

Enclosure to TXX-01099



**NRC LICENSE TRANSFER APPLICATION**  
June 19, 2001

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submitted by

**TXU Electric Company**

**Comanche Peak Steam Electric Station, Units 1 and 2**  
**NRC Facility Operating License Nos. NPF-87 and NPF-89**  
**Docket Nos. 50-445 and 50-446**

**APPLICATION FOR ORDER AND CONFORMING**  
**ADMINISTRATIVE AMENDMENTS FOR TRANSFER OF LICENSES**  
**(NRC FACILITY OPERATING LICENSE NOS. NPF-87 and NPF-89)**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. STATEMENT OF PURPOSE OF THE TRANSFER AND NATURE OF THE TRANSACTION MAKING THE TRANSFER NECESSARY OR DESIRABLE ..... 2

III. INFORMATION REGARDING TXU GENCO, TLP ..... 5

    A. Name of Proposed New Licensee

    B. Address

    C. Description of Business or Occupation

    D. Organization and Management

        1. State of Establishment and Place of Business

        2. Principal Senior Executive and Senior Executive Management

IV. FOREIGN OWNERSHIP OR CONTROL ..... 6

V. TECHNICAL QUALIFICATIONS ..... 6

VI. FINANCIAL QUALIFICATIONS ..... 7

    A. Projected Operating Revenues and Operating Costs

    B. Decommissioning Funding

VII. ANTITRUST CONSIDERATIONS ..... 9

VIII. RESTRICTED DATA AND CLASSIFIED NATIONAL SECURITY INFORMATION ..... 16

IX. ENVIRONMENTAL CONSIDERATIONS ..... 16

X. PRICE-ANDERSON INDEMNITY AND NUCLEAR INSURANCE ..... 17

XI. OTHER INFORMATION ..... 17

    A. Off-site Power Considerations (General Design Criterion 17)

    B. Emergency Planning

    C. Security

    D. Quality Assurance

    E. Final Safety Analysis Report

    F. Training

    G. Standard Contract for Disposal of Spent Nuclear Fuel

    H. Continuation of Current Design and Licensing Basis

    I. Exclusion Area Control

XII. OTHER REQUIRED REGULATORY APPROVALS ..... 20

XIII. EFFECTIVE DATES ..... 21

XIV. CONCLUSION ..... 21

## **LIST OF ATTACHMENTS**

Attachment 1	Safety Analysis (TXU Genco, TLP)
Attachment 2	Annotated Changes to Unit 1 License
Attachment 3	Annotated Changes to Unit 2 License
Attachment 4	Unit 1 License with Proposed Changes Incorporated
Attachment 5	Unit 2 License with Proposed Changes Incorporated
Attachment 6	Projected Income Statement and Projected Opening Balance Sheet of TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing (Non-Proprietary Version)
Attachment 7	Form of Decommissioning Master Trust Agreement
Attachment 8	10 CFR § 2.790 Affidavit of Roger D. Walker
Attachment 9	TXU Electric Business Separation Plan
Proprietary Addendum	
Attachment 6A	Projected Income Statement and Projected Opening Balance Sheet of TXU Genco, TLP 's Anticipated Assets, Liabilities and Capital Structure at Closing (Proprietary Version)

## **LIST OF FIGURES**

Figure 1. Simplified Organizational Diagram for TXU Genco, TLP

## **ADDENDUM**

The following proprietary attachment is bound separately in an Addendum to this Application:

Attachment 6A      Projected Income Statement and Projected Opening Balance Sheet of TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing (Proprietary Version)

## I. INTRODUCTION

This Application requests the consent of the Nuclear Regulatory Commission ("NRC") to the proposed direct transfer of control of TXU Electric's operating authority and 100% undivided ownership interest in the Comanche Peak Steam Electric Station, Units 1 and 2 ("CPSES"), described herein.

CPSES is comprised of two 1150 megawatt (MWe) (net) nuclear power plants, each consisting of a Westinghouse four-loop pressurized water reactor and other associated plant equipment, and related site facilities. CPSES is located in Somervell County, Texas, five miles north of Glen Rose, Texas. TXU Electric is the licensed owner and operator for CPSES, pursuant to licenses issued by the NRC.

TXU Electric seeks consent to a direct transfer of control on January 1, 2002, of TXU Electric's interest in CPSES to a Texas limited partnership. The name of the proposed new licensee has not yet been established, but is referred to herein as "TXU Genco, TLP." The partners of TXU Genco, TLP will be indirect wholly owned subsidiaries of TXU Corp. ("TXU"), the parent of TXU Electric.

The transfer to TXU Genco, TLP will require conforming administrative license amendments to replace TXU Electric on the licenses. TXU Electric will provide NRC with the actual name of this entity no later than seven days prior to issuance of any conforming amendments.

TXU Electric requests that NRC consent to this transfer, and authorize TXU Genco, TLP to own and operate CPSES under essentially the same conditions and authorizations as included in TXU Electric's existing NRC licenses for CPSES. 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. The existing CPSES management, operating organization and technical support organizations will be transferred intact contemporaneously with the ownership transfer. TXU Electric also requests NRC consent to certain conforming administrative amendments to the CPSES licenses to reflect the proposed transfer.<sup>1</sup>

A Safety Analysis performed by TXU Electric of the conforming license amendments requested upon transfer to TXU Genco, TLP is provided as Attachment 1, and this analysis confirms that the amendments do no more than conform the license to reflect the transfer action. As such, the amendments are subject to NRC's generic determination of no significant hazards consideration for license amendments to reflect transfers. *See* 10 CFR § 2.1315. Annotated changes to the Unit 1 and Unit 2 licenses are provided as Attachments 2 and 3, respectively, and Unit 1 and Unit 2 licenses with the proposed changes incorporated are provided as Attachments 4 and 5,

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<sup>1</sup> In this Application, TXU Electric also requests that the antitrust conditions be removed from the CPSES licenses because they are not applicable to TXU Genco, TLP and inconsistent with the competitive regime established by the Texas restructuring legislation.

respectively. To facilitate clear identification of the conforming license amendment changes requested in this Application, Attachments 2 through 5 are provided with other pending license changes incorporated. This representation was discussed in a meeting with the NRC staff on May 21, 2001. The other license changes were previously submitted to the NRC in TXU Electric letter TXX-01042 dated April 4, 2001 and proposed raising the maximum reactor power level to 3458 megawatts thermal and deleting Texas Municipal Power Agency as a licensee. These changes are expected to be approved by the NRC and be incorporated in the CPSES Operating Licenses prior to the changes requested herein.

## **II. STATEMENT OF PURPOSE OF THE TRANSFER AND NATURE OF THE TRANSACTION MAKING THE TRANSFER NECESSARY OR DESIRABLE**

TXU Electric, a Texas corporation, is an electric utility engaged in the generation, purchase, transmission, distribution and sale of electric energy wholly within the State of Texas. TXU Electric is a wholly-owned subsidiary of TXU. TXU is a public utility holding company that, through its subsidiaries, is engaged in the generation, purchase, transmission, distribution and sale of electricity; the gathering, processing, transmission and distribution of natural gas; energy marketing; telecommunications; and other business in the United States, Europe, and Australia.

TXU Electric's service area includes approximately 2.6 million customers in 92 counties in north central, eastern, and western Texas, comprising about one-third of the population of Texas. As of December 31, 2000, TXU Electric owned or leased and operated 80 electric generating units with an aggregate net generating capability of 21,092 MWe. TXU Electric's generating resource mix as of December 31, 2000 is as follows:

<u>Source</u>	<u>Percent</u>
Gas/oil	33.4
Lignite/coal	36.6
Nuclear	16.5
Purchased power	13.5

Texas has adopted restructuring legislation that requires regulated electric utility operations in Texas to be separated into at least three separate business activities: (1) power generation; (2) transmission and distribution; and (3) retail electric service. *See Texas Utilities Code Section 39.051.* TXU Electric's plans for meeting these requirements are described in its Business Separation Plan, as amended, which was originally filed with the Public Utility Commission of Texas ("PUCT") on January 10, 2000. On June 5, 2001, the PUCT issued an Interim Order approving the TXU Electric Business Separation Plan. No parties contested the Business Separation Plan. TXU Electric expects final approval from the PUCT by August 31, 2001. The features of the Business Separation Plan that are directly relevant to the transfer of control of TXU Electric's interest in CPSES are briefly described below. A complete copy of the Business Separation Plan and current regulatory approvals are provided as Attachment 9.

TXU Electric contemplates that the restructuring under the Business Separation Plan will occur on or before January 1, 2002. Upon completion of these transactions, TXU will remain a public utility holding company exempt from registration under the Public Utility Holding Company Act of 1935, as amended ("PUHCA").

A simplified organizational diagram depicting the corporate structure for TXU Genco, TLP is attached as Figure 1 of this Application. As shown in Figure 1, TXU Genco, TLP will be an indirect, wholly owned subsidiary of TXU, and an indirect subsidiary of several intermediate holding companies. Substantially all of TXU Electric's generating resources, including CPSES, will be transferred to TXU Genco, TLP. TXU Genco, TLP will be seeking exempt wholesale generator ("EWG") status from the Federal Energy Regulatory Commission ("FERC"). As demonstrated in the pro forma financial statement, provided as Attachment 6A, projected revenues from sales of electricity at market prices provide substantial assurance that TXU Genco, TLP will have funds available to meet anticipated operating and maintenance expenditures for CPSES, including a six-month outage of both units.

The general and limited partners of TXU Genco, TLP, will both be Delaware limited liability corporations and wholly-owned, special purpose subsidiaries of TXU Genco, LLC.<sup>2</sup> TXU Genco, LLC, also a Delaware limited liability corporation, will be engaged, through its subsidiaries, in generating electricity and making sales of power at wholesale. TXU Genco, LLC will be a direct, wholly-owned subsidiary of TXU Energy, LLC, also a Delaware limited liability corporation. Through its various subsidiaries, TXU Energy, LLC will be engaged in generating electricity, wholesale energy trading, and providing electric services at retail. TXU Energy, LLC will be a substantial corporate entity and will issue debt securities for sale to the public.

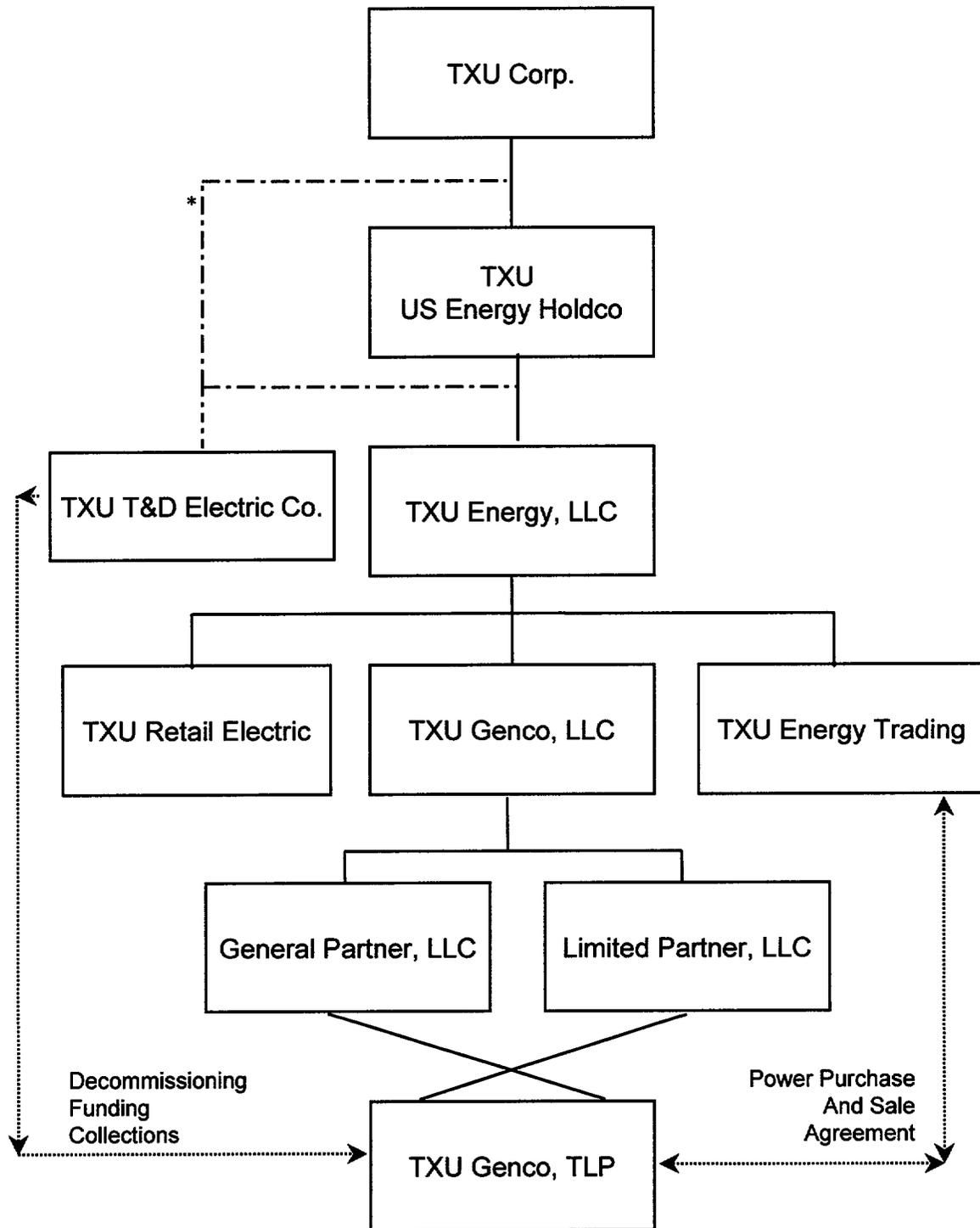
TXU Energy, LLC will be a wholly-owned subsidiary of TXU US Energy Holdco, a Delaware corporation. TXU US Energy Holdco, a direct subsidiary of TXU, will own TXU Energy, LLC, and engage in other energy-related activities.

TXU Electric proposes to transfer substantially all of its electric generating business activities, including its 100% undivided ownership interest in CPSES, to TXU Genco, TLP. TXU Electric seeks NRC consent to the transfer of its interest in CPSES to TXU Genco, TLP.

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<sup>2</sup> Names for corporate entities described herein, except for TXU Corp., have not been selected. TXU Electric will inform the NRC when names for these entities have been determined.

FIGURE 1,  
Simplified Organizational Diagram for  
TXU Genco, TLP



\* Note: TXU T&D Electric Co. may be a subsidiary of either TXU or TXU US Energy Holdco

### **III. INFORMATION REGARDING TXU GENCO, TLP**

#### **A. Name of Proposed New Licensee**

The name for the proposed new licensee has not yet been established. It is currently referred to as TXU Genco, TLP.

#### **B. Address**

Energy Plaza, 1601 Bryan Street  
Dallas, Texas 75201

#### **C. Description of Business or Occupation**

TXU Genco, TLP will be a Texas limited partnership organized under the laws of the State of Texas, engaged in the business of developing, owning, and operating electric generating assets. TXU Genco, TLP will also be engaged in generating electricity for sale at wholesale. In accordance with Section 39.051 of the Texas Utilities Code, TXU Genco, TLP will acquire substantially all of TXU Electric's existing electric generating assets.

#### **D. Organization and Management**

##### **1. State of Establishment and Place of Business**

TXU Genco, TLP will be a Texas limited partnership with its principal place of business in the State of Texas. The General Partner and Limited Partner of TXU Genco, TLP will be Delaware limited liability corporations and wholly owned, indirect subsidiaries of TXU. The General Partner 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.

##### **2. Principal Senior Executive and Senior Executive Management**

The name, title, and mailing address of the principal senior executive of TXU Genco, TLP will be provided once that individual has been identified.

The senior executive management of the General Partner and any intermediate companies (TXU US Energy Holdco, TXU Energy LLC and TXU Genco, LLC) will be drawn from the officers and managers of TXU and TXU Electric. The names of the members of the senior executive management of the General Partner and other intermediate companies will be provided when the management structure of TXU Genco, TLP has been determined.

#### **IV. FOREIGN OWNERSHIP OR CONTROL**

TXU is a publicly traded company whose securities are traded on the New York Stock Exchange and are widely held. TXU Genco, TLP will be indirectly owned and controlled by TXU. Based upon filings with the Securities and Exchange Commission ("SEC"), TXU is not aware of any alien, foreign corporation, or foreign government that holds more than 5% of the securities of TXU.

The Board of Directors of TXU includes ten members, nine of whom -- including the Chairman and Chief Executive Officer, Mr. Erle Nye -- are citizens of the United States. Among the principal executives of TXU, only Mr. Brian Dickie, Executive Vice President, is not a citizen of the United States. Mr. Dickie reports to the TXU Board through senior officers, including Mr. Nye. Accordingly, TXU is not subject to foreign ownership or control. TXU Genco, TLP will be an indirect, wholly owned subsidiary of TXU. The directors and principal officers of the company that will become the General Partner controlling TXU Genco, TLP, and the executive management of TXU Genco, TLP will be drawn from the current pool of officers of TXU and TXU Electric. A majority of the directors of the General Partner will be citizens of the United States. Therefore, TXU Genco, TLP will not be subject to foreign ownership or control.

#### **V. TECHNICAL QUALIFICATIONS**

Upon transfer, TXU Genco, TLP will become the licensed operator for CPSES. The technical qualifications of TXU Genco, TLP to carry out its responsibilities under the existing operating licenses will be the same as those of TXU Electric. The existing nuclear organizations located at CPSES, and support organizations in Dallas, will remain essentially intact. Substantially all of the TXU Electric (not contractor) employees currently in the nuclear organization will become employees of TXU Genco, TLP. Support services that currently support CPSES operations but are not assigned to TXU Genco, TLP will become part of one or more subsidiaries of TXU. To the extent that support services are provided by an entity other than TXU Genco, TLP, appropriate services agreements will govern the provision of such services to TXU Genco, TLP. 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.

TXU Electric will also transfer to TXU Genco, TLP all of the assets related to the operation of CPSES. These assets include, but are not limited to, an extensive number of documents, such as books, operating records, manuals, drawings, specifications, engineering design plans and procedures. These documents include the official copies of records that the NRC requires a licensee to maintain. These documents are located at CPSES or at TXU Electric's Dallas offices; however, to the extent that other such documents are maintained at TXU's offices located elsewhere, custody and control by TXU Genco, TLP of these documents will be assured as part of the transfer.

Furthermore, contracts with major vendors for CPSES will be assigned, as necessary, to TXU Genco, TLP as allowed under these contracts; or, appropriate other contracts will be obtained by TXU Genco, TLP in a timely manner. Other contracts and contractor relationships relating to CPSES will be assigned or transferred to TXU Genco, TLP as appropriate.

The overriding philosophy that will govern TXU Genco, TLP'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.

## **VI. FINANCIAL QUALIFICATIONS**

TXU Electric is currently an "electric utility" within the meaning of 10 CFR § 50.2, and exempt from financial qualification review pursuant to 10 CFR § 50.33(f). Without regard to whether or not TXU Genco, TLP qualifies as an "electric utility" under 10 CFR § 50.2, this entity will be financially qualified to own and operate CPSES during the remaining term of the CPSES licenses in accordance with 10 CFR § 50.33(f), upon the transfer of TXU Electric's interest in CPSES.

