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Ref: 10CFR50.80

CPSES-200700517
Log # TXX-07060

April 18, 2007

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

**SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
DOCKET NOS. 50-445 AND 50-446
APPLICATION FOR ORDER APPROVING INDIRECT TRANSFER
OF CONTROL OF LICENSES AND LICENSE AMENDMENTS TO
REFLECT PROPOSED LICENSEE NAME CHANGE**

Dear Sir or Madam:

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act), and 10 CFR 50.80, TXU Generation Company LP (TXU Power), acting on behalf of Texas Energy Future Holdings Limited Partnership (Texas Energy LP) and itself, hereby requests that the Nuclear Regulatory Commission (NRC) consent to the indirect transfer of control of TXU Power's licenses to operate the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES). TXU Corp. and Texas Energy LP have entered into a definitive agreement for Texas Energy LP to acquire all of the outstanding equity of TXU Corp., which indirectly owns 100% of TXU Power. TXU Corp. and Texas Energy LP seek NRC consent to the indirect transfer of control of TXU Power's licenses that will result from Texas Energy LP's acquisition of TXU Corp.

In connection with the indirect change of control, and the plans of Texas Energy LP to clarify the distinctions between TXU Corp.'s state-regulated transmission and distribution business and its other businesses, TXU Power will be converted to a limited liability company and renamed Luminant Generation Company LLC. Therefore, TXU Power also requests pursuant to 10 CFR 50.92 that conforming license amendments to CPSES Unit 1 Operating License (NPF-87) and CPSES Unit 2 Operating License (NPF-89) be approved to replace TXU Generation Company LP with "Luminant Generation Company LLC" on the licenses.

A member of the STARS (Strategic Teaming and Resource Sharing) Alliance

Callaway • Comanche Peak • Diablo Canyon • Palo Verde • South Texas Project • Wolf Creek

A001
M006

Through the enclosed Application, TXU Power requests, on behalf of Texas Energy LP and itself, that the NRC consent to this proposed indirect transfer of control and conforming license amendment. The information contained in this Application demonstrates that, after the proposed indirect transfer of control, Luminant Generation Company LLC will continue to possess the requisite qualifications to operate CPSES.

In summary, the proposed indirect transfer of control will be consistent with the requirements set forth in the Act, NRC regulations, and the relevant NRC licenses and orders. The proposed indirect transfer of control will not result in any physical changes to CPSES or changes in the officers, personnel, or day-to-day operation of CPSES and will not involve any changes to the current CPSES licensing basis. It will neither have any adverse impact on the public health and safety, nor be inimical to the common defense and security. We therefore respectfully request that the NRC consent to the indirect transfer of control in accordance with 10 CFR 50.80 and approve the conforming administrative amendments pursuant to 10 CFR 50.92 and 10 CFR 2.1315.

Much of the enclosed Application describes in detail the financial and governance arrangements among the investors that are participating, directly and indirectly, in the transaction. These details are specified to provide the Commission with full information, but are somewhat tangential to the issues of concern to the Commission in reviewing the proposed change of control. It is appropriate to stress that most of these arrangements concern passive investors, and that the authority to control the actions of the licensee and its parent entities will be vested ultimately with investment funds affiliated with or advised by Kohlberg Kravis Roberts & Co. L.P. and TPG Capital, L.P., and (subject to the satisfaction of certain conditions) The Goldman Sachs Group, Inc. and Lehman Brothers Holdings Inc., as well as with certain independent directors appointed by them to the TXU Corp. board.

Texas Energy LP and TXU Power desire to close the transaction as soon after September 1, 2007, as all required regulatory approvals and rulings are received and/or waiting periods have expired. The proposed transaction is subject to approval by the Federal Energy Regulatory Commission (FERC). Also, notifications are required to be filed with the Federal Trade Commission and the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act), and applicable rules and regulations. The FERC is expected to be asked to review the transaction on a schedule that would allow for its approval by late July 2007, and the HSR Act waiting period is expected to have expired or been terminated by mid-July 2007. Therefore, NRC approval is expected to be the final regulatory approval necessary prior to closing.

Texas Energy LP and TXU Power request that NRC review this Application on a schedule that will permit the issuance of NRC consent to the indirect transfer of control and amendment of the licenses by September 1, 2007. Such consent should be made immediately effective upon issuance and permit the closing to occur at any time until July 10, 2008. TXU Power will inform NRC if there are any significant changes in the status of any other required approvals or any other developments that have an impact on the schedule.

The Application includes proprietary, separately bound Attachments 1A, 2A, 3A, and 4A, which contain confidential commercial or financial information. Texas Energy LP, TXU Corp., and TXU Power request that Attachments 1A, 2A, 3A, and 4A be withheld from public disclosure pursuant to 10 CFR 9.17(a)(4) and the policy reflected in 10 CFR 2.390, as described in the Affidavit of Fred W. Madden and the Affidavit of Michael MacDougall, both of which are provided in Attachment 7 to the Application. Non-proprietary versions of Attachments 1A, 2A, 3A, and 4A suitable for public disclosure are provided as Attachments 1, 2, 3, and 4 to the Application.

This communication contains no new or revised licensing basis commitments.

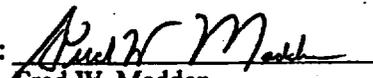
If the NRC requires additional information concerning this license transfer request, please contact Mr. Fred Madden, Director, Oversight & Regulatory Affairs (tel: 254-897-8601). Service on TXU Power and Texas Energy LP of comments, hearing requests or intervention petitions, or other pleadings, if applicable, should be made to counsel for TXU Power, Mr. Timothy Matthews at Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW, Washington, DC 20004 (tel: 202-739-5527; fax: 202-739-3001; e-mail: tmatthews@morganlewis.com) and counsel for Texas Energy LP, Dr. Richard A. Meserve at Covington & Burling LLP, 1201 Pennsylvania Ave. NW, Washington, DC 20004 (tel: 202-662-5304; fax: 202-778-5304; e-mail: rmeserve@cov.com).

