

April 14, 2003

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

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2  
RE: THRESHOLD DETERMINATION CONCERNING CONVERTIBLE NOTES  
AND STOCK TRANSACTIONS (TAC NOS. MB7669 AND MB7670)

Dear Mr. Terry:

In a letter dated January 28, 2003, as supplemented by letter dated March 7, 2003, TXU Generation Company LP (TXU Generation), the licensee for the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES), submitted on its own behalf and on behalf of Credit Suisse First Boston Private Equity, Inc. (CSFBI), a request to the U.S. Nuclear Regulatory Commission (NRC) to make a threshold determination that a financial transaction involving certain entities affiliated with CSFBI and TXU Generation's parent companies and a related ownership interest transfer do not require license transfer approval under Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80. The related ownership transfer involves a transfer of a one percent ownership interest in TXU Energy Company, LLC, an intermediate parent of TXU Generation, from another one of TXU Generation's intermediate parent companies to TXU Energy Holdings Company, an indirect wholly-owned subsidiary of TXU Corp., the ultimate parent of the licensee.

Based upon the NRC staff's safety evaluation, enclosed herein, the NRC staff concludes that the subject financial transaction and related ownership interest transfer as described by the licensee do not involve a transfer, direct or indirect, of the operating licenses for CPSES, pursuant to 10 CFR 50.80. Thus, no NRC consent was required. From its threshold review, the NRC staff also concludes that there is no reason to believe that TXU Generation's financial qualifications or decommissioning funding assurance changed or will change in any material way as a result of the subject financial transaction and ownership interest transfer as described in their entirety in the licensee's submittals, which financial transaction includes the potential for exercising future conversion of certain notes into TXU Corp. common stock. Furthermore, the NRC staff concludes that there has been and will be no resulting material adverse effects in the manner in which CPSES is operated nor in the identity, organization, management, and technical qualifications of TXU Generation as the licensee for CPSES. Also, there do not appear to be any resulting problematic foreign ownership, control, or domination issues. Thus, the NRC staff concludes that the subject financial transaction and related ownership interest transfer did not and will not affect the qualifications of TXU Generation as the holder of the

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licenses for CPSES, and that the subject transaction and ownership interest transfer otherwise appear to be consistent with applicable provisions of law, regulations, and orders issued by the Commission.

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

cc: See next page

L. Terry

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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

cc: See next page

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Comanche Peak Steam Electric Station

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SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

ISSUANCE OF EXCHANGEABLE SUBORDINATED NOTES

BY TXU ENERGY COMPANY LLC

AND THE RELATED TRANSFER OF OWNERSHIP INTEREST

COMANCHE PEAK STEAM ELECTRIC STATION, UNITS 1 AND 2

DOCKET NOS. 50-445 AND 50-446

1.0 INTRODUCTION

In a letter dated January 28, 2003, as supplemented by letter dated March 7, 2003, TXU Generation Company LP (TXU Generation, the licensee), holder of the licenses for the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, submitted, on its own behalf and on behalf of Credit Suisse First Boston Private Equity, Inc. (CSFBI), a request to the U.S. Nuclear Regulatory Commission (NRC) to make a threshold determination that a financial transaction involving certain entities affiliated with CSFBI and TXU Generation's parent companies and a related ownership interest transfer do not require license transfer approval under Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80. The related ownership transfer involves a transfer of a one percent ownership interest in TXU Energy Company, LLC, from one of TXU Generation's intermediate parent companies to TXU Energy Holdings Company, an indirect wholly-owned subsidiary of TXU Corp., the ultimate parent of the licensee.

2.0 BACKGROUND

TXU Generation is an indirect wholly-owned subsidiary of TXU Energy Company LLC (TXU Energy), which in turn is an indirect wholly-owned subsidiary of TXU Corp. TXU Corp. is a publicly-traded energy services company incorporated in Texas and is the ultimate parent company of both TXU Energy and TXU Generation. TXU Energy is engaged primarily in the production of electricity and related energy sales and services in the U.S. and parts of Canada. TXU Generation is the indirect subsidiary of TXU Energy that owns and operates substantially all of TXU Energy's electric generation assets and is the owner and operator of CPSES, Units 1 and 2.