### **A. Projected Operating Revenues and Operating Costs**

The following information confirms that TXU Genco, TLP will possess, or have reasonable assurance of obtaining, the funds necessary to cover the estimated operating costs of CPSES for the period of the licenses in accordance with 10 CFR § 50.33(f)(2) and the Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance (NUREG-1577, Rev. 1) ("Standard Review Plan"). TXU Electric has prepared a Projected Income Statement for TXU Genco, TLP, including specific line items reflecting the operation of its interest in CPSES, for the five-year period from January 1, 2002 until December 31, 2006. Copies of the Projected Income Statement, related schedules, and Projected Opening Balance Sheet are contained in Attachment 6A. TXU Electric requests that Attachment 6A be withheld from public disclosure, as described in the Section 2.790 Affidavit provided as Attachment 8. Redacted versions of these documents, suitable for public disclosure, are contained in Attachment 6.

Substantially all of TXU Electric's generating resources, including CPSES, will be transferred to TXU Genco, TLP. TXU Genco, TLP will be seeking EWG status from FERC. As demonstrated in the pro forma financial statement, provided as Attachment 6A, projected revenues from sales of electricity at market prices provide substantial assurance that TXU Genco, TLP will have funds available to meet anticipated operating and maintenance expenditures for CPSES, including a six-month outage of both units.

### **B. Decommissioning Funding**

The financial qualification of TXU Genco, TLP to own CPSES is further demonstrated by the fact that TXU Electric and then TXU Genco, TLP will provide financial assurance for decommissioning funding in accordance with 10 CFR § 50.75. TXU Electric currently maintains

and will continue to maintain decommissioning trust funds that have been established to provide funding for decontamination and decommissioning of TXU Electric's undivided ownership interest in CPSES. When TXU Electric's interest in CPSES is transferred to TXU Genco, TLP, TXU Electric will also transfer its decommissioning trust funds to TXU Genco, TLP. These entities will at all times maintain these external sinking funds segregated from their assets and outside their administrative control in accordance with the requirements of 10 CFR § 50.75(e)(1)(I) and (ii).

Pursuant to the Texas utility restructuring legislation, TXU Genco, TLP will have access to funds from ratepayers to recover the cost of decommissioning CPSES through a non-bypassable charge collected by the distribution utility. The decommissioning charge will be assessed on all customers of TXU T&D Electric Co., the affiliate transmission and distribution ("T&D") utility, regardless of the source of the energy. TXU Genco, TLP and TXU T&D Electric Co. will enter into an agreement, whereby TXU T&D Electric Co. will act as a collection agent for TXU Genco, TLP, and be responsible for the collection of the revenues required for funding the cost of decommissioning. TXU T&D Electric Co. will transfer its collections to TXU Genco, TLP, who will deposit these monies into the nuclear decommissioning trust funds. Thus, TXU Genco, TLP will have a "non-bypassable charge" within the meaning of 10 CFR § 50.75(e)(1)(ii)(B), the total amount of which will provide the funds estimated to be needed for decommissioning pursuant to 10 CFR § 50.75. These decommissioning funding arrangements are reflected in the PUCT's Interim Order of June 5, 2001.

In addition, the TXU Genco, TLP Decommissioning Master Trust Agreement will be in a form that is acceptable to the NRC and will provide, in addition to other required clauses, that: (a) investments in the securities or other obligations of TXU Genco, TLP, TXU Electric, TXU, their affiliates, successors, or assigns shall be prohibited; (b) except for investments tied to market indices or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited; (c) investments made in the trusts shall adhere to the investment guidelines established by the PUCT (*e.g.*, 16 Texas Admin. Code § 25.301); (d) except for taxes and administrative costs, no disbursements or payments from the trusts shall be made by the trustee unless the trustee has first provided thirty days' prior written notice of such disbursement or payment to the NRC and the trustee has not received written notice of objection from the NRC Director, Office of Nuclear Reactor Regulation, by the later of (1) the date that is thirty days after the giving of such notice, or (2) the date of disbursement or payment; and (e) the Decommissioning Master Trust Agreement may not be modified in any material respect without first providing thirty days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation. Additionally, TXU Genco, TLP will take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with this Application. The Decommissioning Master Trust Agreement for TXU Genco, TLP will follow the form provided as Attachment 7. TXU Electric will inform the NRC if there are any significant changes to the form of the Decommissioning Master Trust Agreement.

As is amply demonstrated above, reasonable assurance exists that TXU Genco, TLP will obtain the funds necessary to cover the estimated decommissioning costs of CPSES at the end of licensed operation in accordance with 10 CFR § 50.75.

## VII. ANTITRUST CONSIDERATIONS

In conjunction with the proposed CPSES license transfer, TXU Electric requests that the NRC approve conforming administrative amendments, pursuant to 10 CFR § 2.1315, which delete the antitrust conditions contained in Appendix C of the CPSES licenses.

The NRC has determined that an antitrust review of post-operating license transfers is not required by the Act, and that from policy and legal perspectives, such a review should not be conducted. See *Kansas Gas and Electric Company* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (June 18, 1999) ("*Wolf Creek*").<sup>3</sup> Further, antitrust review is not necessary for removal of antitrust conditions. For example, in the order approving the Clinton Power Station operating license transfer from Illinois Power to AmerGen, the NRC ordered the removal of very similar antitrust conditions as conforming administrative changes under 10 CFR § 2.1315.<sup>4</sup>

The antitrust provisions of Section 105 of the Act were intended to address the realities of the electric utility industry at the time of enactment. In 1954, the electric power industry consisted mainly of vertically-integrated electric utilities with protected franchises, which owned electric generating units, and transmission and distribution systems. These utility companies were subject to cost-of-service regulation in the wholesale power markets under the Federal Power Act,<sup>5</sup> and in the retail markets by state regulatory authorities. Public power utilities, which played an important role in rural electrification, often depended upon access to generation and transmission provided by the larger, investor-owned utilities. Section 105 was intended, in part, to ensure such access to nuclear generation. Thus, under subsection 105c(6), Congress empowered NRC with the authority to "issue a license with such conditions it deems appropriate." As a result of NRC's exercise of this authority, at least thirty nuclear plants, then operated by traditional electric utilities, had antitrust conditions imposed in their operating licenses.

Changes in the electric industry render unnecessary the application of antitrust license conditions to merchant generators such as TXU Genco, TLP. On a national basis, these changes are rooted

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<sup>3</sup> 10 CFR § 50.80; 65 *Fed. Reg.* 44,649 (2000).

<sup>4</sup> *Illinois Power Company* (Clinton Power Station) Docket No. 50-461 (Order Approving Transfer of License and Conforming Amendment), Nov. 24, 1999 ("*Clinton*").

<sup>5</sup> 16 U.S.C. §§ 791a - 825r.

in the passage of the Energy Policy Act of 1992,<sup>6</sup> which (1) expanded FERC's authority to order transmission providers to open their transmission facilities to competitors in the wholesale power markets; and (2) created a new class of entities - EWGs - that sell power only in the deregulated wholesale market. In the State of Texas, parallel changes opening the wholesale and retail markets have created the same effect.<sup>7</sup> The competitive environment in which CPSES will operate after the transfer to TXU Genco, TLP differs dramatically from that which existed when the antitrust conditions were imposed.

The Commission recently reviewed the evolution of the electric utility industry in its *Wolf Creek* decision,<sup>8</sup> which ended NRC antitrust reviews under section 105c in connection with license transfers:

[T]he competitive and regulatory landscape has changed dramatically since 1970 in favor of those electric utilities who were the intended beneficiaries of the Section 105 antitrust reviews, especially in connection with the acquisition of nuclear power facilities and access to transmission services.<sup>9</sup>

The Commission explained how these changes reflect upon its antitrust authority:

At the time of the 1970 antitrust amendments to the Atomic Energy Act, Congress believed that the Commission was in a unique position to ensure that the licensed activities of nuclear utilities could not be used to create or maintain a situation inconsistent with the antitrust laws . . . . In contrast to the competitive situation that existed in 1970, the current competitive and regulatory climate in which the electric utility industry operates is markedly different.

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<sup>6</sup> P.L. 102-486 (Energy Policy Act). These changes are embodied in order No. 888, *Promoting Wholesale Competition through Wholesale Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, FERC Stats. & Regs. ¶ 31,036 (1996) ("Order No. 888"), *order on reh'g*, FERC Stats. & Regs. ¶ 31,048 (1997) ("Order No. 888-A"), *order on reh'g*, 81 FERC ¶ 61,248 (1997) ("Order No. 888-B"), *order on reh'g*, 82 FERC ¶ 61,046 ("Order No. 888-C"); and in Order No. 889, *Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct*, ("Order No. 889") III FERC Stats. & Regs., Regulations Preambles, ¶ 31,035 (1996); *order on reh'g*, ("Order No. 889-A") III FERC Stats. & Regs., ¶ 31,049 (1997), *order on reh'g*, 81 FERC ¶ 61,253 (1997) ("Order No. 889-B").

<sup>7</sup> Texas Utilities Code §§ 39.001 through 39.9048.

<sup>8</sup> *Kansas City Gas and Electric Co., et al.*, (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441,465 (1999).

<sup>9</sup> *Id.* at 465.

Key statutory changes substantially enhance smaller utilities' ability to compete with the larger generating facilities and gain access to essential transmission services. These differences from 1970 reduce, if not eliminate, the incremental protection of competition that the NRC could provide through its antitrust reviews.<sup>10</sup>

Citing this changed reality, and the Commission's evaluation of the express terms of the Act, the Commission concluded that compelling public policy reasons supported its decision to cease performing antitrust reviews in connection with license transfers:

For this Commission to use its scarce resources needed more to fulfill our primary statutory mandate to protect the public health and safety and the common defense and security than to duplicate other antitrust reviews and authorities makes no sense and only impedes nationwide efforts to streamline and make more efficient the federal government.<sup>11</sup>

Since *Wolf Creek*, the NRC has applied this rationale to remove antitrust conditions that no longer made sense in the context of a merchant generator.

In the Safety Evaluation accompanying the *Clinton* order, the NRC explained both its authority and its rationale for removing the antitrust license conditions:

In the Commission's recent decision regarding the license transfer for the Wolf Creek facility . . . , the Commission addressed the issue of how to handle existing antitrust license conditions in transfer situations. The Commission listed several possibilities: (1) keep the conditions in the transferred license, (2) eliminate the conditions, or (3) modify the conditions.<sup>12</sup>

The Staff went on to note the Commission's observation that which among these outcomes is appropriate depends upon the nature of the transfer and transferee's competitive situation.<sup>13</sup>

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<sup>10</sup> *Id.* at 463.

<sup>11</sup> *Id.* at 465.

<sup>12</sup> *Safety Evaluation by the Office of Nuclear Reactor Regulation, Proposed Transfer of the Clinton Power Station Operating License from Illinois Power Company to AmerGen Energy Company, LLC*, Docket No. 50-461, Nov. 24, 1999 at 16 ("Safety Evaluation").

<sup>13</sup> *See id.*

In applying the *Wolf Creek* guidance to the *Clinton* case, the Safety Evaluation assessed the applicability of the antitrust conditions to AmerGen and concluded that elimination of the conditions was the only appropriate result. In particular, the Safety Evaluation noted that AmerGen, a merchant generator, lacked a public utility transmission network. Absent control over transmission facilities, AmerGen had neither the ability to engage in anti-competitive restrictions on access to transmission, nor the ability to comply with the existing antitrust license conditions requiring access to transmission or power wheeling. Thus, the Safety Evaluation concluded, these provisions “have no practical value to AmerGen, which has no transmission or distribution network.”<sup>14</sup> The *Clinton* order, therefore, removed the antitrust license conditions as conforming administrative amendments pursuant to 10 CFR § 2.1315.

As in the *Clinton* license transfer, removal of antitrust conditions is appropriate in the case of a generator like TXU Genco, TLP operating in the competitive wholesale power market. Upon transfer of the licenses, TXU Genco, TLP will receive substantially all of TXU Electric’s generating assets, including CPSES. TXU Genco, TLP will be an EWG engaged exclusively in owning and operating generating facilities and making sales of power at wholesale. TXU Genco, TLP will receive no ownership interest in TXU Electric’s transmission network as part of this restructuring, nor can or will it have the ability to control access to transmission. An entity other than TXU Genco, TLP will own and operate the T&D facilities now owned by TXU Electric, subject to the regulation of the PUCT. Because TXU Genco, TLP will be a merchant generator operating in a competitive market, the antitrust conditions contained in the CPSES licenses, which were tailored to a vertically-integrated utility operating in a cost-of-service regulated market, are simply no longer necessary.

Identical antitrust conditions in Section B of Appendix C to both of the CPSES licenses consist of sixteen separately numbered provisions, some with additional subparts. These antitrust conditions can be grouped into three general categories: (1) transmission access, operations and planning; (2) protection against market power or market power abuses; and (3) other special matters. As shown below, the Texas electric restructuring legislation, which mandates<sup>15</sup> compliance with PUCT Substantive Rules and the Protocols of the Electric Reliability Council of Texas (“ERCOT”), renders the CPSES antitrust license conditions in each of these categories unnecessary. Further, in some respects, maintenance of the antitrust conditions could operate to thwart the intent and purpose of the restructuring legislation.

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<sup>14</sup> *Id.* at 17.

<sup>15</sup> Texas Utilities Code § 39.151(j).

**A. Texas Restructuring Legislation, PUCT Substantive Rules, and ERCOT Protocols Adequately Address Transmission Access, Operations and Planning**

Antitrust conditions 2 through 10 impose requirements for access to transmission, and for coordination of operation and planning. These conditions address such topics as maintenance, reserve requirements, interconnection, bulk power service, and construction. These conditions are no longer necessary because of changes in the Texas electric market. Additionally, some provisions requiring cost of service pricing may operate to thwart the intent and purpose of Texas electric restructuring legislation.

Wholesale transmission access has been a requirement under Texas law since 1995, and retail open access will be required with the commencement of retail competition under the Texas legislation.<sup>16</sup> All buyers and sellers of electricity will enjoy nondiscriminatory open access to the T&D system now run by TXU Electric. The PUCT exercises jurisdiction over the ERCOT transmission grid, including TXU Electric's T&D system. The PUCT's Substantive Rules require transmission service providers to interconnect with other electric utilities and non-utility generators alike.<sup>17</sup> Further, the PUCT has adopted a Standard Generation Interconnection Agreement to be used for new generators.<sup>18</sup> Additionally, ERCOT Protocol § 3.5 addresses the interconnection of new generation resources to the ERCOT transmission grid, and provides adequate protection for entities desiring to interconnect.

Transmission rates will continue to be regulated by the PUCT. PUCT Substantive Rules include terms and conditions for the provision of transmission service, including the planning and construction of facilities.<sup>19</sup> These rules expressly require utilities, including TXU T&D Electric Co., to consider customer's load in transmission system planning and construction of facilities.<sup>20</sup> ERCOT Protocols and PUCT Substantive Rules require T&D utilities to plan, construct, operate and maintain their systems in accordance with good utility practice as defined by PUCT Substantive Rule § 25.5(31).<sup>21</sup>

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<sup>16</sup> Texas Utilities Code §§ 35.004 (Wholesale Open Access) and 39.203 (Retail Open Access).

<sup>17</sup> PUC Subst. R. Ch. 25, Subch. I.

<sup>18</sup> *Id.*

<sup>19</sup> PUC Subst. R. §§ 25.195(b)(Transmission Service Provider responsibilities), and 25.195(e) (Construction of new facilities).

<sup>20</sup> PUC Subst. R. § 25.195(b).

<sup>21</sup> *Id.*; ERCOT Protocols § 3.1.

The Texas legislation, PUCT Substantive Rules, and ERCOT Protocols ensure nondiscriminatory transmission access to buyers and sellers of electricity in the wholesale market. Additionally, these requirements adequately address transmission coordination, planning, reliability, and information exchange. Accordingly, the antitrust conditions 2 through 10 in the CPSES licenses that address these issues are unnecessary.

**B. Texas Restructuring Legislation Contains Provisions to Guard against Excessive Market Power and Market Power Abuses**

Antitrust conditions 1, 11, 12, and 14 impose requirements to guard against market power or the potential abuse of that power. The Texas electric restructuring legislation delegates new power to the PUCT and creates mandatory mechanisms to protect against these concerns. Accordingly, these antitrust license conditions are no longer necessary and could operate to thwart the intent and purpose of the Texas legislation.

As discussed in the preceding section, a comprehensive regulatory structure guards against anticompetitive practices in the transmission market. The legislation also includes a comprehensive statutory framework to protect against generation market power abuses in the new competitive environment. Beginning on January 1, 2002, a power generation company ("PGC") is prohibited from owning or controlling more than 20% of the installed generation capacity within ERCOT.<sup>22</sup> For purposes of this calculation, the statute includes the ERCOT generating capacity of the PGC's affiliates, collectively.<sup>23</sup> Additionally, the legislation contains comprehensive provisions for monitoring generation market power, mandatory capacity auctions, and remedial actions to mitigate generation market power if discovered.<sup>24</sup>

Additionally, the Texas Legislature granted the PUCT the authority and responsibility to monitor market power associated with the generation, transmission, distribution and sale of electricity in Texas.<sup>25</sup> This authority will apply to TXU Genco, TLP and its affiliates. Should the PUCT find that market power abuses have occurred, the PUCT must require reasonable mitigation by: (1) ordering the construction of additional transmission or distribution facilities; (2) seeking an injunction or civil penalties; (3) imposing administrative penalties; or (4) suspending, revoking or amending a Retail Electric Provider's certificate or a PGC's registration.<sup>26</sup> The statute defines market power abuses as:

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<sup>22</sup> Texas Utilities Code § 39.154

<sup>23</sup> Texas Utilities Code § 39.154(c).

<sup>24</sup> Texas Utilities Code §§ 39.153 (capacity auction), 39.156 and 39.157 (mitigation of violations), and 39.158(a) (mergers).

<sup>25</sup> Texas Utilities Code § 39.157.

<sup>26</sup> *Id.*

practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services. For purposes of this section, “market power abuses” includes predatory pricing, withholding of production, precluding entry, and collusion. A violation of the code of conduct provided by § 39.157(d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power.<sup>27</sup>

As shown above, the Texas Legislature put in place a comprehensive system to regulate competition in the wholesale and retail markets in Texas including an express delegation of authority and responsibility to the PUCT to monitor market power and police against anticompetitive practices. These protections on electric competition in the Texas market obviate the need for antitrust conditions in the CPSES licenses, conditions that are at best redundant of state protections and potentially a hindrance to the statutory design.<sup>28</sup> Condition 14, which requires access to participation in any future nuclear units, is unnecessary for the additional reason that NRC’s licensing process for new units contemplates pre-licensing antitrust review on a case-by-case basis.<sup>29</sup> The propriety of access to future nuclear units is better decided if and when any new license applications are presented. Accordingly, antitrust conditions 1, 11, 12, and 14 should be removed.