Sincerely,

TXU Generation Company LP

By: TXU Generation Management Company LLC
Its General Partner

Mike Blevins ,

By: 
Fred W. Madden
Director, Oversight & Regulatory Affairs

rjk

Enclosure: Application for Order Approving Indirect Transfer Of Control Of Licenses and License Amendments to Reflect Proposed Licensee Name Change

cc: w/o proprietary Addendum except *
(paper copy)

(electronic copy)

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
TXU Generation Company LP)	Docket Nos. 50-445
)	50-446
Comanche Peak Steam Electric Station, Units 1 and 2)	

AFFIRMATION

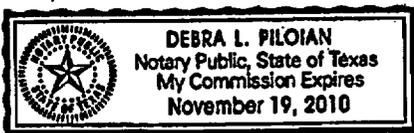
I, Fred W. Madden, being duly sworn, hereby depose and state that I am Director, Oversight & Regulatory Affairs for the Comanche Peak Steam Electric Station, TXU Generation Company LP; that I am duly authorized to sign and file with the Nuclear Regulatory Commission the attached Application for Order Approving Indirect Transfer of Control of Licenses and License Amendments to Reflect Proposed Licensee Name Change; that I am familiar with the content thereof; and that the matters set forth therein with regard to TXU Generation Company LP are true and correct to the best of my knowledge and belief.



 Fred W. Madden
 Director, Oversight & Regulatory Affairs

STATE OF TEXAS)
)
 COUNTY OF SOMERVELL)

Subscribed and sworn to me, a Notary Public, in and for the State of Texas, this 18th day of April, 2007.





 Notary Public in and for the State of Texas

**APPLICATION FOR ORDER APPROVING
INDIRECT TRANSFER OF CONTROL OF LICENSES
AND LICENSE AMENDMENTS TO REFLECT
PROPOSED LICENSEE NAME CHANGE**

April 18, 2007

submitted by

**TXU Generation Company LP
(TXU Power)**

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

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
GLOSSARY OF ABBREVIATIONS	v
I. INTRODUCTION	1
II. STATEMENT OF PURPOSE OF THE TRANSFERS AND NATURE OF THE TRANSACTION MAKING THE TRANSFERS NECESSARY OR DESIRABLE.....	5
III. GENERAL CORPORATE INFORMATION REGARDING THE TXU POWER ENTITIES	5
A. Names	5
B. Address	5
C. Description of Business or Occupation.....	6
D. Organization and Management	6
1. States of Establishment and Place of Business	6
2. Directors and Executive Officers.....	6
a. Proposed TXU Corp. Directors.....	6
b. Executive Officers	7
c. Proposed Luminant Energy Holding Company and Managers	8
IV. GENERAL CORPORATE INFORMATION REGARDING TEXAS ENERGY FUTURE HOLDINGS LIMITED PARTNERSHIP	9
A. Names	9
B. Addresses	9
C. Description of Business or Occupation.....	9
1. Texas Energy LP's General Partner (Texas Energy GP).....	10
a. Current Texas Energy GP Members	12
i) The KKR Funds	12
ii) The Texas Pacific Group Funds.....	15
b. Expected Texas Energy GP Members	16
i) The Goldman Funds.....	17
ii) The Lehman Entities	19
iii) The Passive LLC Owners	20

TABLE OF CONTENTS

(continued)

2. Texas Energy LP's Limited Partners	22
a. Current Texas Energy LP Limited Partners.....	24
i) The KKR Funds	24
ii) The Texas Pacific Group Funds.....	25
b. Expected Texas Energy LP Limited Partners	25
i) The Goldman Funds.....	25
ii) The Lehman Entities	25
iii) The Passive LP Owners	26
3. Further Background on Controlling Owners	28
D. Organization and Management	29
1. Places of Establishment and Places of Business.....	29
2. Directors and Executive Officers.....	30
V. FOREIGN OWNERSHIP OR CONTROL	30
VI. TECHNICAL QUALIFICATIONS.....	36
VII. FINANCIAL QUALIFICATIONS.....	36
A. Projected Operating Revenues and Operating Costs	36
B. Decommissioning Funding	39
VIII. ANTITRUST INFORMATION	40
IX. RESTRICTED DATA AND CLASSIFIED NATIONAL SECURITY INFORMATION.....	40
X. ENVIRONMENTAL CONSIDERATIONS	40
XI. PRICE-ANDERSON INDEMNITY AND NUCLEAR INSURANCE	41
XII. PROPOSED LICENSE AMENDMENTS FOR NAME CHANGE	41
XIII. EFFECTIVE DATE AND OTHER REQUIRED REGULATORY APPROVALS	42
XIV. CONCLUSION.....	42

TABLE OF CONTENTS

(continued)

