

August 14, 2001

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

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES), UNITS 1 AND 2 -  
NOTICE OF CONSIDERATION OF APPROVAL OF TRANSFER OF FACILITY  
OPERATING LICENSES AND CONFORMING AMENDMENTS, AND  
OPPORTUNITY FOR A HEARING AND NOTICE OF CONSIDERATION OF  
ISSUANCE OF AMENDMENTS TO FACILITY OPERATING LICENSES,  
PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION  
DETERMINATION, AND OPPORTUNITY FOR A HEARING (TAC  
NOS. MB2203 AND MB2204)

Dear Mr. Terry:

Enclosed is a copy of a "Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments, and Opportunity for a Hearing" related to the application dated June 19, 2001, from TXU Electric. This application, filed pursuant to 10 CFR 50.80 and 10 CFR 50.90, seeks approval of the direct transfer of Facility Operating Licenses Nos. NPF-87 and NPF-89 for CPSES, Units 1 and 2, respectively, and conforming amendments. The direct transfer would be to an as yet unnamed new company, herein identified as TXU Genco, TLP.

Also enclosed is a "Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," related to the deletion of the antitrust conditions, contained in Appendix C of NPF-87 and NPF-89, as proposed in the application dated June 19, 2001.

These notices are being forwarded to the Office of the Federal Register for publication.

Sincerely,

*/RA/*

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

Docket Nos. 50-445 and 50-446

Enclosures: As stated

cc w/encl: See next page

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Docket Nos. 50-445 and 50-446

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ACCESSION NO.: ML011840352

\*See previous concurrence

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Comanche Peak Steam Electric Station

cc:

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P. O. Box 1002  
Glen Rose, TX 76043

George L. Edgar, Esq.  
Morgan, Lewis & Bockius  
1800 M Street, N.W.  
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Honorable Dale McPherson  
County Judge  
P. O. Box 851  
Glen Rose, TX 76043

Office of the Governor  
ATTN: John Howard, Director  
Environmental and Natural  
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UNITED STATES NUCLEAR REGULATORY COMMISSION  
TXU ELECTRIC  
DOCKET NOS. 50-445 AND 50-446  
COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2  
NOTICE OF CONSIDERATION OF APPROVAL OF TRANSFER OF  
FACILITY OPERATING LICENSES AND  
CONFORMING AMENDMENTS, AND OPPORTUNITY FOR A HEARING

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License Nos. NPF-87 and NPF-89 for Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively, currently held by TXU Electric, as owner and licensed operator of CPSES, Units 1 and 2. The transfer would be to an as yet unnamed new company, herein identified as TXU Genco, TLP. TXU Electric proposes to provide NRC with the actual name of this entity no later than seven days prior to issuance of any conforming amendments. The Commission is further considering amending the licenses for administrative purposes to reflect the proposed transfer, including replacing TXU Electric on the licenses with the new company name. TXU Electric also proposes a license amendment to delete the Antitrust Conditions in Appendix C of the CPSES, Units 1 and 2, Facility Operating Licenses, which is the subject of a separate *Federal Register* notice. CPSES, Units 1 and 2, are located in Somervell and Hood counties, Texas.

According to an application for approval filed by TXU Electric, TXU Genco, TLP would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of CPSES, Units 1

and 2. No physical changes to CPSES, Units 1 and 2, or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action, involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By September 10, 2001, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with

the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)-(2).

Requests for a hearing and petitions for leave to intervene should be served upon: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW, Washington, DC 20036; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held, and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by September 19, 2001, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and

Adjudications Staff, and should cite the publication date and page number of this *Federal Register* notice.

For further details with respect to this action, see the application dated June 19, 2001, a nonproprietary version of which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/ADAMS/index.htm>. If you do not have access to ADAMS or if there are problems accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or send an email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland this 14th day of August, 2001.

FOR THE NUCLEAR REGULATORY COMMISSION

*/RA/*

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

UNITED STATES NUCLEAR REGULATORY COMMISSIONTXU ELECTRICDOCKET NOS. 50-445 AND 50-446NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO  
FACILITY OPERATING LICENSE, PROPOSED NO SIGNIFICANT HAZARDS  
CONSIDERATION DETERMINATION, AND OPPORTUNITY FOR A HEARING

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendments to Facility Operating License (FOL) Nos. NPF-87 and NPF-89 issued to TXU Electric (the licensee) for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES), located in Somervell and Hood Counties, Texas.

The proposed amendments would delete the anti-trust conditions contained in Appendix C to the FOLs for CPSES. The licensee requested the proposed amendments in the context of its application for the Commission's consent to transfer the FOLs to an affiliated generation company. The transfer aspect of the licensee's application is the subject of a separate *Federal Register* notice. According to the application, the antitrust license conditions attached to the CPSES FOLs relate generally to transmission access, market power protection, or unique case-specific matters. In its application, the licensee states primarily that the antitrust license conditions relating to transmission access and market power are no longer necessary because of Texas's adoption of a comprehensive electric restructuring system that guards against anticompetitive practices in the transmission market as well as abuses in generation market power. The licensee also indicates that the changes in the electric industry render unnecessary the application of these antitrust conditions to entities, such as the proposed affiliated generation company transferee, that will sell power only in the deregulated wholesale

market. The licensee maintains that in addition to being unnecessary, the existing antitrust conditions could operate to thwart the intent and purpose of the Texas restructuring legislation. In addition, the licensee requests deletion of antitrust conditions that it maintains have expired by their own terms or were unique to a particular case-specific issue and are now no longer necessary.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

- 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 o[r] 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 o[r] 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.

The NRC staff has reviewed the licensee's analysis and notes that it does not agree that the requested amendments can properly be characterized as involving only "administrative changes." Nevertheless, based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied notwithstanding its view that the requested amendments do not involve only administrative changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments

received. Should the Commission take this action, it will publish in the *Federal Register* a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 19, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site <http://www.nrc.gov/NRC/CFR/index.html>. If there are problems in accessing the document, contact the Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board,

designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the

applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC

20555-0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036-5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 10 CFR 2.714(d).

For further details with respect to this action, see the application for amendments dated June 19, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

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FOR THE NUCLEAR REGULATORY COMMISSION

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Office of Nuclear Reactor Regulation