### **C. Other Antitrust License Conditions Have Expired by Their Own Terms or are Unnecessary**

Antitrust conditions 1, 13, 15, and 16 contain provisions that were unique to a particular issue and are no longer necessary. For example, Condition 1 addresses participation in ownership of CPSES. By its terms, the provision expired on December 1, 1973. Further, those entities that elected to participate have long since terminated their participation in CPSES. The NRC considered virtually identical unit access conditions in the *Clinton* license transfer. In the NRC’s consideration of AmerGen’s request to remove similar unit access provisions, the NRC concluded that, because these conditions had expired by their own terms, the conditions should be removed.

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<sup>27</sup> Texas Utilities Code § 39.157(a).

<sup>28</sup> For example, condition 11 requires bulk power sales to entities with generating capacity less than 200 MW at cost of service rates. The Texas legislation removes cost of service rates for energy sales in favor of market pricing. The mechanisms to determine cost of service pricing for generation will no longer exist once generation is moved outside of this regime.

<sup>29</sup> 10 CFR § 50.33a.

The same logical conclusion should be drawn from provisions 13, 15, and 16. Condition 13 merely requires best efforts to meet the requirements of Condition 12, addressed in the preceding section. Condition 15 addresses efforts to reach settlement in a FERC proceeding (Docket EL79-8), now closed. FERC has since issued a Final Order in that proceeding. Similarly, Condition 16 is unnecessary because it merely addresses implementation of the other substantive conditions.

#### **D. Conclusion**

The Texas Legislature has created a competitive market for electricity in Texas. The statute, PUCT Substantive Rules, and ERCOT Protocols ensure nondiscriminatory transmission access, forming the backbone of the competitive market. Rigorous protections against market power abuses by participants in the Texas electric market (including PGCs, transmission utilities, retail electric providers) are now in place.

The Texas legislation, which requires compliance with PUCT Substantive Rules and ERCOT Protocols, creates a robust, competitive generation market in Texas. Transmission, however, will remain pervasively regulated under this scheme, including requirements for nondiscriminatory open access to transmission. Additionally, the Texas legislation builds in safeguards against market power abuses and empowers the PUCT with new authority to police anticompetitive practices and affiliate abuses. Because of these changes and the passage of time, the antitrust conditions in the CPSES licenses are no longer necessary.

The antitrust conditions contained in the CPSES licenses were crafted for another era in the electric power industry, when electric utilities were vertically integrated, state franchised monopolies. The conditions describe tools suited to that environment. Today, the competitive market has replaced the hand of the regulator. In this environment, the old tools are no longer appropriate and have already been replaced. Accordingly, the NRC should remove the antitrust conditions from the CPSES licenses in connection with the transfer to TXU Genco, TLP.

### **VIII. RESTRICTED DATA AND CLASSIFIED NATIONAL SECURITY INFORMATION**

The proposed transfer does not contain any Restricted Data or other Classified National Security Information, or any change in access to such Restricted Data or Classified National Security Information. TXU Electric's existing restrictions on access to Restricted Data and Classified National Security Information are unaffected by the proposed transfer.

### **IX. ENVIRONMENTAL CONSIDERATIONS**

The requested consent to transfer the CPSES licenses and accompanying administrative amendments are exempt from environmental review because they fall within the categorical exclusion contained in 10 CFR § 51.22(c)(21), for which neither an Environmental Assessment nor an Environmental Impact Statement is required. Moreover, the proposed transfer does not involve any amendment to the facility operating licenses or other change that would directly

affect the actual operation of CPSES in any substantive way. The proposed transfer and changes to the facility operating licenses do not involve an increase in the amounts, or a change in the types, of any radiological effluents that may be allowed to be released off-site, nor do they involve any increase in the amounts or change in the types of non-radiological effluents that may be released off-site. Further, there is no increase in the individual or cumulative operational radiation exposure, and the proposed transfer and facility operating license changes have no environmental impact.

## **X. PRICE-ANDERSON INDEMNITY AND NUCLEAR INSURANCE**

In accordance with 10 CFR § 140.92, Art. IV.2, TXU Electric requests NRC consent to the assignment and transfer of TXU Electric's interest in the Price-Anderson indemnity agreement for CPSES to TXU Genco, TLP, in connection with its consent to the proposed transfer of licenses to this entity. The Projected Income Statement of TXU Genco, TLP provides adequate assurance that TXU Genco, TLP will be able to pay the total retrospective premium of \$10 million per CPSES unit (\$20 million total), pursuant to 10 CFR § 140.21(e)-(f). Prior to the transfer of licenses, TXU Electric will take actions necessary to obtain for or transfer to TXU Genco, TLP all required nuclear property damage insurance pursuant to 10 CFR § 50.54(w), and nuclear energy liability insurance pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and 10 CFR § Part 140.

## **XI. OTHER INFORMATION**

### **A. Off-site Power Considerations (General Design Criterion 17)**

The physical system for supplying off-site power to CPSES will be unchanged as a result of the transfer. The system is currently maintained and operated in accordance with ERCOT requirements. These requirements address, among other things, coordination of switching, voltage levels, and scheduling of maintenance outages, as well as additions, modifications, and normal maintenance of the transmission facilities. TXU Genco, TLP will comply with such requirements in the same manner that TXU Electric has in order to ensure reliable sources of off-site power. An interconnection agreement between TXU Genco, TLP and TXU Electric's T & D system will also provide assurances of the continued compliance with such requirements.

Because PUCT rule changes in support of deregulation broadly impact transmission grid system maintenance and operation guides and procedures, offsite power requirements as currently contained in the CPSES design and licensing basis have been identified and are presently being incorporated into revised ERCOT Operating Guides and TXU Electric's T & D system procedures. ERCOT Operating Guides specifically include provisions intended to address nuclear power plant requirements including the following: 1) the Operating Guides are consistent with North American Electric Reliability Council ("NERC") requirements which include requirements that the ERCOT system black start capability plan include priority restoration of station service to nuclear generation facilities; 2) the Operating Guides provide special considerations for nuclear power plants with respect to maintaining the switchyard voltage at

each operating nuclear power plant at adequate values and within specified limits; and 3) the Operating Guides provide for prior notice to nuclear power plant management before ERCOT system planned changes that could affect nuclear power plants are to be implemented.

## **B. Emergency Planning**

Upon consummation of the transfer, TXU Genco, TLP will assume authority and responsibility for functions necessary to fulfill the emergency planning requirements specified in 10 CFR § 50.47(b) and Part 50, Appendix E. Transition plans will be established to ensure that the support described in the existing emergency plans will be maintained following the transfer.

Any changes made to the existing CPSES Emergency Plan ("Emergency Plan") will be made in accordance with 10 CFR § 50.54(q). Because only a change in the licensee is involved, no changes are anticipated that will result in a decrease in the effectiveness of the Emergency Plan. Any specific Emergency Plan changes will be submitted to the NRC after the changes are made, in accordance with 10 CFR § 50.54(q) and Appendix E, Section V. If, as a result of the transfer, any conditions are identified that would decrease the effectiveness of the approved Emergency Plan, no changes will be implemented until approved by the NRC.

While TXU Electric anticipates that no substantive changes will be made to the existing on-site emergency organization, certain corporate support and/or corporate oversight functions may be changed or transferred to a different corporate support organization. Persons assigned to perform these functions will meet the same qualification requirements as the existing responsible corporate support personnel.

The current on-site and off-site emergency facilities and equipment for CPSES will be transferred to TXU Genco, TLP, including the Emergency Operations Facility, Nuclear Training Center, and radiation monitoring equipment. As necessary, ownership of off-site emergency sirens will also be transferred to TXU Genco, TLP, and existing easements for the siren locations will be assigned to TXU Genco, TLP. Existing agreements for support from organizations and agencies not affiliated with TXU Electric will also be assigned to TXU Genco, TLP, as necessary. TXU Electric plans to notify the parties to such agreements in advance of the transfer and to advise those parties of TXU Genco, TLP's responsibility for management and operation of CPSES.

The proposed license transfer will not impact compliance with the emergency planning requirements.

## **C. Security**

Upon consummation of the transfer, TXU Genco, TLP will assume authority and responsibility for the functions necessary to fulfill the security planning requirement specified in 10 CFR § Part 73. TXU Electric does not anticipate any substantive changes to the existing NRC-approved physical security, guard training and qualifications, and safeguards contingency plans. Any

changes that do occur, or necessary conforming changes, will be made in accordance with 10 CFR § 50.54(p). Transition plans will be established to ensure that the support described in the existing security plans will be maintained following the transfer.

TXU Electric anticipates that no substantive changes will be made to the existing on-site security organization. However, certain corporate support and/or corporate oversight functions may be changed or transferred to a different corporate support organization. Persons assigned to perform these functions will meet the same qualification requirements as the existing responsible corporate support personnel.

Existing agreements for support from organizations and agencies not affiliated with TXU Electric will be assigned to TXU Genco, TLP, as necessary. TXU Electric plans to notify the parties to such agreements in advance of the transfer of the licenses to TXU Genco, TLP and to advise those parties of TXU Genco, TLP's responsibility for management and operation of CPSES.

Thus, the proposed license transfer will not impact compliance with physical security requirements.

#### **D. Quality Assurance**

Upon consummation of the transfer, TXU Genco, TLP will assume authority and responsibility for the functions necessary to fulfill the quality assurance requirements of 10 CFR § Part 50, Appendix B. TXU Electric anticipates that it will be able to transfer all of the current functions and personnel of the existing Quality Assurance organization to TXU Genco, TLP. TXU Electric does not anticipate any substantive changes to the existing Quality Assurance Plans, but any changes that do occur will be made in accordance with 10 CFR § 50.54(a).

#### **E. Final Safety Analysis Report**

Except as described in this Application, the proposed license transfer and conforming administrative amendments will not substantially change or invalidate information presently appearing in the CPSES Final Safety Analysis Reports ("FSAR"), and all existing licensing basis commitments will remain in effect. Changes necessary to accommodate the proposed transfer and conforming administrative license amendments will be processed in accordance with 10 CFR § 50.59 and incorporated in the FSAR, in accordance with 10 CFR § 50.71(e), following NRC consent to the proposed license transfer.

#### **F. Training**

Upon consummation of the transfer, the Nuclear Training Center facilities will be transferred to TXU Genco, TLP. The proposed license amendment will not impact compliance with the operator re-qualification program requirements of 10 CFR § 50.54 and related sections, and will not impact maintenance of the Institute of Nuclear Power Operations accreditation for licensed

and non-licensed training. Upon transfer of the licenses, TXU Genco, TLP will assume ultimate responsibility for implementation of present training programs. Changes to the programs to reflect the transfer will not decrease the scope of the approved operator re-qualification program without the specific authorization of the NRC in accordance with 10 CFR § 50.54(1).

#### **G. Standard Contract for Disposal of Spent Nuclear Fuel**

On or after the date of the transfer, TXU Genco, TLP will assume responsibility for storage and disposal of spent nuclear fuel at the CPSES site. TXU Electric will assign, and TXU Genco, TLP will assume, TXU Electric's rights and obligations under the Standard Contract with the Department of Energy, except that TXU Electric will remain liable for any fees that may be imposed for electricity generated and sold prior to the transfer date.

#### **H. Continuation of Current Design and Licensing Basis**

The proposed license transfer and conforming administrative amendments will authorize TXU Genco, TLP to own, operate and maintain CPSES in accordance with the existing and respective operating licenses and Technical Specifications, and will subject TXU Genco, TLP to applicable provisions of the Atomic Energy Act of 1954, as amended, and the NRC's rules, regulations and orders. The transfer and conforming administrative amendments do not affect the physical configuration of the facility or substantively change the operating licenses under which CPSES operates.

TXU Genco, TLP will control or have access to the design and licensing basis documents to the same extent as TXU Electric now does. While there will be certain administrative amendments to the Operating Licenses, as indicated in the Attachments, TXU Genco, TLP does not seek any other changes to the current licensing basis for CPSES.

Likewise, the proposed transfer will not change or invalidate design or operations information presently appearing in the updated FSAR for CPSES. Changes to the FSAR necessary to reflect the proposed transfer and the conforming license amendments will be incorporated into the FSAR on a schedule that complies with 10 CFR § 50.71(e).

#### **I. Exclusion Area Control**

Upon approval of the transfer, TXU Genco, TLP will have authority to determine all activities within the exclusion area to the extent required by 10 CFR § Part 100.

### **XII. OTHER REQUIRED REGULATORY APPROVALS**

Other major regulatory approvals and rulings that may be required in connection with the proposed transfer of TXU Electric's CPSES ownership interest include approvals and rulings from the PUCT, FERC, the SEC, the Federal Communications Commission, and the Internal Revenue Service

### **XIII. EFFECTIVE DATES**

TXU Electric requests that the NRC review this Application on a schedule that will permit the issuance of NRC consent to the transfer of the CPSES licenses, and approval of the conforming administrative license amendments, as promptly as possible, and in any event no later than December 15, 2001. Such consent should be immediately effective upon issuance and should permit the transfer and the implementation date of the conforming amendments to occur at any time on or before January 1, 2002. Furthermore, TXU Electric requests that the conforming amendments be made effective upon the date of transfer. TXU Electric will inform NRC if there are any significant changes in the status of the other required approvals or any other developments that have an impact on the schedule.

### **XIV. CONCLUSION**

Based upon the foregoing information, TXU Electric respectfully requests that the NRC issue an Order consenting to the Transfer of the Facility Operating Licenses, Nos. NPF-87 and NPF-89, for TXU Electric's operating authority and undivided ownership interest in CPSES, and approving the associated conforming administrative amendments.

**AFFIRMATION**

I, Roger D. Walker, being duly sworn, state that I am Regulatory Affairs Manager at TXU Electric Company ("TXU Electric"), that I am authorized to sign and file this Application with the Nuclear Regulatory Commission on behalf of TXU Electric, and that the statements made and the matters set forth herein are true and correct to the best of my knowledge and belief.

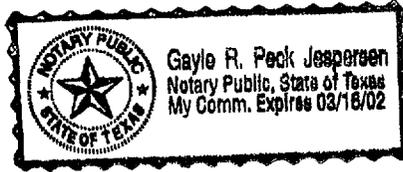
Roger D. Walker  
Roger D. Walker

STATE OF TEXAS  
COUNTY OF Somervell

Subscribed and sworn to before me, a Notary Public, in and for the County and State above named, this 19<sup>th</sup> day of June, 2001.

Gayle R. Peck Jespersen

My commission expires:  
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## **LIST OF ATTACHMENTS**

Attachment 1	Safety Analysis (TXU Genco, TLP)
Attachment 2	Annotated Changes to Unit 1 License
Attachment 3	Annotated Changes to Unit 2 License
Attachment 4	Unit 1 License with Proposed Changes Incorporated
Attachment 5	Unit 2 License with Proposed Changes Incorporated
Attachment 6	Projected Income Statement and Projected Opening Balance Sheet of TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing (Non-Proprietary Version)
Attachment 7	Form of Decommissioning Master Trust Agreement
Attachment 8	10 CFR § 2.790 Affidavit of Roger D. Walker
Attachment 9	TXU Electric Business Separation Plan
Proprietary Addendum Attachment 6A	Projected Income Statement and Projected Opening Balance Sheet of TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing (Proprietary Version)

**ATTACHMENT 1**

**SAFETY ANALYSIS (TXU GENCO, TLP)**

## **SAFETY ANALYSIS**

### **1.0 INTRODUCTION**

1.1 The proposed changes to the Comanche Peak Steam Electric Station, Units 1 and 2 ("CPSES") operating licenses delete references to TXU Electric Company as owner and operator of CPSES, and authorize TXU Genco, TLP to possess, use and operate CPSES, under essentially the same conditions and authorization as included in the existing licenses, and conform these administrative changes to reflect the proposed transfer and to remove the antitrust conditions from the licenses. No changes to the CPSES Technical Specifications are being requested.

### **1.2 ANNOTATED CHANGES TO THE EXISTING OPERATING LICENSES**

Unit 1	See Attachment 2
Unit 2	See Attachment 3

### **1.3 OPERATING LICENSES WITH PROPOSED CHANGES INCORPORATED**

Unit 1	See Attachment 4
Unit 2	See Attachment 5

### **1.4 FINAL SAFETY ANALYSIS REPORT (FSAR)**

The evaluations performed in support of this License Amendment Request ("Request") do not result in any significant changes to the FSAR per 10 CFR § 50.71(e), the guidance provided by Regulatory Guide 1.181 "Content of the Updated Final Safety Analysis Report in Accordance with 10 CFR § 50.71(e)," and NEI98-03, "Guidelines for Updating Final Safety Analysis Reports."

The proposed license transfer and conforming administrative amendments will not change or invalidate information presently appearing in the CPSES FSAR, and all existing licensing basis commitments will remain in effect. Changes necessary to accommodate the proposed transfer and conforming administrative license amendments will be processed in accordance with 10 CFR § 50.59 and incorporated in the FSAR in accordance with 10 CFR § 50.71(e), following NRC consent to the proposed license transfer.

### **2.0 DESCRIPTION**

The proposed changes will delete "TXU Electric Company" and replace with "TXU Genco, TLP" to reflect change in ownership of CPSES, and conform these administrative changes to licenses to reflect the proposed transfer and to remove antitrust conditions.

### 3.0 BACKGROUND

The requested amendment would conform the licenses to reflect the transfer action for which NRC consent has been requested pursuant to 10 CFR § 50.80 and 50.92.

### 4.0 TECHNICAL ANALYSIS

The proposed changes to the Operating Licenses are administrative in nature. These changes identify the new owner and operator of CPSES and remove antitrust conditions. No physical changes will be made as a result of this change, and there will be no significant change in the day-to-day operation of CPSES. The proposed changes will have no impact on the design, function, or operation of any plant structure, system, or component, either technically or administratively, nor will there be a programmatic effect on the CPSES Quality Assurance Program. Therefore, these changes do not adversely affect nuclear safety or safe plant operations.

### 5.0 REGULATORY ANALYSIS

#### 5.1 NO SIGNIFICANT HAZARDS DETERMINATION

The amendment of the CPSES licenses "does no more than conform the license[s] to reflect the transfer action," and therefore is subject to the NRC's generic determination of no significant hazards consideration in accordance with 10 CFR § 2.1315(a). Pursuant to 10 CFR § 50.92, it also has been determined independently that this Request involves no significant hazards considerations. The determination of no significant hazards was made by applying the standards contained in 10 CFR § 50.92. These standards assure that any changes to the operation of CPSES in accordance with this Request consider the following:

- 1) Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This Request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, this Request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

- 2) Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

This Request involves administrative changes only. No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created. Therefore, this Request will have no impact on the possibility of any type of accident: new, different, or previously evaluated.

3) Will the change involve a significant reduction in a margin of safety?

Response: No

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. This Request involves administrative changes only.

No actual plant equipment or accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety systems settings, or will not relax the bases for any limiting conditions of operation. Therefore, the proposed changes will not impact the margin of safety.