Non-Proprietary Addendum

Figure 1	Simplified Organizational Diagram Pre-Closing.....	44
Figure 2	Simplified Organizational Diagram Post-Closing	45
Figure 3	Simplified Governance Structure of KKR Funds	46
Figure 4	Simplified Governance Structure of Texas Pacific Group Funds.....	47
Figure 5	Simplified Governance Structure of Goldman Funds.....	48
Figure 6	Simplified Governance Structure of Lehman Entities	49
Attachment 1	Pro Forma Balance Sheet and Projected Income Statement for Comanche Peak Units	
Attachment 2	Pro Forma Balance Sheet and Projected Income Statement for TXU Power	
Attachment 3	Pro Forma Balance Sheet and Projected Income Statement for Texas Energy LP	
Attachment 4	Pro Forma Balance Sheet and Projected Income Statement for Luminant Holdco	
Attachment 5	Agreement and Plan of Merger Among TXU Corp., Texas Energy LP, and Texas Energy Merger Sub Corp	
Attachment 6	Biographies of Proposed Officers and Directors of TXU Corp. and Officers of Texas Energy GP	
Attachment 7	10 CFR 2.390 Affidavit Fred W. Madden & 10 CFR 2.390 Affidavit Michael MacDougall	
Attachment 8	Conforming License Amendments Request	
Attachment 9	Annotated Changed Pages to CPSES Unit 1 License	
Attachment 10	Annotated Changed Pages to CPSES Unit 2 License	
Attachment 11	CPSES Unit 1 License with Proposed Changed Pages Incorporated	
Attachment 12	CPSES Unit 2 License with Proposed Changed Pages Incorporated	

TABLE OF CONTENTS

(continued)

Proprietary Addendum

Attachment 1A	Pro Forma Balance Sheet and Projected Income Statement for Comanche Peak Units (Proprietary Version)
Attachment 2A	Pro Forma Balance Sheet and Projected Income Statement for TXU Power (Proprietary Version)
Attachment 3A	Pro Forma Balance Sheet and Projected Income Statement for Texas Energy LP (Proprietary Version)
Attachment 4A	Pro Forma Balance Sheet and Projected Income Statement for Luminant Holdco (Proprietary Version)

GLOSSARY OF ABBREVIATIONS

Citigroup	Citigroup Global Markets Inc. and its affiliates
Controlling Owners	KKR Funds and Texas Pacific Group Funds and (subject to satisfaction of certain conditions) Goldman Funds and Lehman Entities
CPSSES	Comanche Peak Steam Electric Station
ERCOT	Electric Reliability Council of Texas
FERC	Federal Energy Regulatory Commission
FOCI	Foreign ownership, control, or influence
Goldman	The Goldman Sachs Group, Inc.
Goldman Funds	GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI GmbH & Co. KG, GS Capital Partners VI Offshore Fund, L.P., GS International Infrastructure Partners I, L.P., GS Global Infrastructure Partners I, L.P., GS Institutional Infrastructure Partners I, L.P., and other investment vehicles affiliated with Goldman
HSR Act	Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended
JPMorgan	J.P. Morgan Ventures Corporation and its affiliates
KKR	Kohlberg Kravis Roberts & Co. L.P.
KKR 2006 Fund	KKR 2006 Fund L.P.
KKR Funds	KKR 2006 Fund L.P., KKR PEI Investments, L.P., KKR Private Equity Investors, L.P., KKR Financial Corp., KKR Strategic Capital Fund, L.P., and other investment vehicles affiliated with KKR
KPE	KKR Private Equity Investors, L.P.
LAR	License Amendment Request
Lehman	Lehman Brothers Holdings Inc.
Lehman Entities	LB I Group Inc., Lehman Brothers Co-Investment Partners L.P., and other investment vehicles affiliated with Lehman Brothers Holdings Inc.
Luminant Holdco	Intermediate holding company; indirect subsidiary of TXU Corp. and parent of Luminant Subsidiaries
Luminant Managers	Members of Board of Managers for Luminant Holdco and/or Luminant Subsidiaries
Luminant Subsidiaries	Subsidiaries of TXU Corp. engaged in power generation, wholesale power, development, and construction businesses
Merger Sub	Texas Energy Future Merger Sub Corp
Morgan Stanley	Morgan Stanley & Co. Incorporated and its affiliates
PUCT	Public Utilities Commission of the State of Texas

Texas Energy GP	Texas Energy Future Capital Holdings LLC
Texas Energy LP	Texas Energy Future Holdings Limited Partnership
Texas Pacific Group	Certain investment funds advised by TPG Capital, L.P.
Texas Pacific Group Funds	TPG Partners V, L.P., TPG Partners IV, L.P., TPG FOF V-A, L.P., TPG FOF V-B, L.P. and other investment vehicles affiliated with Texas Pacific Group
TPG IV Fund	TPG Partners IV, L.P.
TPG V Fund	TPG Partners V, L.P.
TXU Electric Delivery	TXU Electric Delivery Company
TXU Power	TXU Generation Company LP

I. INTRODUCTION

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the “Act”), and 10 CFR 50.80, TXU Generation Company LP (“TXU Power”), acting on behalf of itself and Texas Energy Future Holdings Limited Partnership (“Texas Energy LP”), hereby requests that the Nuclear Regulatory Commission (the “Commission” or “NRC”) consent to the indirect transfer of control of TXU Power’s licenses to operate and own the 100% interest in the Comanche Peak Steam Electric Station, Units 1 and 2 (“CPSES”). TXU Power also seeks approval of amendments to these licenses to reflect a proposed conversion of the licensee from a Texas limited partnership to a Texas limited liability company and the change of the licensee’s name to Luminant Generation Company LLC.

CPSES is composed of two 1,150 megawatt electric (MWe) (net) nuclear power units, 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, approximately 4 miles north of Glen Rose, Texas. TXU Power is the licensed operator for CPSES, pursuant to licenses issued by the NRC. The two units are wholly owned by TXU Power.

A simplified organizational chart depicting the current ownership structure of TXU Power is provided in Figure 1. TXU Power is owned and controlled by a partnership between TXU Generation Management Company LLC (general partner) and TXU Energy Investment Company LLC (limited partner). In turn, TXU Generation Management Company LLC and TXU Energy Investment Company LLC are direct wholly-owned subsidiaries of TXU Energy Company LLC which is 99% owned by TXU US Holdings Company and 1% owned by TXU Energy Holdings Company (a direct wholly-owned subsidiary of TXU US Holdings Company). Finally, TXU US Holdings Company is a direct wholly-owned subsidiary of TXU Corp.