On November 22, 2002, TXU Energy completed the issuance of \$750 million of exchangeable subordinated notes due in 2012 to two subsidiaries of DLJ Merchant Banking Partners III, L.P., an affiliate of CSFBI. The two subsidiaries that acquired the notes are special purpose subsidiaries, formed for tax and other reasons, called UXT Holdings LLC and UXT Intermediary LLC (collectively referred to herein as "UXT"). CSFBI is the private equity financing arm of Credit Suisse First Boston Corporation (CSFB).

The licensee states that, in the related transfer of ownership, for tax reasons TXU U.S. Holdings Company, a direct subsidiary of TXU Corp. and the intermediate parent of TXU Energy, transferred one percent of its 100 percent ownership of TXU Energy to TXU Energy Holdings Company, a newly-formed Texas corporation and wholly-owned subsidiary of TXU U.S. Holdings Company.

The licensee states: "CSFB was organized as a Massachusetts corporation, but effective January 17, 2003, will change its corporate form to a Delaware limited liability company and become known as Credit Suisse First Boston LLC." CSFB is a global investment banking and securities concern and is a wholly-owned subsidiary and business unit of Credit Suisse Group (CSG). CSG, a public corporation formed under the laws of Switzerland, is the ultimate corporate parent of all CSFB affiliates. CSG is a publicly traded company whose securities are traded on the New York Stock Exchange.

Under terms of the financing, UXT has the option to exchange the notes, in whole or in part, for shares of common stock of TXU Corp. for a certain price, subject to obtaining any necessary regulatory approvals. UXT has the right to nominate one member out of six of the Board of Managers of TXU Energy and one member out of 10 to the Board of Directors of TXU Corp. UXT also has the right to syndicate the notes.

On December 19, 2002, UXT sold \$250 million of aggregate principal amount of these notes to entities affiliated with Berkshire Hathaway, Inc. (the "Berkshire Hathaway entities"). The Berkshire Hathaway entities have the right to exchange the notes they have acquired for common stock of TXU Corp., but do not have the right to any representation on the boards of TXU Generation's parent companies. If the Berkshire Hathaway entities were to exchange the full amount of their notes for common stock, they potentially could acquire slightly more than 5 percent of the outstanding shares of TXU Corp. However, due to restrictions under the Public Utility Holding Company Act of 1935, they will not acquire 5 percent or more of the outstanding shares.<sup>1</sup>

### 3.0 EVALUATION

The NRC staff performed a threshold review to determine whether the financial transaction and related ownership interest transfer, as described, needed or would need prior NRC approval. The regulations at 10 CFR 50.80 state, in part, "No license for a production or utilization facility, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing." The NRC staff's evaluation addresses the issue of whether the NRC's approval is needed, under 10 CFR 50.80, for the subject transactions.

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<sup>1</sup>While the December 19, 2002, sale of notes to the Berkshire Hathaway entities alone does not appear to involve a transfer of control issue with respect to those entities and the CPSES licenses, the NRC staff does not have sufficient information at this time concerning those entities to arrive at a conclusion as to whether there is such an issue. The staff notes that the licensee's submittals are on behalf of itself and CSFB, not on behalf of the Berkshire Hathaway entities, and provide a limited amount of information for the Berkshire Hathaway entities.

The licensee states that, if UXT were to exchange their notes for TXU Corp. common stock, the terms of the financial transaction provide that UXT may not own directly more than 4.9 percent of the outstanding common stock of TXU Corp. The terms require that any ownership by UXT of the outstanding common stock above 4.9 percent would be accomplished indirectly through one or more voting trusts, each of which would be established and maintained in accordance with all applicable laws and regulations, and would be controlled by an independent voting trustee. The trustee would be a U.S. entity that is a well-established financial institution contractually and legally independent of UXT or any entity related to it, and would be free to exercise its voting rights in connection with TXU Corp. common stock in its sole discretion, without any control or influence by UXT or any related entity.