## 5.2 REGULATORY SAFETY ANALYSIS

### Applicable Regulatory Requirements/Criteria

- 1.0 10 CFR § 2.1315, "Generic Determination Regarding License Amendments to Reflect Transfers"
- 2.0 10 CFR § 50.80, "Transfer of Licenses"
- 3.0 10 CFR § 50.92, "Issuance of Amendment"

### Analysis

The proposed license changes are administrative in nature. These changes identify the new owner and operator of CPSES and remove antitrust conditions. These changes are considered administrative since the proposed changes ensure an equivalent level of authority and independence where appropriate. No physical changes will be made and there will be no significant change in the day-to-day operations of CPSES. Therefore, these changes do not adversely affect nuclear safety or safe plant operations. The proposed license amendments meet the requirements of 10 CFR § 2.1315, 10 CFR § 50.80, and 10 CFR § 50.92, and do not involve a significant hazards consideration.

## Conclusion

In conclusion, based upon the analysis provided herein, the proposed license amendments will neither have any adverse impact on the public health and safety, nor be inimical to the common defense and security.

## **6.0 ENVIRONMENTAL EVALUATION**

Pursuant to 10 CFR § 51.22, an evaluation of this Request has been performed to determine whether or not it meets the criteria for categorical exclusion set forth in 10 CFR § 51.22(c)(21) of the regulations.

This Request does not individually or cumulatively have a significant effect on the human environment. It has been determined that the proposed changes involve “approvals of direct or indirect transfers of any license issued by NRC and any associated amendments of license required to reflect the approval of a direct or indirect transfer of an NRC license.”

Therefore, this Request for revision of the Facility Operating Licenses meets the criteria of 10 CFR § 51.22 for categorical exclusion from the requirement for an environmental assessment.

## **7.0 REFERENCES**

- 1.0 10 CFR § 2.1315, “Generic Determination Regarding License Amendments to Reflect Transfers”
- 2.0 10 CFR § 50.80, “Transfer of Licenses”
- 3.0 10 CFR § 50.92, “Issuance of Amendment”
- 4.0 10 CFR § 51.22, “Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise not Requiring Environmental Review”

## **8.0 PRECEDENT**

There is precedent for approving conforming amendments in connection with transfer of interest in nuclear plants to affiliated companies in connection with electric industry restructuring. NRC has approved amendments to the Peach Bottom Atomic Power Station, Unit 2 and 3 licenses in connection with the transfer of Public Service Electric & Gas Company’s interests to PSEG Nuclear, LLC, and, it has approved amendments to the Susquehanna Steam Electric Station, Unit 1 and 2 licenses in connection with the transfer of PP&L, Inc.’s interests to PPL Susquehanna, LLC.

## **ATTACHMENT 2**

### **ANNOTATED CHANGES TO UNIT 1 LICENSE**

#### **NPF-87**

**(NOTE: Attached affected pages of NPF-87 reflect changes as previously proposed by TXU Electric in License Amendment Request 01-05 (letter logged TXX-01042, dated April 5, 2001) which increased reactor power to 3458 Mwt and deleted Texas Municipal Power Agency as a licensee.)**

**TXU ELECTRIC COMPANY GENCO, TLP**  
**DOCKET NO. 50-445**  
**COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 1**  
**FACILITY OPERATING LICENSE**

License No. NPF-87

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for a license filed by ~~TXU Electric Company (TXU Electric)~~ **Genco, TLP** (licensee), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Comanche Peak Steam Electric Station, Unit No. 1 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-126 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
  - D. There is reasonable assurance: (i) that the activities authorized by this operating license 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 set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D below;
  - E. ~~TXU Electric~~ **Genco, TLP** is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
  - F. The licensee has satisfied the applicable provisions of 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. NPF-87 subject to the conditions for protection of the environment set forth herein, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and

Amendment No.

- I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70, except that an exemption to the provisions of 70.24 is granted as described in paragraph 2.D below.
2. Based on the foregoing findings regarding this facility, Facility Operating License No. NPF-87 is hereby issued to the licensee, to read as follows:
    - A. This license applies to the Comanche Peak Steam Electric Station, Unit No. 1, a pressurized-water nuclear reactor and associated equipment (the facility), owned by the licensee. The facility is located on Squaw Creek Reservoir in Somervell County, Texas about 5 miles north-northwest of Glen Rose, Texas, and about 40 miles southwest of Fort Worth in north-central Texas and is described in the licensee's Final Safety Analysis Report, as supplemented and amended, and the licensee's Environmental Report, as supplemented and amended.
    - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
      - (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, "Domestic Licensing and Production and Utilization Facilities," **TXU Electric Genco, TLP** to possess, use, and operate the facility at the designated location in Somervell County, Texas in accordance with the procedures and limitations set forth in this license;
      - (2) NOT USED
      - (3) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Part 70, to receive, possess and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, and described in the Final Safety Analysis Report, as supplemented and amended;
      - (4) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
      - (5) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required, any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and

- (6) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

**TXU Electric Genco, TLP** is authorized to operate the facility at reactor core power levels not in excess of 3458 megawatts thermal in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. **TXU Electric Genco, TLP** shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

~~(3) Antitrust Conditions~~

~~Applicants as defined in Appendix C shall comply with the antitrust conditions delineated in Appendix C to this license; Appendix C is hereby incorporated into this license.~~

D. The following exemptions are authorized by law and will not endanger life or property or the common defense and security. Certain special circumstances are present and these exemptions are otherwise in the public interest. Therefore, these exemptions are hereby granted pursuant to 10 CFR 50.12.

- (1) The facility requires a technical exemption from the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii). The justification for this exemption is contained in Section 6.2.5 of Supplement 22 to the Safety Evaluation Report dated January 1990. The staff's environmental assessment was published on November 14, 1989 (54 FR 47430). Therefore, pursuant to 10 CFR 50.12(a)(1), and 10 CFR 50.12(a)(2)(ii) and (iii), the Comanche Peak Steam Electric Station, Unit 1 is hereby granted an exemption from the cited requirement and instead, is required to perform the overall air lock leak test at pressure  $P_a$  prior to establishing containment integrity if air lock maintenance has been performed that could affect the air lock sealing capability.

- (2) The facility was previously granted an exemption from the criticality monitoring requirements of 10 CFR 70.24 (see Materials License No. SNM-1912 dated December 1, 1988 and Section 9.1.1 of Supplement 22 to the Safety Evaluation Report dated January 1990). The staff's environmental assessment was published on November 14, 1989 (54 FR 47432). The Comanche Peak Steam Electric Station, Unit 1 is hereby exempted from the criticality monitoring provisions of 10 CFR 70.24 as applied to fuel assemblies held under this license.
  - (3) The facility requires a temporary exemption from the schedular requirements of 10 CFR 50.33(k) and 10 CFR 50.75. The justification for this exemption is contained in Section 20.6 of Supplement 22 to the Safety Evaluation Report dated January 1990. The staff's environmental assessment was published on November 14, 1989 (54 FR 47431). Therefore, pursuant to 10 CFR 50.12(a)(1), 50.12(a)(2)(iii) and 50.12(a)(2)(v), the Comanche Peak Steam Electric Station, Unit 1 is hereby granted a temporary exemption from the schedular requirements of 10 CFR 50.33(k) and 10 CFR 50.75 and is required to submit a decommissioning funding report for Comanche Peak Steam Electric Station, Unit 1 on or before July 26, 1990.
- E. With the exception of 2.C(2) ~~and 2.C(3)~~, TXU Electric Genco, TLP shall report any violations of the requirements contained in Section 2.C of this license within 24 hours. Initial notification shall be made in accordance with the provisions of 10 CFR 50.72 with written follow-up in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e).
- F. In order to ensure that TXU Electric Genco, TLP will exercise the authority as the surface landowner in a timely manner and that the requirements of 10 CFR Part 100.3 (a) are satisfied, this license is subject to the additional conditions specified below: (Section 2.1.1, SER)
- (1) For that portion of the exclusion area which is within 2250 ft of any seismic Category I building or within 2800 ft of either reactor containment building, TXU Electric Genco, TLP must prohibit the exploration and/or exercise of subsurface mineral rights, and if the subsurface mineral rights owners attempt to exercise their rights within this area, TXU Electric Genco, TLP must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
  - (2) For the unowned subsurface mineral rights within the exclusion area not covered in item (1), TXU Electric Genco, TLP will prohibit the exploration and/or exercise of mineral rights until and unless the licensee and the owners of the mineral rights enter into an agreement which gives TXU Electric Genco, TLP absolute authority to determine all activities -- including times of arrival and locations of personnel and the authority to remove personnel and equipment -- in event of emergency. If the mineral rights owners attempt to exercise their rights within this area without first entering into such an agreement, TXU Electric Genco, TLP must institute immediately effective condemnation proceedings to obtain the mineral rights in this area.

- (3) **TXU Electric Genco, TLP** shall promptly notify the NRC of any attempts by subsurface mineral rights owners to exercise mineral rights, including any legal proceeding initiated by mineral rights owners against **TXU Electric Genco, TLP**.
  
- G. **TXU Electric Genco, TLP** shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report through Amendment 78 and as approved in the SER (NUREG-0797) and its supplements through SSER 24, subject to the following provision:
  - TXU Electric Genco, TLP** may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.
  
- H. **TXU Electric Genco, TLP** shall fully implement and maintain in effect all provisions of the physical security, guard training and qualification, and safeguards contingency plans, previously approved by the Commission, and all amendments made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain safeguards information protected under 10 CFR 73.21, are entitled: "Comanche Peak Steam Electric Station Physical Security Plan" with revisions submitted through November 28, 1988; "Comanche Peak Steam Electric Station Security Training and Qualification Plan" with revisions submitted through November 28, 1988; and "Comanche Peak Steam Electric Station Safeguards Contingency Plan" with revisions submitted through January 9, 1989.
  
- I. The licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.
  
- J. NOT USED
  
- K. This license is effective as of the date of issuance and shall expire at Midnight on February 8, 2030.

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Attachments/Appendices:

- 1. Appendix A - Technical Specifications (NUREG-1399)
- 2. Appendix B - Environmental Protection Plan
- ~~3. Appendix C - Antitrust Conditions~~

Date of Issuance: April 17, 1990

APPENDIX B  
TO FACILITY OPERATING LICENSE NO. NPF-87

~~TXU ELECTRIC COMPANY~~ Genco, TLP  
COMANCHE PEAK STEAM ELECTRIC STATION UNIT 1  
DOCKET NO. 50-445

ENVIRONMENTAL PROTECTION PLAN  
(NON RADIOLOGICAL)

APPENDIX G

TO

FACILITY OPERATING LICENSE NO. NPF-87  
GOMANGHE PEAK STEAM ELECTRIC STATION

UNIT 1

TXU ELECTRIC COMPANY

BOOKET NO. 50-445

ANTITRUST CONDITIONS\*

LICENSE CONDITIONS FOR GOMANGHE PEAK STEAM ELECTRIC STATION, UNIT  
NO. 1

\*These are the Conformed Settlement License Conditions filed in December 1980 which were approved May 6, 1982 by the administrative law judge presiding over the consolidated antitrust proceedings for Gomanche Peak Steam Electric Station. Although the text is identical, the sections have been renumbered for convenience.

Amendment No. 68

~~A. The following definitions apply to paragraph B:~~

- ~~1. "Applicants" means severally and jointly Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Company, and each other subsidiary, affiliate or successor company now or hereafter engaged in the generation, transmission and/or the distribution of electric power in the State of Texas.~~
- ~~2. "North Texas Area" means the following Texas counties: Anderson, Andrews, Angelina, Archer, Bastrop, Baylor, Bell, Borden, Bosque, Brown, Burnet, Cherokee, Clay, Coke, Collin, Comanche, Cooke, Coryell, Crane, Culberson, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Freestone, Gaines, Glasscock, Grayson, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hunt, Jack, Johnson, Kaufman, Kent, Lamar, Lampasas, Leon, Limestone, Loving, Lynn, Martin, McLennan, Midland, Milam, Mitchell, Montague, Nacogdoches, Navarro, Nolan, Palo Pinto, Parker, Pecos, Rains, Reagan, Red River, Reeves, Rockwall, Rusk, Scurry, Schackelford, Smith, Somervell, Stephens, Sterling, Tarrant, Terry, Tom Green, Travis, Upton, Van Zandt, Ward, Wichita, Wilbarger, Williamson, Winkler, Wise, Wood, and Young.~~
- ~~3. "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning, operating or contractually controlling, or proposing in good faith to own, operate, or contractually control, facilities for generation of electric power and energy; provided, however, that as used in paragraphs B.1, B.2, B.7, B.9, B.10(a) and B.10(b), B.11, B.12, and B.13, "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning or operating, or proposing in good faith to own or operate, facilities for generation, transmission and/or distribution of electric power and energy.~~
- ~~4. "Entity in the North Texas Area" means an Entity which owns or operates facilities for the generation, transmission and/or distribution of electric power in any area within the North Texas Area.~~
- ~~5. "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.~~
- ~~6. "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.~~
- ~~7. The terms "connection" and "interconnection" are used interchangeably.~~

~~B. The Applicants defined in Paragraph A.1 are subject to the following antitrust conditions:~~

- ~~1. The Applicants shall afford an opportunity to participate in the Gomanche Peak Steam Electric Station, Units 1 and 2, for the term of the instant license, or any extension or renewal thereof, to any Entity(ies) in the North Texas Area making a timely request therefor, through a reasonable ownership interest in such unit(s) on reasonable terms and conditions and on a basis that will fully compensate Applicants for their costs. It is understood that any request received prior to December 1, 1973, shall be deemed to be timely. In connection with such participation, the Applicants also will interconnect with and offer transmission service as may be required for delivery of such power to such Entity(ies) at a point or points on the Applicants' system on a basis that will fully compensate the Applicants for their costs including a reasonable return on investment. Notwithstanding the December 1, 1973, date appearing hereinabove, the Applicants' offer of participation in Gomanche Peak, Units 1 and 2, to Tex-La Electric Cooperative of Texas, Inc. shall not obligate the Applicants, by virtue of such offer, to offer an opportunity to participate in Gomanche Peak, Units 1 and 2, to any other Entity.~~
  
- ~~2. The Applicants, as long as they are members of the Texas Interconnected Systems (TIS), shall support reasonable requests by Entities in the North Texas Area having generating capacity for membership in TIS. The Applicants shall also propose and actively support, as long as they are members thereof, the creation of one or more additional classifications of TIS membership based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the North Texas Area who desire membership. The Applicants shall also support requests by qualified Entities in the North Texas Area for membership in any other electric utility planning or operating organization or of which the Applicants are members (other than one involving only the Applicants). The Applicants shall share information with other Entities with respect to, and shall, with other such entities through any electric utility planning organizations (other than one involving only the Applicants) of which the Applicants are members, conduct and/or participate in joint studies and planning of future generation, transmission and related facilities; provided, however, this condition shall not obligate the Applicants to conduct or participate in such joint studies or joint planning unless (1) the studies or planning are requested and conducted in good faith and are based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.~~

- ~~3. The Applicants will connect with, coordinate reserves, and sell, purchase or exchange emergency and/or scheduled maintenance bulk power with any Entity(ies) in the North Texas Area on terms that will provide for the Applicants' costs, including a reasonable return on investment, in connection therewith and allow such Entity(ies) full access to the benefits of such reserve coordination.~~
- ~~4. Emergency service and/or scheduled maintenance service to be provided by each party shall be furnished to the fullest extent available from the supplying party and desired by the party in need. If requested, Applicants shall exchange maintenance schedules with any Entity in the North Texas Area. The Applicants and each such Entity(ies) shall provide to the other emergency service and/or scheduled maintenance service if and when available to the extent they can do so without unreasonably impairing service to their customers including other electric systems to whom they have firm commitments. Any curtailment or refusal to provide such emergency and/or scheduled maintenance service shall be on a non-discriminatory basis.~~
- ~~5. The Applicants and the other party(ies) to a reserve sharing arrangement shall from time to time jointly establish the minimum reserves to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties in accordance with good industry practice as developed in the area. Unless otherwise agreed upon, minimum reserve requirements shall be calculated as a percentage of each party's estimated net peak load demand (taking into account firm sales and firm purchases). No party to the arrangement shall be required to maintain greater reserves than the percentage which results from the aforesaid calculation. The reliability of power delivered into TIS-ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants the same as losses of generation within TIS-ERCOT. The Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.~~
- ~~6. The parties to such a reserve sharing arrangement shall provide such amounts of spinning reserves as may be equitable and adequate to avoid the imposition of unreasonable demands on the other party(ies) in meeting the normal contingencies of operating its (their) system(s). However, in no circumstances shall such reserve requirement exceed the installed reserve requirement.~~
- ~~7. Interconnections with any Entity will not be limited to low voltages when higher voltages are requested and are available from the Applicants' installed facilities in the area where a connection is desired, when the proposed arrangement is found to be technically and economically~~

~~feasible. Control and telemetering facilities shall be provided as required for safe and prudent operation of the interconnected systems.~~

- ~~8. Interconnection and coordination agreements shall not embody any restrictive provisions pertaining to intersystem coordination. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.~~
- ~~9. The Applicants shall participate in and facilitate the exchange of bulk power by transmission over the Applicants' transmission facilities between or among two or more Entities in the North Texas Area with which the Applicants are connected, and between any such Entity(ies) and any Entity(ies) outside the North Texas Area between whose facilities the Applicants' transmission lines and other transmission lines, including any direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given Applicants reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate the Applicants for their costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to any regulatory agency(ies) having jurisdiction thereof. The Applicants shall not refuse to provide such transmission service merely because the rates to be charged therefor are the subject of dispute with such Entity. The Applicants shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded, other transmission may be for emergency use and operated either unloaded or partially loaded. (The foregoing applies to any Entity(ies) to which the Applicants may be connected in the future as well as those to which they are now connected).~~
- ~~10(a) The Applicants shall include in their planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraphs 8.9 and B.11, provided any Entity(ies) in the North Texas Area gives the Applicants sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates the Applicants for their costs including a reasonable return on investment. The Applicants shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of their obligations above, the Applicants shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to~~

~~its share of the cost of the addition. Any such contribution made in aid of construction or ownership interest shall be properly credited in determining any wheeling charges. If the Applicants engage in joint ownership of transmission lines with any other Entity, they shall not refuse to engage in similar transactions in comparable circumstances with other Entities, subject to the provisions limiting the Applicants' obligations above.~~

- ~~10(b) Applicants shall provide other Entities with reasonable access to any future interstate interconnection facilities which Applicants may own, on terms and conditions comparable to the provisions of paragraph B.9 hereof, and subparagraph 10(a).~~
- ~~11. The Applicants shall, upon reasonable advance notice, sell full and partial requirements bulk power to requesting Entities in the North Texas Area having, on the date of this license, non-aggregated generating capacity of less than 200 MW (including no generating capacity) under reasonable terms and conditions which shall provide for recovery of Applicants' costs, including a reasonable return on investment. The Applicants shall not be required to make any such sale if they do not have available sufficient bulk power or adequate transmission to provide the requested service or if the sale would impair their ability to render adequate and reliable service to their own customers or their ability to discharge prior commitments.~~
- ~~12(a) In connection with the performance of their obligations herein and subject to the provisions of this paragraph, the Applicants will not disconnect from or refuse to connect their then-existing or proposed facilities with the facilities of any Entity, used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and the Applicants will not prevent any Entity with which they Maintain connection from establishing, maintaining, modifying, or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to paragraph 12(b) and 12(d) below), any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of the Applicants under the Federal Power Act shall have filed an application with and used its best efforts to obtain an order from the Federal Energy Regulatory Commission, applicable to the Applicants under Sections 210, 211, and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an Application pursuant to this subparagraph, the Applicants agree that they will not unreasonably oppose any such application. In the event such application is denied by a valid order of the Federal Energy Regulatory Commission, any continuing refusal by the Applicants to establish, maintain, modify or utilize such~~