TXU Corp., through its subsidiaries, owns or leases 17,605 megawatts (MW) of generation in Texas, including 2,300 MW of nuclear-fueled capacity, 5,837 MW of lignite/coal-fueled capacity and 9,468 MW of natural gas-fueled capacity. One subsidiary provides electricity to more than 2.1 million electricity customers in Texas. Another subsidiary operates the largest distribution and transmission system in Texas, providing power to over 3 million electricity delivery points over more than 100,000 miles of distribution lines and 14,300 miles of transmission lines. At December 31, 2006, TXU Corp. had 7,262 full-time employees, including approximately 1,800 employees under collective bargaining agreements.

In the proposed transaction, Texas Energy LP would acquire 100% of the ownership of TXU Corp. A simplified organizational chart depicting the post-closing ownership structure of TXU Corp., including Texas Energy LP, is provided in Figure 2.

Texas Energy LP is a Delaware limited partnership, which was recently formed for the purpose of acquiring TXU Corp. Currently, Texas Energy LP is owned and controlled in equal parts by certain investment fund entities affiliated with Kohlberg Kravis Roberts & Co. L.P. (“KKR”) and certain investment funds advised by TPG Capital, L.P. (“Texas Pacific Group”). Other investors will make equity investments in Texas Energy LP on or before the closing date of the acquisition of TXU Corp. by Texas Energy LP (the “Closing Date”).

As a newly-formed entity, Texas Energy LP is not engaged in other business activities. Texas Energy LP does not currently own or operate other electric generation facilities in Texas or elsewhere, nor does Texas Energy LP currently hold or control, directly or indirectly, any other licenses from NRC.

On February 25, 2007, Texas Energy LP, Texas Energy Future Merger Sub Corp (“Merger Sub”), and TXU Corp. entered into a definitive agreement and plan of merger pursuant

to which Merger Sub, a Texas corporation and wholly-owned subsidiary of Texas Energy LP, will merge with and into TXU Corp., with TXU Corp. continuing as the surviving entity and becoming a subsidiary of Texas Energy LP. In the merger, shares of common stock of TXU Corp. will be converted into the right to receive cash consideration. As a result of the transaction, Texas Energy LP will become the parent of TXU Corp., the surviving entity in the merger of TXU Corp. and Merger Sub. A copy of the agreement and plan of merger is attached hereto as Attachment 5.

Merger Sub has received a debt commitment letter from a group of lenders to provide approximately \$24.6 billion in indebtedness in order to finance the transaction. TXU Energy Company LLC, a current subsidiary of TXU Corp. (see Figure 1), is expected to incur a substantial majority of this debt, secured by substantially all of the assets of TXU Energy Company LLC and its subsidiaries, including TXU Power, and guaranteed by substantially all of those subsidiaries. A portion of this debt is going to be unsecured debt that will reside at the TXU Corp. level. Additionally, the debt commitments provide for funds to repay some outstanding indebtedness of TXU Corp. and its subsidiaries, and to pay fees and expenses incurred in connection with the transaction. Significant additional borrowing facilities (e.g., lines of credit) will be made available to TXU Energy Company LLC and TXU Electric Delivery Company (“TXU Electric Delivery”), another current subsidiary of TXU Corp., to provide for ongoing working capital and other general corporate purposes of the surviving corporation and its subsidiaries after the consummation of the transaction.¹

Through this Application, TXU Power requests on behalf of itself and Texas Energy LP that the Commission consent to this indirect transfer of control of the NRC licenses in

¹ Other than the borrowing facility to provide TXU Electric Delivery access to working capital, which will not be drawn upon to finance the acquisition of TXU Corp., none of the new debt will be raised or guaranteed by, or secured by the assets of, TXU Electric Delivery.

connection with the proposed transaction. The information contained in this Application demonstrates that after the indirect transfer of control, TXU Power will continue to possess the requisite qualifications to own the 100% undivided ownership interest in CPSES. The proposed indirect transfer of control will not result in any change in the role of TXU Power as the licensed operator of the facility and will not result in any changes to TXU Power's technical qualifications or any physical or operational changes to CPSES.

Much of the following discussion, especially in Section IV, describes in detail the financial and governance arrangements among the investors that are participating, directly and indirectly, in the transaction. These details are specified to provide the Commission with full information. Although a variety of passive investors will be involved through a number of investment vehicles, their involvement is not directly relevant to the issues of concern to the Commission in reviewing the proposed indirect transfer of control. The authority to control the actions of the licensee and its parent entities is relatively straightforward: such controlling authority will be vested in investment funds affiliated with KKR and Texas Pacific Group, and (subject to satisfaction of certain conditions that are not relevant to this Application) entities affiliated with The Goldman Sachs Group, Inc. ("Goldman") and Lehman Brothers Holdings Inc. ("Lehman"), as well as independent directors appointed by the new ownership group.

Through this Application, TXU Power also requests approval of administrative license amendments to reflect a proposed conversion of the licensee from a Texas limited partnership to a Texas limited liability company and change of the licensee's name. In connection with the proposed transaction, Texas Energy LP plans to convert TXU Power to a limited liability company and change its name to Luminant Generation Company LLC.

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

TXU Power has and will continue to manage CPSES safely and effectively. Through the acquisition of TXU Corp. by Texas Energy LP, TXU Power will become part of a privately-held enterprise that will be customer-centered, technology-driven, and environmentally focused. Through the investment and involvement of the controlling private equity investors, this enterprise will focus on long-term solutions to the challenges posed by Texas's evolving energy needs. Texas Energy LP does not have any plans to change the management, personnel, or operation of CPSES.