The TXU Generation supplemental letter dated March 7, 2003, states that the common stock of TXU Corp. is held by a large number of persons and that Capital Research and Management Company, which owns approximately 6.1 percent of the common stock of TXU Corp., currently is the only beneficial owner of five percent or more of the outstanding common stock of TXU Corp.<sup>2</sup> The CSFBI entities would own a total of 10.046184 percent of the outstanding common shares of TXU Corp. if all the exchangeable subordinated notes were converted into common stock. The licensee states that none of Donaldson, Lufkin & Jenrette, Inc. (now known as Credit Suisse First Boston (USA) Inc., the indirect parent of CSFBI), UXT, CSG, nor any other subsidiary of CSG (collectively, the "CSG Entities") will acquire additional common stock of TXU Corp., other than shares that are or may be held by certain subsidiaries of CSG in their capacity as broker dealers, investment advisers, market makers, insurance companies, and underwriters as part of the ordinary course of their business.

The licensee also states in their March 7, 2003, supplemental letter that, under the financing transactions described in its letter dated January 28, 2003, to the extent that the CSG Entities may establish one or more voting trusts resulting from the transaction, trustees of such trusts will be required to act independently as to voting the shares of TXU Corp., and that no voting trusts will have any agreements between them, express or implied, that they would act in concert regarding actions pertaining to TXU Corp. The licensee states that no CSG Entity that acquires TXU Corp. common stock as a result of the exchange of the subordinated notes will have any agreement, express or implied, that they will act in concert with any third-party entities that own TXU Corp. stock, now or in the future, such as Berkshire Hathaway, Inc. Additionally, the March 7, 2003, supplemental letter states that, under the financing transactions described in TXU Generation's January 28, 2003, letter, any planned agreements, or any other existing agreements, CSG, either by itself or in combination with its subsidiaries, will not have the right to cause the election of more than one member of the Board of Managers of TXU Energy or more than one member of the Board of Directors of TXU Corp. On January 31, 2003, the CSFBI nominee assumed a seat on the TXU Energy Board of Managers, and the same nominee was elected to the Board of Directors of TXU Corp. on February 21, 2003.

Based on the information provided by the licensee, the NRC staff finds that the subject financial transaction regarding the issuance of subordinated notes and the related ownership transfer of a one percent interest in an intermediate parent of the licensee to an affiliated intermediate

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<sup>2</sup>If this statement was based on 13D or 13G schedules filed with the Securities and Exchange Commission, the licensee's identification would apply to only beneficial owners owning more than five percent of TXU Corp. stock, rather than five percent or more.

company do not involve a transfer of control, direct or indirect, of the licenses for CPSES. Accordingly, prior approval by the NRC under 10 CFR 50.80 was not necessary. Nonetheless, the staff analyzed the effect of the transactions on the licensee's financial qualifications and decommissioning funding assurance, its technical qualifications, and its status with respect to any foreign control.

### 3.1 Financial Qualifications

Based on the information provided by the licensee, the NRC staff finds that the transaction involving the issuance of subordinated notes and the related ownership interest transfer did not and will not result in any material change in the financial ability of TXU Generation to cover operation costs of CPSES. The licensee states that the current organizational structure of TXU Corp., and its affiliates and subsidiaries, will remain essentially the same and that TXU Generation will remain a wholly-owned, indirect subsidiary of TXU Corp. The licensee also states that the financial qualifications of TXU Generation are not affected in any material way by the described financial transaction.