~~connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the Applicants in such NRC proceeding.~~

- ~~12(b) Applicants shall not enter into or maintain any agreement or understanding with any other Entity(ies) to refuse to deal with another Entity(ies) with the purpose of maintaining a non-jurisdictional status under the Federal Power Act, and in the event that Applicants refuse to make an interconnection with or choose to disconnect from any Entity(ies), such decision and/or action by the Applicants will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after Applicants decide to undertake such action, they may notify any affected Entity.~~
- ~~12(c) In the event that an Entity files an application pursuant to subparagraph 12(a) solely by reason of the Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act, Applicants agree to pay such Entity's reasonable expenses connection with such application and the ensuing proceeding, <sup>1/</sup> provided, however, that Applicants shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by Applicants at FERC, and provided further, that Applicants shall not be required to pay for any expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act.~~
- ~~12(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connection with any Entity(ies), provided, that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.~~

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~~<sup>1/</sup> This obligation shall not apply to the expenses of the Central & South West Corporation or Houston Industries or any of their respective subsidiaries, including, but not limited to, the expenses of Central & South West Corporation and any of its subsidiaries incurred in FERC Docket EL79-8.~~

- ~~13. Applicants agree to use their best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs B.12(a) and B.12(b) above.~~
- ~~14. The Applicants will, in accordance with applicable law, allow ownership participation in future nuclear generating facilities which they may construct, own, and operate in the State of Texas on conditions similar to these License Conditions.~~
- ~~15. Applicants shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among Applicants, Central & South West Corporation, Houston Lighting & Power Company and the FERC Staff dated September 11, 1980; Applicants shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including FERC Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate.~~
- ~~16. The foregoing conditions shall be implemented i) in a manner consistent with applicable Federal, state and local statutes and regulations and ii) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.~~

## **ATTACHMENT 3**

### **ANNOTATED CHANGES TO UNIT 2 LICENSE**

#### **NPF-89**

**(NOTE: Attached affected pages of NPF-89 reflect changes as previously proposed by TXU Electric in License Amendment Request 01-05 (letter logged TXX-01042, dated April 5, 2001) which increased reactor power to 3458 Mwt and deleted Texas Municipal Power Agency as a licensee.)**

TXU ELECTRIC COMPANY GENCO, TLP  
DOCKET NO. 50-446  
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 2  
FACILITY OPERATING LICENSE

License No. NPF-89

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for a license filed by ~~TXU Electric Company~~ **TXU Electric Genco, TLP** (licensee), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Comanche Peak Steam Electric Station, Unit No. 2 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-127 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
  - D. There is reasonable assurance: (i) that the activities authorized by this operating license 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 set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D. below;
  - E. **TXU Electric Genco, TLP** is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

Amendment No.

- F. The licensee has satisfied the applicable provisions of 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. NPF-89 subject to the conditions for protection of the environment set forth herein, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
  - I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70, except that an exemption to the provisions of 70.24 is granted as described in paragraph 2.D below.
2. Pursuant to approval by the Nuclear Regulatory Commission at a meeting on April 6, 1993, the License for Fuel Loading and Low Power Testing, License No. NPF-88, issued on February 2, 1993, is superseded by Facility Operating License No. NPF-89 hereby issued to the licensee, to read as follows:
- A. This license applies to the Comanche Peak Steam Electric Station, Unit No. 2, a pressurized-water nuclear reactor and associated equipment (the facility), owned by the licensee. The facility is located on Squaw Creek Reservoir in Somervell County, Texas about 5 miles north-northwest of Glen Rose, Texas, and about 40 miles southwest of Fort Worth in north-central Texas and is described in the licensee's Final Safety Analysis Report, as supplemented and amended, and the licensee's Environmental Report, as supplemented and amended.
  - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
    - (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," TXU **Electric Genco, TLP** to possess, use, and operate the facility at the designated location in Somervell County, Texas in accordance with the procedures and limitations set forth in this license;
    - (2) NOT USED

- (3) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Part 70, to receive, possess and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, and described in the Final Safety Analysis Report, as supplemented and amended;
- (4) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
- (5) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required, any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
- (6) **TXU Electric Genco, TLP**, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

**TXU Electric Genco, TLP** is authorized to operate the facility at reactor core power levels not in excess of 3458 megawatts thermal in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, as revised through Amendment No. 72, are hereby incorporated into this license. **TXU Electric Genco, TLP** shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

~~(3) Antitrust Conditions~~

~~Applicants as defined in Appendix C shall comply with the antitrust conditions delineated in Appendix C to this license; Appendix C is hereby incorporated into this license.~~

- D. The following exemptions are authorized by law and will not endanger life or property or the common defense and security. Certain special circumstances are present and these exemptions are otherwise in the public interest. Therefore, these exemptions are hereby granted:
- (1) The facility requires a technical exemption from the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii). The justification for this exemption is contained in Section 6.2.5.1 of Supplement 26 to the Safety Evaluation Report dated February 1993. The staff's environmental assessment was published on January 19, 1993 (58 FR 5036). Therefore, pursuant to 10 CFR 50.12(a)(1), 10 CFR 50.12(a)(2)(ii) and (iii), the Comanche Peak Steam Electric Station, Unit 2 is hereby granted an exemption from the cited requirement and instead, is required to perform the overall air lock leak test at pressure  $P_a$  prior to establishing containment integrity if air lock maintenance has been performed that could affect the air lock sealing capability.
  - (2) The facility was previously granted exemption from the criticality monitoring requirements of 10 CFR 70.24 (see Materials License No. SNM-1986 dated April 24, 1989 and Section 9.1.1 of SSER 26 dated February 1993.) The staff's environmental assessment was published on January 19, 1993 (58 FR 5035). The Comanche Peak Steam Electric Station, Unit 2 is hereby exempted from the criticality monitoring provisions of 10 CFR 70.24 as applied to fuel assemblies held under this license.
- E. With the exception of 2.C(2) and 2.C(3), TXU Electric Genco, TLP shall report any violations of the requirements contained in Section 2.C of this license within 24 hours. Initial notification shall be made in accordance with the provisions of 10 CFR 50.72 with written followup in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e).
- F. In order to ensure that TXU Electric Genco, TLP will exercise the authority as the surface landowner in a timely manner and that the requirements of 10 CFR 100.3 (a) are satisfied, this license is subject to the additional conditions specified below: (Section 2.1, SER)
- (1) For that portion of the exclusion area which is within 2250 ft of any seismic Category I building or within 2800 ft of either reactor containment building, TXU Electric Genco, TLP must prohibit the exploration and/or exercise of subsurface mineral rights, and if the subsurface mineral rights owners attempt to exercise their rights within this area, TXU Electric Genco, TLP must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.

- (2) For the unowned subsurface mineral rights within the exclusion area not covered in item (1), **TXU Electric Genco, TLP** will prohibit the exploration and/or exercise of mineral rights until and unless the licensee and the owners of the mineral rights enter into an agreement which gives **TXU Electric Genco, TLP** absolute authority to determine all activities -- including times of arrival and locations of personnel and the authority to remove personnel and equipment -- in event of emergency. If the mineral rights owners attempt to exercise their rights within this area without first entering into such an agreement, **TXU Electric Genco, TLP** must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
  - (3) **TXU Electric Genco, TLP** shall promptly notify the NRC of any attempts by subsurface mineral rights owners to exercise mineral rights, including any legal proceeding initiated by mineral rights owners against **TXU Electric Genco, TLP**.
- G. **TXU Electric Genco, TLP** shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report through Amendment 87 and as approved in the SER (NUREG-0797) and its supplements through SSER 27, subject to the following provision:
- TXU Electric Genco, TLP** may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.
- H. **TXU Electric Genco, TLP** shall fully implement and maintain in effect all provisions of the physical security, guard training and qualification, and safeguards contingency plans, previously approved by the Commission, and all amendments made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain safeguards information protected under 10 CFR 73.21, are entitled: "Comanche Peak Steam Electric Station Physical Security Plan" with revisions submitted through January 14, 1993; "Comanche Peak Steam Electric Station Security Training and Qualification Plan" with revisions submitted through June 10, 1991; and "Comanche Peak Steam Electric Station Safeguards Contingency Plan" with revisions submitted through December 1988.
- I. The licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

- J. NOT USED
- K. This license is effective as of the date of issuance and shall expire at Midnight on February 2, 2033.

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Attachments/Appendices:

1. Appendix A - Technical Specifications (NUREG-1468)
2. Appendix B - Environmental Protection Plan
3. ~~Appendix C - Antitrust Conditions~~

Date of Issuance: April 6, 1993

APPENDIX B  
TO FACILITY OPERATING LICENSE NO. NPF-89

~~TXU ELECTRIC COMPANY~~ **Genco, TLP**  
COMANCHE PEAK STEAM ELECTRIC STATION UNITS 1 & 2  
DOCKET NOS. 50-445 AND 50-446

ENVIRONMENTAL PROTECTION PLAN  
(NON RADIOLOGICAL)

APRIL 6, 1993

~~APPENDIX G~~

~~TO~~

~~FACILITY OPERATING LICENSE NO. NPF-89  
COMANCHE PEAK STEAM ELECTRIC STATION~~

~~UNIT 2~~

~~TXU ELECTRIC COMPANY~~

~~DOCKET NO. 50-446~~

~~ANTITRUST CONDITIONS\*~~

~~LICENSE CONDITIONS FOR COMANCHE PEAK STEAM ELECTRIC STATION, UNIT  
NO. 2~~

~~\*These are the Conformed Settlement License Conditions filed in December 1980  
which were approved May 6, 1982 by the administrative law judge presiding over the  
consolidated antitrust proceedings for Comanche Peak Steam Electric Station.  
Although the text is identical, the sections have been renumbered for convenience.~~

~~Amendment No. 68~~

A. The following definitions apply to paragraph B:

1. "Applicants" means severally and jointly Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Company, and each other subsidiary, affiliate or successor company now or hereafter engaged in the generation, transmission and/or the distribution of electric power in the State of Texas.

2. "North Texas Area" scans the following Texas counties: Anderson, Andrews, Angelina, Archer, Bastrop, Baylor, Bell, Borden, Bosque, Brown, Burnet, Cherokee, Clay, Coke, Collin, Comanche, Cooke, Coryell, Crane, Cuthbertson, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Freestone, Gaines, Glasscock, Grayson, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hunt, Jack, Johnson, Kaufman, Kent, Lamar, Lampasas, Leon, Limestone, Loving, Lynn, Martin, McLennan, Midland, Milam, Mitchell, Montague, Nacogdoches, Navarro, Nolan, Pato Pinto, Parker, Pecos, Rains, Reagan, Red River, Reeves, Rockwall, Rusk, Scurry, Schackelford, Smith, Somervell, Stephens, Sterling, Tarrant, Ferry, Tom Green, Travis, Upton, Van Zandt, Ward, Wichita, Wilbarger, Williamson, Winkler, Wise, Wood, and Young.

3. "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning, operating or contractually controlling, or proposing in good faith to own, operate, or contractually control, facilities for generation of electric power and energy; provided, however, that as used in paragraphs B.1, B.2, B.7, B.9, B.10(a) and B.10(b), B.11, B.12, and B.13, "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning or operating, or proposing in good faith to own or operate, facilities for generation, transmission and/or distribution of electric power and energy.

4. "Entity in the North Texas Area" means an Entity which owns or operates facilities for the generation, transmission and/or distribution of electric power in any area within the North Texas Area.

5. "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

6. "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

7. The terms "connection" and "interconnection" are used interchangeably.

~~B. The Applicants defined in Paragraph A.1 are subject to the following antitrust conditions:~~

- ~~1. The Applicants shall afford an opportunity to participate in the Gomanche Peak Steam Electric Station, Units 1 and 2, for the term of the instant license, or any extension or renewal thereof, to any Entity(ies) in the North Texas Area making a timely request therefor, through a reasonable ownership interest in such unit(s) on reasonable terms and conditions and on a basis that will fully compensate Applicants for their costs. It is understood that any request received prior to December 1, 1973, shall be deemed to be timely. In connection with such participation, the Applicants also will interconnect with and offer transmission service as may be required for delivery of such power to such Entity(ies) at a point or points on the Applicants' system on a basis that will fully compensate the Applicants for their costs including a reasonable return on investment. Notwithstanding the December 1, 1973, date appearing hereinabove, the Applicants offer of participation in Gomanche Peak, Units 1 and 2, to Tex-La Electric Cooperative of Texas, Inc. shall not obligate the Applicants, by virtue of such offer, to offer an opportunity to participate in Gomanche Peak, Units 1 and 2, to any other Entity.~~
- ~~2. The Applicants, as long as they are members of the Texas Interconnected Systems (TIS), shall support reasonable requests by Entities in the North Texas Area having generating capacity for membership in TIS. The Applicants shall also propose and actively support, as long as they are members thereof, the creation of one or more additional classifications of TIS membership based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the North Texas Area who desire membership. The Applicants shall also support requests by qualified Entities in the North Texas Area for membership in any other electric utility planning or operating organization or of which the Applicants are members (other than one involving only the Applicants). The Applicants shall share information with other Entities with respect to, and shall, with other such entities through any electric utility planning organizations (other than one involving only the Applicants) of which the Applicants are members, conduct and/or participate in joint studies and planning of future generation, transmission and related facilities; provided, however, this condition shall not obligate the Applicants to conduct or participate in such joint studies or joint planning unless (1) the studies or planning are requested and conducted in good faith and are based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.~~

- ~~3. The Applicants will connect with, coordinate reserves, and sell, purchase or exchange emergency and/or scheduled maintenance bulk power with any Entity(ies) in the North Texas Area on terms that will provide for the Applicants' costs, including a reasonable return on investment, in connection therewith and allow such Entity(ies) full access to the benefits of such reserve coordination.~~
- ~~4. Emergency service and/or scheduled maintenance service to be provided by each party shall be furnished to the fullest extent available from the supplying party and desired by the party in need. If requested, Applicants shall exchange maintenance schedules with any Entity in the North Texas Area. The Applicants and each such Entity(ies) shall provide to the other emergency service and/or scheduled maintenance service if and when available to the extent they can do so without unreasonably impairing service to their customers including other electric systems to whom they have firm commitments. Any curtailment or refusal to provide such emergency and/or scheduled maintenance service shall be on a non-discriminatory basis.~~
- ~~5. The Applicants and the other party(ies) to a reserve sharing arrangement shall from time to time jointly establish the minimum reserves to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties in accordance with good industry practice as developed in the area. Unless otherwise agreed upon, minimum reserve requirements shall be calculated as a percentage of each party's estimated net peak load demand (taking into account firm sales and firm purchases). No party to the arrangement shall be required to maintain greater reserves than the percentage which results from the aforesaid calculation. The reliability of power delivered into TIS-ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants the same as losses of generation within TIS-ERCOT. The Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.~~
- ~~6. The parties to such a reserve sharing arrangement shall provide such amounts of spinning reserves as may be equitable and adequate to avoid the imposition of unreasonable demands on the other party(ies) in meeting the normal contingencies of operating its (their) system(s). However, in no circumstances shall such reserve requirement exceed the installed reserve requirement.~~
- ~~7. Interconnections with any Entity will not be limited to low voltages when higher voltages are requested and are available from the Applicants' installed facilities in the area where a connection is desired, when the proposed arrangement is found to be technically and economically feasible. Control and telemetering facilities shall be provided as required for safe and prudent operation of the interconnected systems.~~

- ~~8. Interconnection and coordination agreements shall not embody any restrictive provisions pertaining to intersystem coordination. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.~~
- ~~9. The Applicants shall participate in and facilitate the exchange of bulk power by transmission over the Applicants' transmission facilities between or among two or more Entities in the North Texas Area with which the Applicants are connected, and between any such Entity(ies) and any Entity(ies) outside the North Texas Area between whose facilities the Applicants' transmission lines and other transmission lines, including any direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given Applicants reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate the Applicants for their costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to any regulatory agency(ies) having jurisdiction thereof. The Applicants shall not refuse to provide such transmission service merely because the rates to be charged therefor are the subject of dispute with such Entity. The Applicants shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded, other transmission may be for emergency use and operated either unloaded or partially loaded. (The foregoing applies to any Entity(ies) to which the Applicants may be connected in the future as well as those to which they are now connected).~~
- ~~10(a) The Applicants shall include in their planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraphs B.9 and Bell, provided any Entity(ies) in the North Texas Area gives the Applicants sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates the Applicants for their costs including a reasonable return on investment. The Applicants shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of their obligations above, the Applicants shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to~~

- ~~its share of the cost of the addition. Any such contribution made in aid of construction or ownership interest shall be properly credited in determining any wheeling charges. If the Applicants engage in joint ownership of transmission lines with any other Entity, they shall not refuse to engage in similar transactions in comparable circumstances with other Entities, subject to the provisions limiting the Applicants' obligations above.~~
- ~~10(b) Applicants shall provide other Entities with reasonable access to any future interstate interconnection facilities which Applicants may own, on terms and conditions comparable to the provisions of paragraph B.9 hereof, and subparagraph 10(a).~~
- ~~11. The Applicants shall, upon reasonable advance notice, sell full and partial requirements bulk power to requesting Entities in the North Texas Area having, on the date of this license, non-aggregated generating capacity of less than 200 MW (including no generating capacity) under reasonable terms and conditions which shall provide for recovery of Applicants' costs, including a reasonable return on investment. The Applicants shall not be required to make any such sale if they do not have available sufficient bulk power or adequate transmission to provide the requested service or if the sale would impair their ability to render adequate and reliable service to their own customers or their ability to discharge prior commitments.~~
- ~~12(a) In connection with the performance of their obligations herein and subject to the provisions of this paragraph, the Applicants will not disconnect from or refuse to connect their then-existing or proposed facilities with the facilities of any Entity, used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and the Applicants will not prevent any Entity with which they maintain connection from establishing, maintaining, modifying, or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to paragraph 12(b) and 12(d) below), any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of the Applicants under the federal Power Act shall have filed an application with and used its best efforts to obtain an order from the Federal Energy Regulatory Commission, applicable to the Applicants under Sections 210, 211, and 212 of such Act, requiring the establishment, maintenance, Modification or utilization of such connection. In the event that an Entity files an Application pursuant to this subparagraph, the Applicants agree that they will not unreasonably oppose any such application. In the event such application is denied by a valid order of the Federal Energy Regulatory Commission, any continuing refusal by the Applicants to establish, maintain, modify or utilize such~~

~~connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the Applicants in such NRC proceeding.~~

~~12(b) Applicants shall not enter into or maintain any agreement or understanding with any other Entity(ies) to refuse to deal with another Entity(ies) with the purpose of maintaining a non-jurisdictional status under the Federal Power Act, and in the event that Applicants refuse to make an interconnection with or choose to disconnect from any Entity(ies), such decision and/or action by the Applicants will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after Applicants decide to undertake such action, they may notify any affected Entity.~~

~~12(c) In the event that an Entity files an application pursuant to subparagraph 12(a) solely by reason of the Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act, Applicants agree to pay such Entity's reasonable expenses in connection with such application and the ensuing proceeding,] provided, however, that Applicants shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by Applicants at FERC, and provided further, that Applicants shall not be required to pay for any expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of Applicants' desire to maintain their non-jurisdictional status under the Federal Power Act.~~

~~12(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connection with any Entity(ies), provided, that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.~~

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~~1/ This obligation shall not apply to the expenses of the Central & South West Corporation or Houston Industries or any of their respective subsidiaries, including, but not limited to, the expenses of Central & South West Corporation and any of its subsidiaries incurred in FERC Docket EL79-8.~~

- ~~13. Applicants agree to use their best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs B.12(a) and B.12(b) above.~~
- ~~14. The Applicants will, in accordance with applicable law, allow ownership participation in future nuclear-generating facilities which they may construct, own, and operate in the State of Texas on conditions similar to these License Conditions.~~
- ~~15. Applicants shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among Applicants, Central & South West Corporation, Houston Lighting & Power Company and the FERC Staff dated September 11, 1980. Applicants shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including FERC Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate.~~
- ~~16. The foregoing conditions shall be implemented i) in a manner consistent with applicable Federal, state and local statutes and regulations and ii) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.~~

**ATTACHMENT 4**

**UNIT 1 LICENSE WITH PROPOSED CHANGES INCORPORATED**

**NPF-87**

(NOTE: Attached affected pages of NPF-87 reflect the changes as previously proposed by TXU Electric in License Amendment Request 01-05 (letter logged TXX-01042, dated April 5, 2001) which increased reactor power to 3458 Mwt and deleted Texas Municipal Power Agency as a licensee.)