III. GENERAL CORPORATE INFORMATION REGARDING THE TXU POWER ENTITIES

Detailed information regarding the business and management of TXU Corp. and its subsidiaries is provided in its 2006 SEC Form 10-K Annual Report ("TXU Corp. 2006 10-K"), which was filed with the Securities and Exchange Commission on March 2, 2007.² In addition to the information provided in the TXU Corp. 2006 10-K, certain key information is provided below.

A. Names

TXU Generation Company LP
TXU Generation Management Company LLC
TXU Energy Investment Company LLC
TXU Energy Company LLC
TXU Energy Holdings Company
TXU US Holdings Company
TXU Corp.

B. Address

Energy Plaza 1601 Bryan Street, Dallas, Texas 75201-3411

² The TXU Corp. 2006 10-K is available at:
<http://www.sec.gov/Archives/edgar/data/1023291/000114036107004767/0001140361-07-004767-index.htm>.

C. Description of Business or Occupation

As discussed in the TXU Corp. 2006 10-K, TXU Corp., through its subsidiaries, owns or leases 17,605 MW of generation in Texas, including the 2,300 MW from CPSES. The subsidiaries directly related to the ownership interest in CPSES are: TXU Energy Company LLC, TXU Energy Investment Company LLC, TXU Generation Management Company LLC, and TXU Power.

D. Organization and Management

1. States of Establishment and Place of Business

Company	State of Formation	Principal Place of Business
TXU Generation Company LP (TXU Power)	Texas	Texas
TXU Generation Management Company LLC	Delaware	Texas
TXU Energy Investment Company LLC	Delaware	Texas
TXU Energy Company LLC	Delaware	Texas
TXU Energy Holdings Company	Texas	Texas
TXU US Holdings Company	Texas	Texas
TXU Corp.	Texas	Texas

2. Directors and Executive Officers

a. Proposed TXU Corp. Directors

At the closing of the transaction, it is anticipated that the Board of Directors of TXU Corp. will be reconstituted by Texas Energy LP to consist of thirteen members. Investment funds affiliated with KKR, Texas Pacific Group, and Goldman, as members of Texas Energy LP's general partner, are expected to each name three designees to the TXU Corp. Board of Directors, and also collectively to name additional members. The following individuals, all but one of whom are U.S. citizens, are currently expected to be appointed as members of TXU Corp.'s Board of Directors, and have agreed to serve as directors, upon closing of the transaction:

<u>Name</u>	<u>Affiliation</u>
Marc S. Lipschultz	KKR Designee
Frederick M. Goltz	KKR Designee
Jonathan D. Smidt*	KKR Designee
David Bonderman	Texas Pacific Group Designee
Michael MacDougall	Texas Pacific Group Designee
Jeffrey Liaw	Texas Pacific Group Designee
Kenneth Pontarelli	Goldman Designee ³
Steven Feldman	Goldman Designee
Scott Lebovitz	Goldman Designee
William K. Reilly	Joint Designee
Donald L. Evans	Joint Designee
James R. Huffines	Joint Designee
Lyndon L. Olson	Joint Designee

*Mr. Smidt is a citizen of South Africa and U.S. resident.

Biographies of these individuals are contained in Attachment 6. Sufficiently in advance of the closing of the acquisition to allow review by the NRC, any additional anticipated members or other changes to the expected composition of the Board of Directors of TXU Corp. will be named and TXU Power or Texas Energy LP will notify the Commission of their identities in a supplement to this Application.

b. Executive Officers

Although at the time of the filing of this Application, Texas Energy LP does not have any agreement with any member of current management of TXU Corp. or any of its subsidiaries for employment after the closing of the merger, Texas Energy LP anticipates that the executive officers and management personnel from TXU Corp. and its subsidiaries will continue in

³ As noted in this Application, participation in the transaction by investment vehicles affiliated with Goldman is subject to the satisfaction of certain conditions, which are expected to be satisfied. Designation of directors of TXU Corp. by Goldman or its affiliates is dependent on their participation in the transaction.

substantially comparable positions of management and operational responsibility following the closing of the transaction. If any additional individuals are identified that will hold executive officer positions with TXU Corp., TXU Power, or the subsidiaries directly related to the ownership interest in CPSES at the time of the proposed transfer, other than the individuals below who are expected to remain in such positions, TXU Power will provide supplemental information to the Commission regarding such personnel. Any such additional officers will be U.S. citizens. The current executive team of the TXU organization with responsibilities encompassing TXU Power comprises the following individuals, each of whom is expected to continue in his respective position after the closing of the transaction:

Executive Officer	Title
C. John Wilder	President and CEO of TXU Corp.
Michael Greene	Chairman of the Board, President, and Chief Executive of TXU Energy Company LLC and TXU Generation Management Company LLC
Michael Blevins	Senior Vice President and Chief Nuclear Officer of TXU Generation Management Company LLC

c. Proposed Luminant Energy Holding Company and Managers

TXU Corp., KKR, and Texas Pacific Group have previously announced that, in connection with the proposed acquisition, Texas Energy LP expects to reorganize TXU Corp.’s power generation, wholesale power, development, and construction businesses into an independently managed business within the TXU Corp. structure, associated with the new name “Luminant.” Those TXU Corp. subsidiaries (the “Luminant Subsidiaries”), including TXU Power, will be governed by a common board of at least five managers/directors (the “Luminant Managers”). A new holding company subsidiary (“Luminant Holdco”) governed by the Luminant Managers is proposed to be formed to directly or indirectly own and control the Luminant Subsidiaries. Luminant Holdco will be a wholly-owned subsidiary within the TXU Corp. structure, indirectly controlled by TXU Corp. (Fig. 2.) The Luminant Managers will

consist of at least five of the proposed directors of TXU Corp. identified in Section III.D(2)(a) above (all but one of whom are U.S. citizens) and appropriate representatives of TXU Corp. management, all of whom are U.S. citizens. TXU Power will promptly notify the NRC upon the selection of the initial Luminant Managers. It is also contemplated that some or all of TXU Corp. and its subsidiaries may be renamed in connection with this anticipated reorganization.

