



**TXU Energy**  
 Comanche Peak Steam  
 Electric Station  
 P.O. Box 1002 (E01)  
 Glen Rose, TX 76043  
 Tel: 254 897 8920  
 Fax: 254 897 6652  
 lance.terry@txu.com

**C. Lance Terry**  
 Senior Vice President &  
 Principal Nuclear Officer

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April 26, 2002

ATTN: Rulemaking and Adjudications Staff  
 Secretary, U. S. Nuclear Regulatory Commission  
 Washington, DC 20555-0001

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)  
 Comments on Proposed Rule to Revise Fee Schedules  
 (67 Fed. Reg. 14818, March 27, 2002)

Gentlemen:

Attached are TXU Generation Company LP (TXU Energy) comments on the Nuclear Regulatory Commission's (NRC) proposed rule to revise fee schedules as published in the Federal Register on March 27, 2002 (67FR14818). TXU Energy supports the industry comments provided by the Nuclear Energy Institute (NEI), especially in two areas. First, TXU Energy strongly believes that the changes in the NRC's regulatory approach and the industry's continued excellent performance should result in a decrease in the NRC's overall budget and a decrease in attendant fees charged to licensees and applicants. The revised inspection, assessment and enforcement processes are far more objective and risk-informed, which should lead to more efficient use of agency resources while ensuring that licensees maintain a high level of operational safety.

The second area of concern is the aspect of the proposed rule that relates to fee waivers. The NRC has an opportunity through fee waivers to encourage regulatory improvements that could increase safety, provide more efficient processes, and reduce unnecessary regulatory burden. The proposed rule does not provide licensees the incentive to take advantage of this opportunity and may actually serve as a roadblock to such regulatory improvement.

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TXU Energy and the Strategic Teaming and Resource Sharing (STARS) partners have several significant examples in which the ability to waive NRC review fees was critical to establishing the business case in undertaking the projects. Specifically, Risk Informed In-Service Testing, Risk-informed Inservice Inspection (ISI), Power Uprate Exemption based on feedwater measurement accuracy, Graded Quality Assurance and the Special Treatment Exemption may not have been pursued without the ability to waive the fees. The NRC should reconsider any rule changes that would negatively impact the industry's ability to pursue these types of beneficial projects in the future.

#### New Fee Waiver Criteria

Frequently, licensees embark on "ground breaking" licensing actions. These actions may be in the form of an exemption request, a relief request, a license amendment request, etc. The NRC action, however, is an assessment which may contribute to generic regulatory activity and which may serve as a significant precedent for other licensees. Many safety improvements, burden reductions, improved processes, etc. result from such efforts. Such "pioneering" by licensees should be encouraged and supported by the NRC. The proposed rule does just the opposite.

The review costs may be significant for the first plant to request the action. Without some relief in the review fees, there is no incentive for a licensee to pilot an initiative. It would be less expensive for a licensee to let someone else lead and submit later, when the review costs would be significantly less. The end result would be a slowing down of the evolution/development of the overall regulatory process and some safety-beneficial changes may never occur.

#### Proposed Alternative Paragraph

A possible solution is to add a new paragraph to modify the criteria:

- (iv) To request action for a specific licensee(s), but which also has the potential to result in final products which could provide a useful precedent to additional licensees or which could contribute to the development of generic regulatory improvements.

The Statement for Consideration for this addition should make the following points:

- (A) The waiver of fees is intended primarily for lead licensee(s) for the type of activity being addressed,

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- An example of an activity that would meet this fee waiver criteria is an exemption request that pursues generically applicable risk-informed alternative to a currently deterministic regulatory requirement.
- An example of an activity that would not meet this requirement is a topical report submitted by or on behalf of an owners group and which would be limited in its applicability to the members of that group.

(B) It is preferable, but not required, that the request be made prior to or concurrent with the submittal for the special project to the NRC.

(C) The exemption request to waive fees shall include the amount to be waived, either in a dollar amount or as a percentage (up to and including 100%) of the normal fee.

In summary, the NRC should not miss this opportunity to establish rules which encourage the development of regulatory processes and requirements. The new restrictions as proposed in items [A] through [D] of sub-paragraph (iii) would impose new restrictions that would impede (and in some cases even stop) the continued development of improved regulations and regulatory processes.

TXU Energy appreciates the opportunity to comment on the NRC's proposed rule to revise fee schedules. If there are any questions regarding these comments, please contact me at 254-897-8233 or Dennis Buschbaum at 254-897-5851.

Sincerely,

TXU Generation Company LP

By: TXU Generation Management Company LLC,  
Its General Partner

C. L. Terry  
Senior Vice President and Principal Nuclear Officer

By:   
Roger D. Walker  
Regulatory Affairs Manager