TXU GENCO, TLP  
DOCKET NO. 50-445  
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 1  
FACILITY OPERATING LICENSE

License No. NPF-87

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for a license filed by TXU Genco, TLP (licensee), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Comanche Peak Steam Electric Station, Unit No. 1 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-126 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
  - D. There is reasonable assurance: (i) that the activities authorized by this operating license 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 set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D below;
  - E. TXU Genco, TLP is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;
  - F. The licensee has satisfied the applicable provisions of 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;

Amendment No.

- H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. NPF-87 subject to the conditions for protection of the environment set forth herein, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
  - I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70, except that an exemption to the provisions of 70.24 is granted as described in paragraph 2.D below.
2. Based on the foregoing findings regarding this facility, Facility Operating License No. NPF-87 is hereby issued to the licensee, to read as follows:
- A. This license applies to the Comanche Peak Steam Electric Station, Unit No. 1, a pressurized-water nuclear reactor and associated equipment (the facility), owned by the licensee. The facility is located on Squaw Creek Reservoir in Somervell County, Texas about 5 miles north-northwest of Glen Rose, Texas, and about 40 miles southwest of Fort Worth in north-central Texas and is described in the licensee's Final Safety Analysis Report, as supplemented and amended, and the licensee's Environmental Report, as supplemented and amended.
  - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
    - (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, "Domestic Licensing and Production and Utilization Facilities," TXU Genco, TLP to possess, use, and operate the facility at the designated location in Somervell County, Texas in accordance with the procedures and limitations set forth in this license;
    - (2) NOT USED
    - (3) TXU Genco, TLP, pursuant to the Act and 10 CFR Part 70, to receive, possess and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, and described in the Final Safety Analysis Report, as supplemented and amended;

- (4) TXU Genco, TLP, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
- (5) TXU Genco, TLP, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required, any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
- (6) TXU Genco, TLP, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.

C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:

(1) Maximum Power Level

TXU Genco, TLP is authorized to operate the facility at reactor core power levels not in excess of 3458 megawatts thermal in accordance with the conditions specified herein.

(2) Technical Specifications and Environmental Protection Plan

The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. TXU Genco, TLP shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

- D. The following exemptions are authorized by law and will not endanger life or property or the common defense and security. Certain special circumstances are present and these exemptions are otherwise in the public interest. Therefore, these exemptions are hereby granted pursuant to 10 CFR 50.12.
- (1) The facility requires a technical exemption from the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii). The justification for this exemption is contained in Section 6.2.5 of Supplement 22 to the Safety Evaluation Report dated January 1990. The staff's environmental assessment was published on November 14, 1989 (54 FR 47430). Therefore, pursuant to 10 CFR 50.12(a)(1), and 10 CFR 50.12(a)(2)(ii) and (iii), the Comanche Peak Steam Electric Station, Unit 1 is hereby granted an exemption from the cited requirement and instead, is required to perform the overall air lock leak test at pressure  $P_a$  prior to establishing containment integrity if air lock maintenance has been performed that could affect the air lock sealing capability.
  - (2) The facility was previously granted an exemption from the criticality monitoring requirements of 10 CFR 70.24 (see Materials License No. SNM-1912 dated December 1, 1988 and Section 9.1.1 of Supplement 22 to the Safety Evaluation Report dated January 1990). The staff's environmental assessment was published on November 14, 1989 (54 FR 47432). The Comanche Peak Steam Electric Station, Unit 1 is hereby exempted from the criticality monitoring provisions of 10 CFR 70.24 as applied to fuel assemblies held under this license.
  - (3) The facility requires a temporary exemption from the schedular requirements of 10 CFR 50.33(k) and 10 CFR 50.75. The justification for this exemption is contained in Section 20.6 of Supplement 22 to the Safety Evaluation Report dated January 1990. The staff's environmental assessment was published on November 14, 1989 (54 FR 47431). Therefore, pursuant to 10 CFR 50.12(a)(1), 50.12(a)(2)(iii) and 50.12(a)(2)(v), the Comanche Peak Steam Electric Station, Unit 1 is hereby granted a temporary exemption from the schedular requirements of 10 CFR 50.33(k) and 10 CFR 50.75 and is required to submit a decommissioning funding report for Comanche Peak Steam Electric Station, Unit 1 on or before July 26, 1990.
- E. With the exception of 2.C(2), TXU Genco, TLP shall report any violations of the requirements contained in Section 2.C of this license within 24 hours. Initial notification shall be made in accordance with the provisions of 10 CFR 50.72 with written follow-up in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e).

- F. In order to ensure that TXU Genco, TLP will exercise the authority as the surface landowner in a timely manner and that the requirements of 10 CFR Part 100.3 (a) are satisfied, this license is subject to the additional conditions specified below: (Section 2.1.1, SER)
- (1) For that portion of the exclusion area which is within 2250 ft of any seismic Category I building or within 2800 ft of either reactor containment building, TXU Genco, TLP must prohibit the exploration and/or exercise of subsurface mineral rights, and if the subsurface mineral rights owners attempt to exercise their rights within this area, TXU Genco, TLP must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
  - (2) For the unowned subsurface mineral rights within the exclusion area not covered in item (1), TXU Genco, TLP will prohibit the exploration and/or exercise of mineral rights until and unless the licensee and the owners of the mineral rights enter into an agreement which gives TXU Genco, TLP absolute authority to determine all activities -- including times of arrival and locations of personnel and the authority to remove personnel and equipment -- in event of emergency. If the mineral rights owners attempt to exercise their rights within this area without first entering into such an agreement, TXU Genco, TLP must institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
  - (3) TXU Genco, TLP shall promptly notify the NRC of any attempts by subsurface mineral rights owners to exercise mineral rights, including any legal proceeding initiated by mineral rights owners against TXU Genco, TLP.
- G. TXU Genco, TLP shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report through Amendment 78 and as approved in the SER (NUREG-0797) and its supplements through SSER 24, subject to the following provision:
- TXU Genco, TLP may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.
- H. TXU Genco, TLP shall fully implement and maintain in effect all provisions of the physical security, guard training and qualification, and safeguards contingency plans, previously approved by the Commission, and all amendments made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain safeguards information protected under 10 CFR 73.21, are entitled: "Comanche Peak Steam Electric Station Physical Security Plan" with revisions submitted through November 28, 1988; "Comanche Peak Steam Electric Station Security Training and Qualification Plan" with revisions submitted through November 28, 1988; and "Comanche Peak Steam Electric Station Safeguards Contingency Plan" with revisions submitted through January 9, 1989.

- I. The licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.
- J. NOT USED
- K. This license is effective as of the date of issuance and shall expire at Midnight on February 8, 2030.

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

**Attachments/Appendices:**

- 1. Appendix A - Technical Specifications (NUREG-1399)
- 2. Appendix B - Environmental Protection Plan

**Date of Issuance: April 17, 1990**

APPENDIX B  
TO FACILITY OPERATING LICENSE NO. NPF-87

TXU GENCO, TLP  
COMANCHE PEAK STEAM ELECTRIC STATION UNIT 1  
DOCKET NO. 50-445

ENVIRONMENTAL PROTECTION PLAN  
(NON RADIOLOGICAL)

**ATTACHMENT 5**

**UNIT 2 LICENSE WITH PROPOSED CHANGES INCORPORATED**

**NPF-89**

**(NOTE: Attached affected pages of NPF-89 reflect the changes as previously proposed by TXU Electric in License Amendment Request 01-05 (letter logged TXX-01042, dated April 5, 2001) which increased reactor power to 3458 Mwt and deleted Texas Municipal Power Agency as a licensee.)**

TXU GENCO. TLP  
DOCKET NO. 50-446  
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 2  
FACILITY OPERATING LICENSE

License No. NPF-89

1. The Nuclear Regulatory Commission (the Commission) has found that:
  - A. The application for a license filed by TXU Genco, TLP (licensee), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;
  - B. Construction of the Comanche Peak Steam Electric Station, Unit No. 2 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-127 and the application, as amended, the provisions of the Act, and the regulations of the Commission;
  - C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);
  - D. There is reasonable assurance: (i) that the activities authorized by this operating license 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 set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D. below;
  - E. TXU Genco, TLP is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

Amendment No.

- F. The licensee has satisfied the applicable provisions of 10 CFR 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations;
  - G. The issuance of this license will not be inimical to the common defense and security or to the health and safety of the public;
  - H. After weighing the environmental, economic, technical, and other benefits of the facility against environmental and other costs and considering available alternatives, the issuance of Facility Operating License No. NPF-89 subject to the conditions for protection of the environment set forth herein, is in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied; and
  - I. The receipt, possession, and use of source, byproduct, and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Parts 30, 40, and 70, except that an exemption to the provisions of 70.24 is granted as described in paragraph 2.D below.
2. Pursuant to approval by the Nuclear Regulatory Commission at a meeting on April 6, 1993, the License for Fuel Loading and Low Power Testing, License No. NPF-88, issued on February 2, 1993, is superseded by Facility Operating License No. NPF-89 hereby issued to the licensee, to read as follows:
- A. This license applies to the Comanche Peak Steam Electric Station, Unit No. 2, a pressurized-water nuclear reactor and associated equipment (the facility), owned by the licensee. The facility is located on Squaw Creek Reservoir in Somervell County, Texas about 5 miles north-northwest of Glen Rose, Texas, and about 40 miles southwest of Fort Worth in north-central Texas and is described in the licensee's Final Safety Analysis Report, as supplemented and amended, and the licensee's Environmental Report, as supplemented and amended.
  - B. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses:
    - (1) Pursuant to Section 103 of the Act and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," TXU Genco, TLP to possess, use, and operate the facility at the designated location in Somervell County, Texas in accordance with the procedures and limitations set forth in this license;
    - (2) NOT USED

- (3) TXU Genco, TLP, pursuant to the Act and 10 CFR Part 70, to receive, possess and use at any time, special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, and described in the Final Safety Analysis Report, as supplemented and amended;
  - (4) TXU Genco, TLP, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use, at any time, any byproduct, source, and special nuclear material as sealed neutron sources for reactor startup, sealed sources for reactor instrumentation and radiation monitoring equipment calibration, and as fission detectors in amounts as required;
  - (5) TXU Genco, TLP, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to receive, possess, and use in amounts as required, any byproduct, source or special nuclear material without restriction to chemical or physical form, for sample analysis or instrument calibration or associated with radioactive apparatus or components; and
  - (6) TXU Genco, TLP, pursuant to the Act and 10 CFR Parts 30, 40 and 70, to possess, but not separate, such byproduct and special nuclear materials as may be produced by the operation of the facility.
- C. This license shall be deemed to contain and is subject to the conditions specified in the Commission's regulations set forth in 10 CFR Chapter I and is subject to all applicable provisions of the Act and to the rules, regulations, and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified or incorporated below:
- (1) Maximum Power Level  
TXU Genco, TLP is authorized to operate the facility at reactor core power levels not in excess of 3458 megawatts thermal in accordance with the conditions specified herein.
  - (2) Technical Specifications and Environmental Protection Plan  
The Technical Specifications contained in Appendix A and the Environmental Protection Plan contained in Appendix B, as revised through Amendment No. 72, are hereby incorporated into this license. TXU Genco, TLP shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

- D. The following exemptions are authorized by law and will not endanger life or property or the common defense and security. Certain special circumstances are present and these exemptions are otherwise in the public interest. Therefore, these exemptions are hereby granted:
- (1) The facility requires a technical exemption from the requirements of 10 CFR 50, Appendix J, Section III.D.2(b)(ii). The justification for this exemption is contained in Section 6.2.5.1 of Supplement 26 to the Safety Evaluation Report dated February 1993. The staff's environmental assessment was published on January 19, 1993 (58 FR 5036). Therefore, pursuant to 10 CFR 50.12(a)(1), 10 CFR 50.12(a)(2)(ii) and (iii), the Comanche Peak Steam Electric Station, Unit 2 is hereby granted an exemption from the cited requirement and instead, is required to perform the overall air lock leak test at pressure  $P_a$  prior to establishing containment integrity if air lock maintenance has been performed that could affect the air lock sealing capability.
  - (2) The facility was previously granted exemption from the criticality monitoring requirements of 10 CFR 70.24 (see Materials License No. SNM-1986 dated April 24, 1989 and Section 9.1.1 of SSER 26 dated February 1993.) The staff's environmental assessment was published on January 19, 1993 (58 FR 5035). The Comanche Peak Steam Electric Station, Unit 2 is hereby exempted from the criticality monitoring provisions of 10 CFR 70.24 as applied to fuel assemblies held under this license.
- E. With the exception of 2.C(2), TXU Genco, TLP shall report any violations of the requirements contained in Section 2.C of this license within 24 hours. Initial notification shall be made in accordance with the provisions of 10 CFR 50.72 with written followup in accordance with the procedures described in 10 CFR 50.73(b), (c), and (e).
- F. In order to ensure that TXU Genco, TLP will exercise the authority as the surface landowner in a timely manner and that the requirements of 10 CFR 100.3 (a) are satisfied, this license is subject to the additional conditions specified below: (Section 2.1, SER)
- (1) For that portion of the exclusion area which is within 2250 ft of any seismic Category I building or within 2800 ft of either reactor containment building, TXU Genco, TLP must prohibit the exploration and/or exercise of subsurface mineral rights, and if the subsurface mineral rights owners attempt to exercise their rights within this area, TXU Genco, TLP must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.

- (2) For the unowned subsurface mineral rights within the exclusion area not covered in item (1), TXU Genco, TLP will prohibit the exploration and/or exercise of mineral rights until and unless the licensee and the owners of the mineral rights enter into an agreement which gives TXU Genco, TLP absolute authority to determine all activities -- including times of arrival and locations of personnel and the authority to remove personnel and equipment -- in event of emergency. If the mineral rights owners attempt to exercise their rights within this area without first entering into such an agreement, TXU Genco, TLP must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
  - (3) TXU Genco, TLP shall promptly notify the NRC of any attempts by subsurface mineral rights owners to exercise mineral rights, including any legal proceeding initiated by mineral rights owners against TXU Genco, TLP.
- G. TXU Genco, TLP shall implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report through Amendment 87 and as approved in the SER (NUREG-0797) and its supplements through SSER 27, subject to the following provision:
- TXU Genco, TLP may make changes to the approved fire protection program without prior approval of the Commission only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.
- H. TXU Genco, TLP shall fully implement and maintain in effect all provisions of the physical security, guard training and qualification, and safeguards contingency plans, previously approved by the Commission, and all amendments made pursuant to the authority of 10 CFR 50.90 and 10 CFR 50.54(p). The plans, which contain safeguards information protected under 10 CFR 73.21, are entitled: "Comanche Peak Steam Electric Station Physical Security Plan" with revisions submitted through January 14, 1993; "Comanche Peak Steam Electric Station Security Training and Qualification Plan" with revisions submitted through June 10, 1991; and "Comanche Peak Steam Electric Station Safeguards Contingency Plan" with revisions submitted through December 1988.
- I. The licensee shall have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with Section 170 of the Atomic Energy Act of 1954, as amended, to cover public liability claims.

- J. NOT USED
- K. This license is effective as of the date of issuance and shall expire at Midnight on February 2, 2033.