IV. GENERAL CORPORATE INFORMATION REGARDING TEXAS ENERGY FUTURE HOLDINGS LIMITED PARTNERSHIP

Texas Energy LP is a Delaware limited partnership formed on February 21, 2007, as the entity through which the KKR and Texas Pacific Group investment funds and their fellow investors would acquire TXU Corp.

A. Names

Texas Energy Future Holdings Limited Partnership
Texas Energy Future Capital Holdings LLC

B. Addresses

c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, Suite 4200, New York, NY 10019

and

c/o Texas Pacific Group, 301 Commerce Street, Suite 3300, Fort Worth, TX 76102

C. Description of Business or Occupation

Texas Energy LP is a Delaware limited partnership that was formed for the purpose of acquiring TXU Corp. Its sole general partner is Texas Energy Future Capital Holdings LLC (“Texas Energy GP”). Although Texas Energy LP has and will have a number of direct and indirect investors, its business activities will be controlled by Texas Energy GP, which in turn will be controlled by the leading members of the investor group – investment funds affiliated

with KKR and Texas Pacific Group, and, subject to the satisfaction of certain conditions, entities affiliated with Goldman and Lehman.

1. Texas Energy LP's General Partner (Texas Energy GP)

The sole general partner of Texas Energy LP is Texas Energy GP, which owns a nominal portion of the equity interests of Texas Energy LP and acts as its sole general partner. Texas Energy GP exercises exclusive control over the actions of Texas Energy LP.

Texas Energy GP is a Delaware limited liability company that was formed for the purpose of acquiring TXU Corp. Its activities are managed and controlled by its managing members. The controlling interests in Texas Energy GP are currently owned by KKR 2006 Fund L.P. ("KKR 2006 Fund"), an investment vehicle affiliated with KKR, and TPG Partners V, L.P. ("TPG V Fund"), an investment vehicle affiliated with Texas Pacific Group. At the consummation of the transaction, it is expected that the controlling interests in Texas Energy GP will be owned by KKR 2006 Fund and other investment vehicles affiliated with KKR (collectively, the "KKR Funds"), TPG V Fund and other investment vehicles affiliated with Texas Pacific Group (collectively, the "Texas Pacific Group Funds"), and, subject to satisfaction of certain conditions, investment vehicles affiliated with Goldman (collectively, the "Goldman Funds"), with smaller additional interests owned by affiliates of Lehman (collectively, the "Lehman Entities") and passive minority interest owners. The KKR Funds, the Texas Pacific Group Funds, and (assuming the conditions are satisfied) the Goldman Funds are each expected to be entitled to approximately equal governance rights in Texas Energy GP.

The KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities are referred to collectively as the "Controlling Owners."⁴ Upon the consummation of the

⁴ The Lehman Entities are not anticipated to exercise substantial control over Texas Energy GP, because they are expected to own no more than approximately 12% of the membership interests in Texas Energy GP.

transaction, the Controlling Owners will collectively have the right to cause Texas Energy LP to appoint all of the members of the board of directors of TXU Corp. and thereby through Texas Energy GP will effectively control the management of TXU Corp. and its subsidiaries, including TXU Power. In addition, the KKR Funds, Texas Pacific Group Funds, and Goldman Funds will be entitled to consent rights over extraordinary transactions by TXU Corp. and its subsidiaries, such as a change of control, initial public offering, or voluntary bankruptcy.

As described in further detail below, it is anticipated that upon the closing of the transaction the following entities will be members of Texas Energy GP and the Commission is asked to approve the participation of these entities accordingly:⁵

Expected Members of Texas Energy GP at Closing	
<u>Entities</u>	<u>Equity Interest⁶</u>
KKR 2006 Fund L.P., KKR PEI Investments, L.P., KKR Private Equity Investors, L.P., KKR Financial Corp., KKR Strategic Capital Fund, L.P., other investment vehicles affiliated with KKR	25% - 65%*
TPG Partners V, L.P., TPG Partners IV, L.P., TPG FOF V-A, L.P., TPG FOF V-B, L.P., other investment vehicles affiliated with Texas Pacific Group	17% - 54%*

Nonetheless, given the absence of a defined threshold for determining control under the Commission's standards and precedents, the Lehman Entities are considered solely for purposes of this Application to be among the parties that will be Controlling Owners upon the consummation of the transaction as a result of their expected ownership of up to 12% of the membership interests in Texas Energy GP.

⁵ For reasons not relevant to this Application, the acquisition of membership interests in Texas Energy GP by the Goldman Funds and Lehman Entities is subject to the satisfaction of certain conditions. For purposes of this Application, it is assumed that those conditions will be satisfied and those groups will thereby participate in the transaction. In the event, however, that the conditions are not satisfied, then the Goldman Funds and/or the Lehman Entities (as applicable) either will not make any investment in Texas Energy GP or would be restricted to being, at the election of KKR 2006 Fund and TPG V Fund, either Passive LLC Owners or Passive LP Owners (as defined below) and subject to the limitations on such investors discussed below.

⁶ The sum of the aggregate equity interests represented in this table exceeds 100% given the ranges of potential interests for several of the investors.

GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI GmbH & Co. KG, GS Capital Partners VI Offshore Fund, L.P., GS International Infrastructure Partners I, L.P., GS Global Infrastructure Partners I, L.P., GS Institutional Infrastructure Partners I, L.P., other investment vehicles affiliated with Goldman	≤28%*
LB I Group Inc., Lehman Brothers Co-Investment Partners L.P., other investment vehicles affiliated with Lehman	≤12%*
Citigroup Global Markets Inc. and affiliate(s)	<5%
J.P. Morgan Ventures Corporation and affiliate(s)	<5%
Morgan Stanley & Co. Incorporated and affiliate(s)	<5%
Other Passive LLC Owners and their affiliates	<5% each
*The respective equity interests of the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities will depend on whether or not the Goldman Funds and/or Lehman Entities participate in the transaction. In all events, more than 50% of the equity interests in Texas Energy GP and correspondingly more than 50% of the membership interests of Texas Energy GP will be held by entities within these groups, so that even if the Goldman Funds and/or Lehman Entities do not participate, a majority of the membership interests of Texas Energy GP will be held by the participating members of the Controlling Owners group.	

a. Current Texas Energy GP Members⁷

i) The KKR Funds

The KKR Funds are indirectly controlled by domestic business entities that are controlled by the two leading principals of KKR, both of whom are U.S. citizens. The current governance structure of the KKR Funds, discussed in detail in the following paragraphs, is illustrated in simplified form in Figure 3. KKR is one of the world's oldest and most experienced private equity firms specializing in management buyouts, with offices in New York City and other financial centers around the world. KKR's investment approach is focused on acquiring attractive business franchises and working closely with management over the long-term to design and implement value-creating strategies. Over the past 30 years, KKR and its investment fund affiliates have invested in approximately 150 transactions with a total value of over \$260 billion.

⁷ Descriptions in this section, as elsewhere in this Application, of organizational structures are based upon information current as of the date of this Application.

KKR has extensive experience investing in the energy sector; prior energy investments include ITC Holdings, DPL Inc., Texas Genco, and Union Texas Petroleum.

KKR 2006 Fund is a Delaware limited partnership that is controlled by its general partner, KKR Associates 2006 L.P., a Delaware limited partnership, which is controlled by its general partner, KKR 2006 GP LLC, a Delaware limited liability company, which is controlled by its managing members, Henry Kravis and George Roberts, who are U.S. citizens. KKR is controlled by its general partner, KKR & Co. L.L.C., which is controlled by its managing members, also Messrs. Kravis and Roberts. (Fig. 3.) The limited partners of KKR 2006 Fund are a diverse group of passive co-investors such as financial institutions, institutional investors (e.g., pension funds), and high net worth individuals, who have no rights to control the fund's activities. KKR 2006 Fund has entered into an agreement, for itself and other affiliated investment funds controlled by KKR, pursuant to which the KKR Funds have committed to invest up to a certain amount of equity in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon consummation of the transaction, the KKR Funds will own between approximately 25% and 65% of the membership interests of Texas Energy GP.⁸

KKR 2006 Fund has assigned a portion of its equity commitment to KKR Private Equity Investors, L.P. ("KPE"), a Guernsey⁹ limited partnership that is affiliated with KKR. KPE is a Guernsey limited partnership that will invest in Texas Energy GP through KKR PEI Investments, L.P., a Guernsey limited partnership, of which KPE is the sole limited partner. KKR PEI Investments, L.P. is controlled by its general partner, KKR PEI Associates, L.P., a Guernsey

⁸ The percentage interest of the KKR Funds in Texas Energy GP will vary within the indicated range based on the ultimate participation of other investors in the transaction, in particular whether the Goldman Funds and Lehman Entities ultimately invest in the transaction. Any investment by the Goldman Funds and Lehman Entities will reduce proportionately the investments, and membership interests in Texas Energy GP, of the KKR Funds and Texas Pacific Group Funds.

⁹ Guernsey, in the Channel Islands, is a Crown dependency of the United Kingdom.

limited partnership, which is controlled by its general partner, KKR PEI GP Limited, a Guernsey limited company. (Fig. 3.) As a Guernsey limited company, KKR PEI GP Limited is managed by its directors, each of whom is a member or employee of KKR and a U.S. citizen. Those directors are appointed by the shareholders of KKR PEI GP Limited, who are eleven members or employees of KKR, a majority of whom are not U.S. citizens. In addition, KPE's investments are selected and managed by KKR pursuant to a services agreement among KKR, as service provider, and KPE, KKR PEI Investments, L.P., KKR PEI Associates, L.P., KKR PEI GP Limited, and certain other KPE-related entities, as service recipients. KPE's limited partners are public investors, because its limited partnership interests are publicly traded on Euronext Amsterdam exchange, and like KKR 2006 Fund, the limited partners of KPE are passive investors who have no rights to control the fund's activities. KPE has entered into an agreement with the KKR 2006 Fund, pursuant to which it has committed to invest a certain amount of equity in the transaction. Upon the closing of the transaction, however, KPE will own less than 5% of the membership interests of Texas Energy GP.