The NRC staff is aware of nothing to indicate that there have been any material effects on the financial qualifications of TXU Generation by reason of the issuance of the notes on November 22, 2002, or that there will be any material effects in the future resulting from the transaction as described in its entirety in the licensee's letter of January 28, 2003. This letter includes: a description of the initial issuance of the notes, the sale of notes to the Berkshire Hathaway entities, the potential for exercising conversion of the notes into shares of TXU Corp. common stock at a later date, and the potential establishment of voting trusts by CSG Entities that may result from a certain level of conversion as described in the letter. Additional statements made by the licensee in its March 7, 2003, supplemental letter describing limitations on ownership and control by the CSG Entities in relation to TXU Corp. and its subsidiaries, as cited above, provide additional assurance to the NRC staff that the financial qualifications of TXU Generation will not be materially affected by the transaction involving the issuance of subordinated notes, or by the related ownership transfer of the one percent interest in the licensee's intermediate parent.

### 3.2 Decommissioning Funding Assurance

The licensee states that TXU Generation's assurance of funding for decommissioning is based upon Texas statute and is not affected in any material way by the described transaction. The NRC staff has been presented with no information to indicate that there have been, or will be in the future, any material effects on the decommissioning funding assurance provided by TXU Generation resulting from the transactions as described in their entirety in the licensee's submittals.

### 3.3 Management and Technical Qualifications

The licensee states that, after the transaction, no changes will be made in the manner in which CPSES is operated and that control over the CPSES operating licenses will remain with TXU Generation. Furthermore, the licensee states that the described transaction does not create any material change in TXU Generation's identity, organization, management, or technical qualifications, and that these aspects of the CPSES licensee are not affected in any material way by the transaction.

The NRC staff is aware of nothing to indicate that there have been, as of November 22, 2002, or will be in the future, any material effects on the manner in which CPSES is operated and in the identity, organization, management, and technical qualifications of TXU Generation as the CPSES licensee resulting from the subordinated notes transaction, as described in its entirety in the licensee's letter of January 28, 2003, or from the related one percent transfer of ownership in one of the licensee's intermediate parents.

### 3.4 Foreign Ownership, Control, or Domination

Section 103d of the Atomic Energy Act prohibits the Commission from issuing a license for a nuclear power plant to "any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government." The Commission's regulations at 10 CFR 50.38 contain virtually identical language to implement this prohibition.

The licensee states that its exchangeable notes have been issued to subsidiaries of CSFBI referred to as UXT and that UXT and CSFBI are U.S. entities. The ultimate parent of CSFBI is CSG, a public corporation formed under the laws of Switzerland. The licensee also states that UXT may convert these notes for approximately 10 percent of the outstanding common shares of TXU Corp., but that the terms of the financial transaction provide that UXT may not directly own more than 4.9 percent of the outstanding common stock of TXU Corp. Any ownership by UXT above 4.9 percent would be accomplished indirectly through one or more voting trusts with any trustees required to be a U.S. entity without any control or influence by UXT or any related entity.

The licensee states that, under the subject financial transaction, any planned agreements, or any other existing agreements, CSG, either by itself or in combination with its subsidiaries, will not have the right to cause the election of more than one member of the six-member Board of managers of TXU Energy or more than one member of the 10-member Board of Directors of TXU Corp.

Notwithstanding these considerations, the NRC staff does not know or have reason to believe that, as a result of the subject financial transaction and related ownership interest transfer, TXU Generation, its direct parent, any of its intermediate parents, or TXU Corp. will be owned, controlled, or dominated by a foreign person or entity.

### 4.0 CONCLUSIONS

In view of the foregoing facts and considerations, the NRC staff concludes that the subject financial transaction and related ownership interest transfer, as described by the licensee, do not involve a transfer, direct or indirect, of the operating licenses of CPSES, pursuant to 10 CFR 50.80. Accordingly, prior NRC consent was not required. From its threshold review, the NRC staff concludes that the subject financial transaction and related ownership interest transfer did not and will not affect the qualifications of TXU Generation as the holder of the licenses of CPSES, and that the subject transaction and ownership interest transfer otherwise appear to be consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Principal Contributor: Alex F. McKeigney

Date: April 14, 2003