FOR THE NUCLEAR REGULATORY COMMISSION

Thomas E. Murley, Director  
Office of Nuclear Reactor Regulation

Attachments/Appendices:

1. Appendix A - Technical Specifications (NUREG-1468)
2. Appendix B - Environmental Protection Plan

Date of Issuance: April 6, 1993

APPENDIX B  
TO FACILITY OPERATING LICENSE NO. NPF-89

TXU GENCO, TLP  
COMANCHE PEAK STEAM ELECTRIC STATION UNITS 1 & 2  
DOCKET NOS. 50-445 AND 50-446

ENVIRONMENTAL PROTECTION PLAN  
(NON RADIOLOGICAL)

APRIL 6, 1993

**ATTACHMENT 6**

**PROJECTED INCOME STATEMENT AND PROJECTED OPENING BALANCE SHEET OF TXU GENCO, TLP'S ANTICIPATED ASSETS, LIABILITIES AND CAPITAL STRUCTURE AT CLOSING (NON-PROPRIETARY VERSION)**

Attachment 6 (Page 1 of 4)  
Projected Income Statement and Projected Opening Balance Sheet of  
TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing

**TXU GENCO, TLP**  
**Key Assumptions**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Power Sold (GWh)					
Volume Weighted Wholesale Power Price Deterministic w/o ancillary services					
Fuel Costs (\$/MMBtu)					
Gas (Henry Hub Delivered Burner Tip)					
Generation Mix					
Gas					
Coal					
Nuclear					
Capacity Factor for Comanche Peak SES					

Attachment 6 (Page 2 of 4)  
 Projected Income Statement and Projected Opening Balance Sheet of  
 TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing

**TXU GENCO, TLP**  
**Net Income**  
**(\$ Millions)**

	<b>Forecast</b>				
	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Revenue (\$M):</b>					
Power					
Ancillary Services					
Other					
<b>Total Revenue</b>					
<b>Expenses (\$M):</b>					
Fuel					
Ancillary Services					
Operations & Maintenance					
Taxes Other Than Income					
Depreciation					
Decommissioning					
<b>Total Expenses</b>					
<b>EBIT</b>					
<b>Interest Expense</b>					
<b>Income Tax</b>					
<b>Net Income</b>					

Attachment 6 (Page 3 of 4)  
 Projected Income Statement and Projected Opening Balance Sheet of  
 TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing

**TXU GENCO, TLP**  
**Balance Sheet**  
**As of January 1, 2002**  
**(\$ Millions)**

	<u>1/1/2002</u>		<u>1/1/2002</u>
<b>ASSETS</b>		<b>CAPITALIZATION AND LIABILITIES</b>	
<b>UTILITY PLANT</b>		<b>CAPITALIZATION</b>	
Gross Plant		Membership Interest	
Less accumulated depreciation		Advances from Parent	
Net Plant	<u>                    </u>	Total capitalization	<u>                    </u>
<b>INVESTMENTS</b>		<b>CURRENT LIABILITIES</b>	
Decommissioning Fund		Accounts payable - trade	
Other Property and Investments		Accounts payable to affiliated companies	
Total investments	<u>                    </u>	Taxes accrued	
<b>CURRENT ASSETS</b>		Other	
Cash and Equivalents		Total current liabilities	<u>                    </u>
Accounts receivable - net of allow. for uncollect.		<b>DEFERRED CREDITS AND OTHER</b>	
Inventories		<b>NONCURRENT LIABILITIES</b>	
Other Current Assets		Accumulated deferred income taxes	
Total current assets	<u>                    </u>	Unamortized federal investment tax credits	
<b>DEFERRED DEBITS AND OTHER</b>		Other	
<b>NONCURRENT ASSETS</b>		Total defer. credits and other noncur liabilities	<u>                    </u>
Other		<b>Total capitalization and liabilities</b>	<u>                    </u>
Total deferred assets	<u>                    </u>		
Total assets	<u>                    </u>		

Projected Income Statement and Projected Opening Balance Sheet of  
TXU Genco, TLP's Anticipated Assets, Liabilities and Capital Structure at Closing

**COMANCHE PEAK STEAM ELECTRIC STATION**  
**Operations and Maintenance Expense**  
**(\$ Millions)**

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Labor and Benefits					
Contractors / Outside Services					
Materials					
Outage					
Shared Services / Corporate Directs					
Other					
<b>Operations and Maintenance Expense</b>	<u>          </u>				

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**COMANCHE PEAK STEAM ELECTRIC STATION**  
**Base O&M Estimate**  
**(\$ Millions)**

**Base O&M expense for 6-months**

**ATTACHMENT 7**

**FORM OF DECOMMISSIONING MASTER TRUST AGREEMENT**

**NUCLEAR DECOMMISSIONING  
TRUST AGREEMENT**

THIS NUCLEAR DECOMMISSIONING TRUST AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_, a Texas Limited Partnership duly organized and existing under the laws of the State of Texas, having its principal office at 1601 Bryan Street, Dallas, Texas 75201 (the "Company"), and MELLON BANK, N.A., as Trustee, having its principal office at One Mellon Bank Center, Pittsburgh, Pennsylvania 15258 (the "Trustee");

**W I T N E S S E T H:**

WHEREAS, the Company is operating and owns two nuclear generating units known as Comanche Peak I and Comanche Peak II (the "Units"); and

WHEREAS, the Company desires to establish pursuant to this Agreement four trusts under a single trust agreement, two of which qualify as Nuclear Decommissioning Reserve Funds under Section 468A of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder ("Section 468A"), or any corresponding section or sections of any future United States internal revenue statute (the "Code") and the regulations thereunder (the "Qualified Funds") with one Qualified Fund relating to each Unit, and two of which do not so qualify (the "Nonqualified Funds") with one Nonqualified Fund relating to each Unit; (collectively, the "Funds");

WHEREAS, the Public Utility Commission of Texas ("PUC") has permitted T&D Co., on behalf of the Company, to include in its cost of service for ratemaking purposes certain amounts to be contributed by the Company, or by T&D Co. on behalf of the Company, to decommissioning funds in order to provide monies for the Company's decommissioning costs with respect to the Units; and

WHEREAS, the execution and delivery of this Agreement have been duly authorized by each of the Company and the Trustee and all things necessary to make this Agreement a valid and binding agreement by each of the Company and the Trustee have been done.

NOW, THEREFORE, this Agreement evidences that, in order for the creation of the Funds and the making of payments therefrom and the performance of the covenants of the Company and the Trustee set forth herein, the Company does hereby sell, assign, transfer, set over and pledge unto the Trustee, and to its successors in the trust and its assigns, all of the Company's right, title and interest in and to any and all cash and property herewith and hereafter contributed to the Funds, subject to the provisions of Article V hereof and Section 4 of the Special Terms of the Qualified Nuclear

Decommissioning Reserve Funds, attached hereto as Exhibit A (the "Special Terms") and to have and to hold the same in trust for the exclusive purpose of providing funds for the decommissioning of the Units in order to satisfy the Company's liability in connection therewith, to pay the administrative costs and other incidental expenses of the Funds, and to make certain investments, all as hereinafter provided.

## ARTICLE I.

### **Purposes of the Funds; Contributions**

**Section 1.01. Establishment of the Funds.** The Funds shall be maintained separately at all times in the United States as the Nonqualified Funds and the Qualified Funds pursuant to this Agreement, each as a trust under applicable state law. The Company intends that the Qualified Funds shall qualify as Nuclear Decommissioning Reserve Funds under Section 468A of the Code.

**Section 1.02. Purposes of the Funds.** The Funds are established for the exclusive purpose of providing funds for the decommissioning of the Units and to constitute Qualified and Nonqualified nuclear decommissioning reserve funds and to comply with any applicable orders or requirements of the PUC and the United States Nuclear Regulatory Commission (the "NRC"). The Nonqualified Funds shall accumulate all contributions (whether from the Company or others) which do not satisfy the requirements for contributions to the Qualified Funds pursuant to Section 2 of the Special Terms. The Qualified Funds shall accumulate all contributions which satisfy the requirements of Section 2 of the Special Terms. The Qualified Funds shall also be governed by the provisions of the Special Terms, which provisions shall take precedence over any provisions of this Agreement construed to be in conflict therewith. The duties of the Trustee provided herein shall apply equally to the corpus of, as well as any interest earned on, the Funds. Any and all interest earned, from time to time, on the corpus of any of the Funds shall become part of the corpus of the respective Funds. The duties of the Trustee provided herein shall apply equally to the corpus of the Funds and to any and all interest earned on the corpus of any of the Funds. None of the assets of the Funds shall be subject to attachment, garnishment, execution or levy in any manner for the benefit of creditors of the Company, except to the extent a Certificate of Disbursement, substantially in the form attached as Exhibit B, has been signed by the Company with respect to such assets of the Funds.

**Section 1.03. Contributions to the Funds.** The assets of the Funds shall be contributed by or on behalf of the Company from time to time. The Company shall designate into which of the Qualified Funds or Nonqualified Funds the assets shall be contributed; provided, however, that the Company shall, to the extent permitted under Section 468A of the Code and the regulations promulgated thereunder, make such

contributions to the Qualified Funds. Subject to the foregoing limitations and other relevant limitations promulgated from time to time by the PUC or other authoritative entities, the Company shall have sole discretion as to whether cash payments are allocated to the Qualified Funds or the Nonqualified Funds. Contributions of property other than cash shall be allocated to the Nonqualified Funds.

## ARTICLE II.

### CONCERNING THE TRUSTEE

**Section 2.01. Limitation on Use of Assets.** The assets of each Fund shall be used in the first instance (a) to satisfy, in whole or in part, any expenses or liabilities incurred by or on behalf of the Company with respect to the decommissioning of the Unit to which each Fund relates, including expenses incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all expenses incurred after the actual decommissioning occurs, such as physical security and radiation monitoring expenses (the "Decommissioning Costs"), (b) to pay the administrative costs and other incidental expenses of each Fund separately from the assets of such Fund, and (c) to invest in securities and investments as directed by the investment manager(s) pursuant to Section 3.02(a) or the Trustee pursuant to Section 3.01(b), except that all assets of the Qualified Funds must be invested in Permissible Assets as defined in the Special Terms. Use of the assets of the Qualified Funds shall be further limited by the provisions of the Special Terms and must be used as authorized by Section 468A of the Code and the regulations thereunder.

**Section 2.02. Certification for Decommissioning Costs.** If assets of a Fund are required to satisfy Decommissioning Costs, the Company shall present a certificate substantially in the form attached hereto as Exhibit B to the Trustee signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting payment from the Funds.

The Trustee shall retain at least one counterpart of all copies of such certificates (including attachments) and related documents received by it pursuant to this Article II.

Except for disbursements for Administrative Costs as provided for in Section 2.03, no disbursements or payments from the Funds shall be made by the Trustee unless the Trustee has first provided thirty days' prior written notice of such disbursement or payment to the NRC and the Trustee has not received written notice of an objection from the NRC Director, Office of Nuclear Reactor Regulation, by the later of: (1) the date that is thirty days after the giving of such notice; or (2) the date of disbursement or payment.

The Company shall have the right to enforce payments from the Funds upon compliance with the procedures set forth in this Section 2.02.

**Section 2.03. Administrative Costs.** The Trustee shall pay, or reimburse the Company for, as directed by the Company, the administrative costs and other incidental expenses of the Nonqualified Funds, including all federal, state, and local taxes, if any imposed on or with respect to the Nonqualified Funds, legal expenses, accounting expenses, actuarial expenses and trustee expenses, from the assets of the Nonqualified Funds and shall pay, as directed by the Company, the administrative costs and other incidental expenses of the Qualified Funds as defined in the Special Terms, from the assets of the Qualified Funds.

**Section 2.04. Payments between the Funds.** The Trustee shall make payments between Qualified Funds or between Nonqualified Funds provided such payments are in accordance with applicable provisions contained herein and are pursuant to written instructions from the Company or (i) from a Qualified Fund to a Nonqualified Fund provided such payments are in accordance with Section 4 of the Special Terms or (ii) from a Nonqualified Fund to a Qualified Fund provided such payments are in cash and are in accordance with the contribution limitations set forth in Section 2 of the Special Terms, as the case may be, upon presentation by the Company of a certificate substantially in the form of Exhibit C hereto executed by the Company instructing the Trustee to make any such payments. The Trustee shall be fully protected in relying upon such certificate.

### **ARTICLE III.**

#### **CONCERNING THE TRUSTEE**

**Section 3.01. Authority of Trustee.** The Trustee hereby accepts the trusts created under this Agreement. The Trustee shall have the authority and discretion to manage and control the Funds to the extent provided in this Agreement but does not guarantee the Funds in any manner against investment loss or depreciation in asset value or guarantee the adequacy of the Funds to satisfy the Decommissioning Costs. The Trustee shall not be liable for the making, retention or sale of any asset of the Qualified Funds which qualifies as a Permissible Asset, as defined in the Special Terms, nor shall the Trustee be responsible for any other loss to or diminution of the Funds, or for any other loss or damage which may result from the discharge of its duties hereunder, except if such loss or diminution is the result of the Trustee's failure to perform its responsibilities hereunder in the same manner as would a prudent man, acting in a like capacity and familiar with such matters, in the conduct of an enterprise of a similar nature. Notwithstanding the foregoing or any provision of this Agreement seemingly to the contrary, the Trustee shall have a continuing duty to review the Funds to assure

compliance with the investment guidelines provided in this Agreement and otherwise provided from time to time by the Company, as well as with applicable federal, state or local statutes, regulations, rules or ordinances. In no event shall the Trustee's power and authority provided for herein exceed the power and authority which may be granted to trustees under the Texas Trust Cost.

**Section 3.02. Investment of Funds.** (a) The Company shall have the authority to appoint one or more investment managers (which may include the Company) who shall have the power to direct the Trustee in investing the assets of the Funds. Notwithstanding the appointment of an investment manager to direct the investment of the Funds or any other provision herein, the Trustee, through its computerized monitoring system and otherwise, shall review all investment instructions from the investment manager and shall carry out only those investment instructions which would not cause a violation of Section 468A of the Code (or any successor provision) or the regulations promulgated thereunder. To the extent that the Company chooses to exercise this authority, it shall so notify the Trustee and instruct the Trustee in writing to separate into a separate account those assets the investment of which will be directed by each investment manager. The Company shall designate in writing the person or persons who are to represent any such investment manager in dealings with the Trustee. Upon the separation of the assets in accordance with the Company's instructions, the Trustee, as to those assets while so separated, shall be released and relieved of all investment duties, investment responsibilities and investment liabilities normally or statutorily incident to a trustee; provided, however, that the Trustee shall not be relieved of the responsibility of ensuring that assets of the Qualified Funds are invested solely in Permissible Assets, as defined in the Special Terms. The Trustee shall retain all other fiduciary duties with respect to assets the investment of which is directed by investment managers. The Trustee, investment manager, or anyone else directing the investments made in the Funds shall adhere to the investment guidelines provided by the Company incorporating the standards for such investments as set forth in PUC Substantive Rule 25.301 (16 Tex. Admin. Code 25.301), as such section may be amended, and any successors thereto.

(b) To the extent that the investment of assets of the Funds is not being directed by one or more investment managers under Section 3.02(a), the Trustee shall hold, invest, and reinvest the funds delivered to it hereunder as it in its sole discretion deems advisable, subject to all of its obligations and liabilities set forth in this Agreement and to the restrictions set forth herein for investment of the assets of the Qualified Funds. As a part, but not in limitation, of the restrictions referenced in the preceding sentence, the Trustee shall not: (i) lend the Funds, or any part thereof, with itself, its officers or its directors; or (ii) invest or reinvest the Funds, or any part thereof, in instruments issued by the Trustee, except for time deposits, demand deposits or money market accounts of the Trustee.

(c) Regardless of the person directing investment, any assets of the Qualified Funds shall be invested solely in Permissible Assets as defined in, and required by, the Special Terms, and shall be accumulated, invested, and reinvested in like manner. Upon written consent of the Company, assets of a Qualified Fund relating to a Unit may be pooled, but only with the assets of the Qualified Fund relating to the other Unit, and assets of a Nonqualified Fund relating to a Unit may be pooled, but only with the assets of the Nonqualified Fund relating to the other Unit, provided that the following conditions are satisfied: (i) the trustee of each Fund must separately account for the contributions, earnings, expenses, and distributions of such Fund; (ii) the earnings and expenses must be reasonably apportioned among such Funds; (iii) the books and records of such Funds must enable the Internal Revenue Service to verify that the requirements of Section 468A of the Code and the regulations thereunder are satisfied; and (iv) the book and tax allocations of the pooling arrangement are made in compliance with Code section 704 and regulations thereunder. Any pooling arrangement undertaken as permitted in this section can be terminated at any time by any Fund. No Fund in such a pooling arrangement may substitute for itself in such arrangement any person that is not a member of that pooling arrangement. Notwithstanding the foregoing, the provisions of this Section 3.02(c) shall not limit the Trustee's authority to invest in permissible common or collective trust funds.

**Section 3.03. Prohibition Against Self-Dealing.** Notwithstanding any other provisions in this Agreement, the parties to this Agreement shall not engage in any act of self-dealing as defined in Section 468A(e)(5) of the Code, and Treas. Reg. §1.468A-5(b) or any corresponding future Treasury Regulation.

**Section 3.04. Compensation.** The Trustee shall be entitled to receive out of the Funds reasonable compensation for services rendered by it, as well as expenses necessarily incurred by it in the execution of the trust hereunder, provided such compensation and expenses qualify as administrative costs and other incidental expenses of the Qualified Funds, as defined in the Special Terms, with respect to any payment of compensation and expenses from the Qualified Funds.

**Section 3.05. Books of Account.** The Trustee shall keep separate true and correct books of account with respect to each of the Funds, which books of account shall at all reasonable times be open to inspection by the Company or its duly appointed representatives. The Trustee shall, upon written request of the Company, permit government agencies, such as, but not limited to, the PUC or the Internal Revenue Service, to inspect the books of account of the Funds. The Trustee shall furnish to the Company by the tenth business day of each month a statement for each Fund showing, with respect to the preceding calendar month, the balance of assets on hand at the beginning of such month, all receipts, investment transactions, and disbursements which took place during such month and the balance of assets on hand at the end of such

month. All records and accounts maintained by the Trustee with respect to the Funds shall be preserved for such period as may be required under any applicable law. Upon the expiration of any such required retention period, the Trustee shall have the right to destroy such records and accounts after first notifying the Company in writing of its intention and transferring to the Company any records and accounts requested by the Company.

**Section 3.06. Tax Returns and Other Reports.** The Trustee shall prepare and timely file all federal, state and local income or franchise tax returns or other reports (including estimated tax returns and information returns) as may be required from time to time with respect to the Funds, and the Company agrees to provide the Trustee in a timely manner with any information within its possession, and to cause any investment manager(s) appointed by the Company to provide the Trustee with any information in its possession, which is necessary to such filings. The Trustee shall prepare and submit to the Company in a timely manner all information requested by the Company regarding the Funds required to be included in the Company's federal, state and local income tax returns or any other reports to government authorities (including estimated tax returns and information returns). The Trustee may employ independent certified public account[ants] or other tax counsel to prepare or review such returns and reports. The Trustee agrees to sign any tax returns or other reports where required by law to do so or arising out of the Trustee's responsibilities hereunder, and to remit from the trusts appropriate payments or deposits of federal, state and local income or franchise taxes directly to the taxing agencies or authorized depositories in a timely manner. Notwithstanding any provision in this Agreement seemingly to the contrary, any interest or penalty charges assessed against the Funds pursuant to Subtitle F, Chapters 67 or 68 of the Code and regulations thereunder, or pursuant to any similar state or local tax provisions, as a result of the Trustee's failure to comply with this Section 3.06 shall be borne by the Trustee and not the Funds. The Trustee agrees to notify the Company in writing within ten (10) days of receiving notice of the commencement of any audit of any Fund's federal, state or local tax returns or any other audit of any Funds by any governmental authority, and to participate with the Company on behalf of the Funds and such audits and related inquiries. The Trustee further agrees to provide the Company with any additional information in its possession regarding the Funds which may be requested by the Company to be furnished in an audit of the Company's federal, state or local tax returns.

**Section 3.07. Reliance on Documents.** The Trustee, upon receipt of documents furnished to it by the Company pursuant to the provisions of this Agreement, shall examine the same to determine whether they conform to the requirements thereof. The Trustee acting in good faith may conclusively rely, as to the truth of statements and the correctness of opinions expressed in any certificate or other documents conforming to the requirements of this Agreement. If the Trustee in the administration of the Funds,

shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action hereunder, such matter (unless evidence in respect thereof is otherwise specifically prescribed hereunder) may be deemed by the Trustee to be conclusively provided or established by a certificate signed by the Chairman of the Board, the President or any Vice President of the Company and delivered to the Trustee. The Trustee shall have no duty to inquire into the validity, accuracy or relevancy of any statement contained in any certificate or document nor the authorization of any party making such certificate or delivering such document and the Trustee may rely and shall be protected in acting or refraining from acting upon any such written certificate or document furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not, however, be relieved of any obligation to refrain from self-dealing as provided in Section 3.03 hereof or from ensuring that all assets of the Qualified Funds are invested solely in Permissible Assets as defined in the Special Terms.

