russell to D. Crutchfield and R. Zimmerman.).

The basis of this review is § 50.80(a), which states, "No license for a production or 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."

With respect to our financial qualifications review, we conclude that the proposed acquisition should be approved, based on the fact that TUEC will remain an electric utility as defined in 10 CFR 50.2. However, because of concerns that future transfers of assets between an NRC licensee and its non-licensed corporate affiliates could lead to licensees no longer being an electric utility under the NRC definition, we recommend that this approval be conditioned to contain the commitment already provided by TUEC not to transfer significant assets from itself to its parent or other company, or if it elects to make such a transfer, to inform the NRC. This wording for this commitment is provided in the attached SER input. We recommend that this commitment be made a condition of TUEC's license for CPSES.

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With respect to our antitrust review, we conclude that the corporate restructuring outlined by TUEC in its September 20, 1996, letter does not appear to present any opportunity for the restructured parent company of the owner/operator of CPSES to exert any undue market power over other power systems in the geographic area served by the CPSES facility. We also note that antitrust issues that may be associated with the acquisition of ENSERCH by TUC but not directly connected to the activities under the CPSES license will be reviewed separately by the U.S. Department of Justice and the Federal Trade Commission.

Attachment:
As stated

With respect to our antitrust review, we conclude that the corporate restructuring outlined by TUEC in its September 20, 1996, letter does not appear to present any opportunity for the restructured parent company of the owner/operator of CPSES to exert any undue market power over other power systems in the geographic area served by the CPSES facility. We also note that antitrust issues that may be associated with the acquisition of ENSERCH by TUC but not directly connected to the activities under the CPSES license will be reviewed separately by the U.S. Department of Justice and the Federal Trade Commission.

Attachment:
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INPUT TO SER ON RESTRUCTURING OF TEXAS UTILITY ELECTRIC COMPANY

I. BACKGROUND

Texas Utilities Company (TUC), the parent holding company of Texas Utility Electric Company (TUEC), proposes to acquire ENSERCH Corporation (ENSERCH), which is a company engaged in natural gas and oil exploration and production, natural gas pipeline gathering, processing and marketing,and natural gas distribution and power generation (Letter dated September 20, 1996 from TUEC, Attachment 2, p. 1). TUC's acquisition of ENSERCH will be accomplished through the following merger transactions: (1) the formation of a new Texas Corporation, TUC Holding Company, and two new subsidiaries of TUC Holding Company (i.e., TUC Merger Corporation and Enserch Merger Corporation); (2) the merger of TUC Merger Corporation with and into TUC with TUC being the surviving corporation; and (3) the merger of Enserch Merger Corporation 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, which will change its name to Texas Utilities Company (TUEC letter, Attachment 2, p. 2). In the view of the NRC staff, the structure of TUC's acquisition of ENSERCH through the formation of these interim holding companies constitutes an indirect transfer of the licenses to operate the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES). Consequently, the staff believes that the merger is subject to the license transfer provisions of 10 CFR 50.80.

TUEC would continue to remain the sole owner and operator of CPSES. Upon consummation of the restructuring, current stockholders of TUC would become stockholders of the new Texas Utilities Company and would hold approximately 94 percent of the issued and outstanding shares of common stock of the new Texas Utilities Company.

TUEC indicates that

> 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. (TUEC letter, Attachment 2, p. 2).

II. FINANCIAL QUALIFICATIONS

Based on the information provided in TUEC's application, the staff finds that there will be no near-term substantive change in TUEC's financial ability to contribute appropriately to the operations and decommissioning of the CPSES units as a result of the proposed restructuring. TUEC also would remain an "electric utility" as defined in 10 CFR 50.2, engaged in the generation, transmission, and distribution of electric energy for wholesale and retail sale, subject to the rate regulation of the Texas Public Utility Commission. Thus, pursuant to 10 CFR 50.33(f), TUEC is exempt from further financial qualifications review as an electric utility.

ATTACHMENT

However, in view of the NRC's concern that restructuring can lead to a diminution of assets necessary for the safe operation and decommissioning of a licensee's nuclear power plants, the NRC has sought to obtain commitments from its licensees that initiate restructuring actions not to transfer significant assets from the licensee without notifying the NRC. TUEC has made the following such commitment:

> TU Electric agrees to provide the Director of Nuclear Reactor Regulation with a copy of any application to any other regulatory authority, at the time it is filed, to transfer (excluding grants of a security interest or liens) from TU Electric to its parent company, or any other affiliated company, facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding one percent (1%) of TU Electric's consolidated net utility plant, as recorded on TU Electric's books of account. (TUEC letter, Attachment 2, p. 15-16.)

The staff believes that this commitment, modified to reflect reporting of transfers of 10 percent (10%) or more, as a condition to the NRC's consent to the proposed restructuring, will enable the NRC to ensure that TUEC will continue to maintain adequate resources to contribute to the safe operation and decommissioning of the CPSES, Units 1 and 2.

III. ANTITRUST

The proposed restructuring by TUC does not involve a significant change in control of the CPSES facility. According to TUEC, after the acquisition of ENSERCH, approximately 94 percent of the holders of TUC common stock will become the holders of common stock of the Parent Company. In situations involving changes in ownership that do not appear to represent a significant change in control, the staff conducts a threshold competitive (antitrust) review pursuant to 50.80 to determine whether any significant changes in the relevant markets will result from the restructuring. There is no apparent rationale to link TUC's acquisition of ENSERCH to a "significant change" since its previous antitrust review, i.e., there is no basis for the staff to make a finding of "significant change" under Section 105 of the Atomic Energy Act.

In addition, antitrust issues that may be associated with the acquisition of ENSERCH by TUC but not directly connected to the activities under the CPSES license will be reviewed separately by the U.S. Department of Justice and the Federal Trade Commission.

Thus, there do not appear to be antitrust issues for which the NRC is responsible under Section 105 of the Atomic Energy Act of 1954, as amended, that have been raised by TUC's acquisition of ENSERCH.

IV. FOREIGN OWNERSHIP

None of Texas Utilities Company, TUC, or TUEC will be owned, controlled, or dominated by any alien, foreign corporation, or foreign government.

V. CONCLUSIONS

In view of the foregoing, the staff concludes that TUEC's proposed restructuring of its parent company, TUC, will not adversely affect its financial qualifications with respect to the operation and decommissioning of the CPSES units. Also, there do not appear to be any antitrust or foreign ownership considerations related to the CPSES licenses that would result from TUC's acquisition of ENSERCH. Thus, the proposed restructuring should be approved.