**Section 3.08. Liability and Indemnification.** The Trustee shall not be liable for any action taken by it in good faith and without negligence and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement and may consult with counsel of its own choice (including counsel for the Company) and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and without negligence and in accordance with the opinion of such counsel, provided, however, that the Trustee shall be liable for any consequences resulting from investing assets of the Qualified Funds in other than Permissible Assets or from self-dealing as provided in Section 3.03 hereof. Provided indemnification does not result in self-dealing under Section 3.03 hereof or in a deemed contribution to the Qualified Funds in excess of the limitation on contributions under Section 468A of the Code and the regulations thereunder, the Company hereby agrees to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence on the part of the Trustee, arising out of or in connection with its entering into this Agreement and carrying out its duties hereunder, including the costs and expenses of defending itself against any claim of liability in the premises, provided such loss, liability or expense does not result from investing assets of the Qualified Funds in other than Permissible Assets as defined in the Special Terms or from self-dealing under Section 3.03 hereof, and provided further, that no such costs or expenses shall be paid if the payment of such costs or expenses is prohibited by Section 468A of the Code or the regulations thereunder.

**Section 3.09. Resignation and Removal of Trustee.** The Trustee may resign at any time upon sixty (60) days written notification to the Company. The Company may remove the Trustee for any reason at any time upon thirty (30) days written notification to the Trustee. If a successor Trustee shall not have been appointed within the above time limits, the Trustee or Company may apply to any court of competent jurisdiction to

appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed and shall have accepted its appointment as provided below. If the Trustee shall be adjudged bankrupt or insolvent, a vacancy shall thereupon be deemed to exist in the office of Trustee and a successor shall thereupon be appointed by the Company. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company an appropriate written instrument accepting such appointment hereunder, subject to all the terms and conditions hereof, and thereupon such obligations of its predecessor in trust hereunder, with like effect as if originally named as Trustee hereunder. The predecessor Trustee shall upon written request of the Company, and payment of all fees and expenses, deliver to the successor Trustee the corpus of the Funds and perform such other acts as may be required or be desirable to vest and confirm in said successor Trustee all right, title and interest in the corpus of the Fund to which it succeeds.

**Section 3.10. Merger of Trustee.** Any corporation into which the Trustee may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Trustee shall be a party, or any corporation to which the corporate trust functions of the Trustee may be transferred, shall be the successor Trustee under this Agreement without the necessity of executing or filing any additional acceptance of this Agreement or the performance of any further act on the part of any other parties hereto.

#### **ARTICLE IV.**

#### **AMENDMENTS**

The Company may revoke or amend, consistent with the purposes of the Funds, this Agreement from time to time, provided such amendment does not cause the Qualified Funds to fail to qualify as a Nuclear Decommissioning Reserve Fund under, nor cause the provisions of the Agreement with respect to the Qualified Funds to violate, Section 468A of the Code or the regulations thereunder. Each Qualified Fund was established and shall be maintained for the purpose of qualifying as a Nuclear Decommissioning Reserve Fund under Section 468A of the Code and the regulations thereunder. If a Qualified Fund would fail to so qualify because of any provisions contained in this Agreement, this Agreement shall be deemed to be amended as necessary to conform with the requirements of Section 468A and the regulations thereunder. If a proposed amendment shall affect the responsibility of the Trustee, such amendment shall not be considered valid and binding until such time as the amendment is executed by the Trustee. Notwithstanding any provision herein to the contrary, this Agreement cannot be modified in any material respect without first providing thirty days' prior written notice to the NRC Director, Office of Nuclear Reactor Regulation.

## ARTICLE V.

### TERMINATION

**Section 5.01. Trusts Irrevocable.** Subject to the provisions of this Agreement regarding amendments of this Agreement, the trusts created hereunder shall be irrevocable.

**Section 5.02. Termination of Trusts.** The trusts created hereunder shall terminate only upon the earliest of: (i) the termination by the NRC of the licenses covering the Units; (ii) the sale or other disposition by the Company of all of its right, title and ownership interest in and to the Units; and (iii) the date which is one day prior to twenty-one (21) years after the death of the last survivor of (x) each person who was an officer of the Company or of the Company's affiliated companies on July 10, 1990, and (y) each of their descendants born on or prior to July 10, 1990. Upon termination of the trust(s), the assets of the terminated trust(s) shall be distributed to the Company or transferred to another financial assurance mechanism which is authorized by the NRC, as may be directed by the Company. The Company shall provide the Trustee with notification that the trust(s) has terminated and with directions for distribution of the assets of the terminated trust(s).

**Section 5.03. Termination of Qualified Funds.** A Qualified Fund shall terminate upon the earlier of either (i) substantial completion of decommissioning of the Unit, as defined in the Special Terms, to which such Qualified Fund relates; or (ii) disqualification of the Qualified Fund by the Internal Revenue Service as provided in Treas. Reg. §1.468A-5(c) or any corresponding future Treasury Regulation; or (iii) the effective date of a resolution adopted by the Board of Directors of the Company terminating the Qualified Fund provided, however, that such effective date shall be no earlier than the date of approval by the NRC, if applicable; or (iv) twenty-one (21) years after the last survivor of (x) each person who was an officer of the Company or of the Company's affiliated companies on July 10, 1990, and (y) each of their descendants born on or prior to July 10, 1990; or (v) to the extent required under Section 468A of the Code or any regulation promulgated thereunder, upon the Company's sale or other disposition of all or a portion of the Unit to which such Qualified Fund relates.

## ARTICLE VI.

### MISCELLANEOUS

**Section 6.01. Binding Agreement.** All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors and assigns.

**Section 6.02. Notices.** All notices and communications hereunder shall be in writing and shall be deemed to be duly given on the date mailed if sent by registered mail, return receipt requested, as follows:

MELLON BANK, N.A.  
Room 151-3346  
One Mellon Bank Center  
Pittsburgh, PA 15258

\_\_\_\_\_  
1601 Bryan Street  
Dallas, TX 75201  
Attention: \_\_\_\_\_

or at such other address as any of the above may have furnished to the other parties in writing by registered mail, return receipt requested.

**Section 6.03. Governing Law.** The trusts created under this Agreement are Texas trusts and all questions relating to or governing the trusts, the Funds or this Agreement shall, to the extent they are not preempted by Federal law, be determined in accordance with the laws of the State of Texas.

**Section 6.04. Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**Section 6.05. Counterparts.** This Agreement may be executed in several counterparts, and all such counterparts executed and delivered, each an original, shall constitute but one and the same instrument.

**Section 6.06. Entire Agreement.** This Agreement sets forth the entire understanding and agreement among the parties with respect to the subject matter hereof and supersedes and replaces any prior understanding, agreement or statement (written or oral).

IN WITNESS WHEREOF, the parties hereto, each intending to be legally bound hereby, have hereunto set their hands and seals as of the day and year first above written.

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_ By:

**ATTEST:**

**MELLON BANK, N.A.**

\_\_\_\_\_  
\_\_\_\_\_ By:

**EXHIBIT A**  
**SPECIAL TERMS OF THE QUALIFIED**  
**NUCLEAR DECOMMISSIONING RESERVE FUND**

The following Special Terms of the Qualified Nuclear Decommissioning Reserve Funds (the "Qualified Funds") (hereinafter referred to as the "Special Terms") will apply for purposes of the Nuclear Decommissioning Trust Agreement, dated \_\_\_\_\_ between \_\_\_\_\_ (the "Company") and Mellon Bank, N.A. (the "Trustee") (the "Agreement").

**Section 1. Definitions.** The following terms as used in the Special Terms shall, unless the context clearly indicates otherwise, have the following respective meanings:

(a) "Administrative costs and other incidental expenses of the Qualified Funds" shall mean all ordinary and necessary expenses incurred in connection with the operation of the Qualified Funds, as provided in Treas. Reg. §1.468A-5(a)(3)(ii)(A) or any corresponding future Treasury Regulation, including without limitation, federal, state, and local income tax, legal expenses, accounting expenses, actuarial expenses and trustee expenses.

(b) "Qualified Decommissioning Costs" shall mean all expenses otherwise deductible for federal income tax purposes, without regard to Section 280B of the Internal Revenue Code of 1986, as amended, or any corresponding section or sections of any future United States internal revenue statute (the "Code"), incurred (or to be incurred) in connection with the entombment, decontamination, dismantlement, removal and disposal of the structures, systems and components of a Unit when it has permanently ceased the production of electric energy, excluding any costs incurred for the disposal of spent nuclear fuel, as provided in Treas. Reg. §1.468A-1(b)(5) or any corresponding future Treasury Regulation. Such term includes all otherwise deductible expenses to be incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses, and all otherwise deductible expenses to be incurred with respect to the Unit after the actual decommissioning occurs, such as physical security and radiation monitoring expenses.

(c) "Obligations of a state or local government" shall mean obligations of a state or local government unit the interest on which is exempt from tax under Section 103(a) of the Code and regulations thereunder.

(d) "Permissible assets" shall mean assets that the Qualified Funds are permitted to own by the Code and by the PUC, except that:

(i) other than as permitted by 16 Tex. Admin. Code 25.301, investments in the securities or other obligations of [name of licensee] or its affiliates, successors, or assigns shall be prohibited; and

(ii) other than investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants are prohibited.

(e) "Public debt securities of the United States" shall mean Treasury bills, Treasury notes, Treasury bonds and savings bonds.

(f) "PUC" shall mean the Texas Public Utility Commission or any successor governmental authority.

(g) "Substantial completion of decommissioning" shall mean the date that the maximum acceptable radioactivity levels mandated by the U.S. Nuclear Regulatory Commission with respect to a decommissioned nuclear power plant are satisfied by the Units; provided, however, that if the Company requests a ruling from the Internal Revenue Service, the date designated by the Internal Revenue Service as the date on which substantial completion of decommissioning occurs shall govern; provided, further, that the date on which substantial completion of decommissioning occurs shall be in accordance with Treas. Reg. §1.468A-5(d)(2) or any corresponding future Treasury Regulation.

(h) "Time or demand deposits" shall mean checking accounts, savings accounts, certificates of deposit or other time or demand deposits, excluding common or collective trust funds.

**Section 2. Contributions to the Qualified Funds.** The assets of the Qualified Funds shall be contributed by the Company from time to time in cash. The Trustee shall not accept any contributions for the Qualified Funds other than cash payments with respect to which the Company is allowed a deduction under Section 468A of the Code and Treas. Reg. §1.468A-2(a) or any corresponding future Treasury Regulations. The Company hereby represents that all contributions (or deemed contributions) by the Company to the Qualified Funds in accordance with the provisions of Section 1.03 of the Agreement shall be deductible under Section 468A of the Code and Treas. Reg. §1.468A-2(a) or any corresponding future Treasury Regulation or shall be withdrawn pursuant to Section 4 hereof.

**Section 3. Limitation on Use of Assets.** The assets of each Qualified Fund shall be used exclusively with respect to the Unit for which the Fund is established as follows:

(a) To satisfy, in whole or in part, the liability of the Company for Qualified Decommissioning Costs through payments by the Trustee pursuant to Article II of the Agreement; and

(b) To pay the administrative costs and other incidental expenses of the Qualified Funds; and

(c) To the extent the assets of the Qualified Funds are not currently required for (a) and (b) above, to invest directly in Permissible Assets.

**Section 4. Withdrawals by the Company.** If the Company's contribution (or deemed contribution) to either Qualified Fund in any one year exceeds the amount deductible under Section 468A of the Code and the regulations thereunder, the Company may withdraw such excess contribution from such Qualified Fund or instruct the Trustee to withdraw such excess contribution from such Qualified Fund and pay such excess contribution to the other Qualified Fund or to a Nonqualified Fund, as defined in the Agreement, pursuant to Section 2.04 of the Agreement, provided any such withdrawal occurs on or before the date prescribed by law (including extensions) for filing the federal income tax return of the Fund for the taxable year to which the excess contribution relates for withdrawals pursuant to Treas. Reg. §1.468A-5(c)(2) and 1.468A-2(f)(2) and occurs on or before the later of the date prescribed by law (including extensions) for filing the federal income tax return of the Fund for the taxable year to which the excess contribution relates or the date that is thirty (30) days after the date that the Company receives the ruling amount for such taxable year for withdrawals pursuant to Treas. Reg. 31.468A-3(j)(3). If the Company determines that withdrawal pursuant to this Section 4 is appropriate, the Company shall present a certificate so stating to the Trustee signed by its Chairman of the Board, its President or one of its Vice Presidents and its Treasurer or an Assistant Treasurer, requesting such withdrawal. The certificate shall be substantially in the form attached as Exhibit C to the Agreement for transfers to a Nonqualified Fund as provided in Section 2.04 of the Agreement and substantially in the form of Exhibit D to the Agreement for withdrawals by the Company.

**Section 5. Taxable Year/Tax Returns.** The accounting and taxable year for each Qualified Fund shall be the taxable year of the Company for federal income tax purposes. If the taxable year of the Company shall change, the Company shall notify the Trustee of such change and the accounting and taxable year of each Qualified Fund must change to the taxable year of the Company as provided in Treas. Reg. §1.468A-4(c)(1) or any corresponding future Treasury Regulation. The Company shall assist the Trustee in complying with any requirements under Section 442 of the Code and Treas. Reg. §1.442-1.

**EXHIBIT B**

**DISBURSEMENT CERTIFICATE FOR PAYMENT  
OF DECOMMISSIONING COSTS**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.02 of the Nuclear Decommissioning Trust Agreement, dated \_\_\_\_\_, between Mellon Bank, N.A. (the "Trustee") and \_\_\_\_\_ (the "Company") (the "Agreement"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement. In your capacity as Trustee, you are hereby authorized and requested to disburse out of the Funds to \_\_\_\_\_ the amount of \$ \_\_\_\_\_ from the Qualified Fund for Unit \_\_\_\_\_ and the amount of \$ \_\_\_\_\_ from the Nonqualified Fund for Unit \_\_\_\_\_ for the payment of the Decommissioning Costs which have been incurred with respect to such Unit. With respect to such Decommissioning Costs, the Company hereby certifies as follows:

1. The amount to be disbursed pursuant to this Certificate shall be solely used for the purpose of paying the Decommissioning Costs described in Schedule A hereto.
2. None of the Decommissioning Costs described in Schedule A hereto have previously been made the basis of any certificate pursuant to Section 2.02 of the Agreement.
3. The amount to be disbursed from the Qualified Fund pursuant to this Certificate shall be used solely for the purpose of paying Qualified Decommissioning Costs as defined in the Special Terms.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT C**

**CERTIFICATE FOR TRANSFER  
BETWEEN A QUALIFIED FUND  
AND A NONQUALIFIED FUND**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 2.04 of the Nuclear Decommissioning Trust Agreement, \_\_\_\_\_, between Mellon Bank, N.A. (the "Trustee") and \_\_\_\_\_ (the "Company") (the "Agreement"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement. In your capacity as Trustee, you are hereby authorized and instructed as follows (complete one):

To pay \$ \_\_\_\_\_ in cash from the Nonqualified Fund for Unit \_\_\_\_\_ to the Qualified Fund for Unit \_\_\_\_\_; or

To pay \$ \_\_\_\_\_ in cash from the Qualified Fund for Unit \_\_\_\_\_ to the Nonqualified Fund for Unit \_\_\_\_\_.

With respect to such payment, the Company hereby certifies as follows:

1. Any amount stated herein to be paid from the Nonqualified Fund for Unit \_\_\_\_\_ to the Qualified Fund for Unit \_\_\_\_\_ is in accordance with the contribution limitations applicable to the Qualified Fund for Unit \_\_\_\_\_ set forth in Section 2 of the Special Terms and the limitations of Section 2.04 of the Agreement.
2. Any amount stated herein to be paid from the Qualified Fund for Unit \_\_\_\_\_ to the Nonqualified Fund for Unit \_\_\_\_\_ is in accordance with Section 4 of the Special Terms. The Company has determined that such payment is appropriate under the standards of Section 4 of the Special Terms.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_.

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT D**

**CERTIFICATE FOR WITHDRAWAL  
OF EXCESS CONTRIBUTIONS  
FROM A QUALIFIED FUND**

**[Name of Trustee],  
as Trustee  
[Address]**

This Certificate is submitted pursuant to Section 4 of the Special Terms attached as Exhibit A to the Nuclear Decommissioning Trust Agreement, dated \_\_\_\_\_, between Mellon Bank, N.A. (the "Trustee") and \_\_\_\_\_ (the "Company") (the "Agreement"). All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement. In your capacity as Trustee, you are hereby authorized and instructed to pay \$\_\_\_\_\_ in cash to the Company from the Qualified Fund for Unit \_\_\_\_\_. With respect to such payment, the Company hereby certifies that withdrawal pursuant to Section 4 of the Special Terms is appropriate and that \$\_\_\_\_\_ constitutes an excess contribution pursuant to such Section.

IN WITNESS WHEREOF, the undersigned have executed this Certificate in the capacity shown below as of \_\_\_\_\_.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

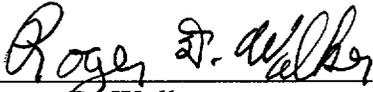
**ATTACHMENT 8**

**10 CFR 2.790 AFFIDAVIT OF ROGER D. WALKER**

**AFFIDAVIT OF ROGER D. WALKER**

I, Roger D. Walker, Regulatory Affairs Manager at TXU Electric Company ("TXU Electric"), do hereby affirm and state:

1. I am authorized to execute this affidavit on behalf of TXU Electric.
2. TXU Electric is providing information in support of its Application for Order Consenting to License Transfers and Approving Conforming Administrative License Amendments. The documents being provided in Attachment 6A contain financial projections related to the ownership and operation of TXU Electric's generation assets, including the Comanche Peak Steam Electric Station, Units 1 and 2 ("CPSES"). These documents constitute proprietary commercial and financial information that should be held in confidence by the NRC pursuant to the policy reflected in 10 CFR §§ 2.790(a)(4) and 9.17(a)(4), because:
  - i. This information is and has been held in confidence by TXU Electric.
  - ii. This information is of a type that is held in confidence by TXU Electric and there is a rational basis for doing so because the information contains sensitive financial information concerning the projected revenues and operating expenses of TXU Electric and its successors and affiliates.
  - iii. This information is being transmitted to the NRC in confidence.
  - iv. This information is not available in public sources and could not be gathered readily from other publicly available information.
  - v. Public disclosure of this information would create substantial harm to the competitive position of TXU Electric and its successors and affiliates by disclosing their internal financial projects.
3. Accordingly, TXU Electric requests that the designated documents be withheld from public disclosure pursuant to the policy reflected in 10 CFR §§ 2.790(a)(4) and 9.17(a)(4).

  
\_\_\_\_\_  
Roger D. Walker  
Regulatory Affairs Manager

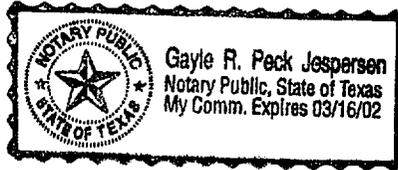
STATE OF TEXAS  
COUNTY OF Somervell

Subscribed and sworn to before me, a Notary Public, in and for the County and State  
above named, this 19th day of June, 2001.

Gayle R. Peck Jespersen

My commission expires:

\_\_\_\_\_



**ATTACHMENT 9**

**TXU ELECTRIC BUSINESS SEPARATION PLAN**