The KKR Funds that participate in the transaction as members of Texas Energy GP also may include two other domestic entities. KKR 2006 Fund may assign a portion of its equity commitment to KKR Financial Corp., a publicly-traded Maryland corporation that is externally managed and advised by KKR Financial Advisors LLC pursuant to a management agreement between KKR Financial Corp. and KKR Financial Advisors LLC. KKR Financial Advisors LLC is a Delaware limited liability company that is wholly owned by KKR Financial LLC, a Delaware limited liability company, which is owned by KKR, Saturnino S. Fanlo, and David A. Netjes, the chief executive officer and chief operating officer, respectively, of both KKR Financial Corp. and KKR Financial Advisors LLC. (Fig. 3.) Messrs. Fanlo and Netjes are U.S.

citizens. KKR 2006 Fund also may assign a portion of its equity commitment to KKR Strategic Capital Fund, L.P. KKR Strategic Capital Fund, L.P. is a Delaware limited partnership that is controlled by its general partner, KKR Strategic Capital Partners, L.L.C., a Delaware limited liability company and wholly-owned subsidiary of KKR Financial LLC. KKR Strategic Capital Fund, L.P. is externally managed and advised by KKR Strategic Capital Management, L.L.C., a Delaware limited liability company that is wholly owned by KKR Financial LLC. (Fig. 3.). Based upon their actual equity investments upon consummation of the transaction, if any, KKR Financial Corp. and KKR Strategic Capital Fund, L.P. each will own less than 5% of the membership interests of Texas Energy GP.

ii) The Texas Pacific Group Funds

The Texas Pacific Group Funds are indirectly controlled by domestic business entities that are controlled by the principals of Texas Pacific Group, who are U.S. citizens. The current governance structure of the Texas Pacific Group Funds, discussed in detail in the following paragraphs, is illustrated in simplified form in Figure 4. Texas Pacific Group is a private investment partnership that was founded in 1992 and currently has more than \$30 billion of assets under management. Headquartered in Fort Worth, Texas, Texas Pacific Group has extensive experience with global public and private investments executed through leveraged buyouts, recapitalizations, spinouts, joint ventures, and restructurings. Its goal is to help management teams build long-term value that benefits all stakeholders. Texas Pacific Group and its investment fund affiliates invest in companies across a broad range of industries and geographies; prior investments include Denbury Resources and Texas Genco.

TPG V Fund is a Delaware limited partnership that is controlled by its general partner, TPG GenPar V, L.P., a Delaware limited partnership, which is controlled by TPG Advisors V,

Inc., a Delaware corporation, which is indirectly controlled by the principals of Texas Pacific Group, David Bonderman and James G. Coulter, who are U.S. citizens. TPG Partners IV, L.P. (“TPG IV Fund”) is a Delaware limited partnership that is controlled by its general partner, TPG GenPar IV, L.P., a Delaware limited partnership, which is controlled by TPG Advisors IV, Inc., a Delaware corporation, which also is indirectly controlled by Messrs. Bonderman and Coulter. TPG FOF V-A, L.P. and TPG FOF V-B, L.P. are Delaware limited partnerships, both of which also are controlled by the same general partner, TPG GenPar V, L.P., and thus under the indirect control of Messrs. Bonderman and Coulter. (Fig. 4.) The limited partners of the Texas Pacific Group Funds are a diverse group of passive co-investors, who have no rights to control the funds’ activities. TPG V Fund has entered into an agreement, for itself and other affiliated investment funds controlled by Texas Pacific Group, pursuant to which the Texas Pacific Group Funds have committed to invest up to a certain amount of equity in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon consummation of the transaction, the Texas Pacific Group Funds will own between approximately 17% and 54% of the membership interests of Texas Energy GP.¹⁰

b. Expected Texas Energy GP Members

The Commission also is asked to approve the inclusion of the Goldman Funds and the Lehman Entities among the members of Texas Energy GP in approving the indirect transfer of control. The Goldman Funds and Lehman Entities will become members of Texas Energy GP on or before the Closing Date so long as they have satisfied certain conditions they have agreed to with KKR 2006 Fund and TPG V Fund that are not relevant to this Application. It is

¹⁰ The percentage interest of the Texas Pacific Group Funds in Texas Energy GP will vary within the indicated range based on the ultimate participation of other investors in the transaction, in particular whether the Goldman Funds and Lehman Entities ultimately invest in the transaction. Any investment by the Goldman Funds and Lehman Entities will reduce proportionately the investments, and membership interests in Texas Energy GP, of the KKR Funds and Texas Pacific Group Funds.

expected, but not certain, that those commitments will be satisfied. The Goldman Funds propose to acquire a substantial membership interest sufficient to share with the KKR Funds and the Texas Pacific Group Funds a roughly equivalent role in controlling Texas Energy GP; the Lehman Entities propose to acquire a smaller, minority membership interest. For purposes of this Application, it is assumed that both of these groups of entities will participate in this transaction and the Commission is asked to approve their participation accordingly. This assumption affords the Commission full review of the significant direct investors in the transaction.

i) The Goldman Funds

The Goldman Funds are indirectly controlled by Goldman, a publicly-traded Delaware corporation. The current governance structure of the Goldman Funds, discussed in detail in the following paragraphs, is illustrated in simplified form in Figure 5. Goldman is a holding company that (directly and indirectly through subsidiaries or affiliated companies or both) is a leading investment banking organization. Its headquarters is in New York and it maintains significant offices in other financial centers around the world. The executive officers and eleven of the thirteen directors of Goldman are U.S. citizens.¹¹ The Goldman Funds, identified in the following paragraphs, were formed for the purpose of investing in equity, equity-related, and debt securities.

Pursuant to an agreement with KKR 2006 Fund and TPG V Fund, certain of the Goldman Funds have committed, subject to satisfaction of certain conditions, to invest up to a certain amount of equity in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon consummation of the transaction, the Goldman Funds will own up to

¹¹ The remaining two directors of Goldman are citizens of the United Kingdom and Sweden.

approximately 28% of the membership interests of Texas Energy GP. Any investment made by the Goldman Funds in the acquisition of TXU Corp. will reduce proportionately the investments, and membership interests in Texas Energy GP, of the KKR Funds and the Texas Pacific Group Funds, within the ranges of interests identified above for the KKR Funds and Texas Pacific Group Funds, respectively.

The Goldman Funds include four limited partnerships formed in Delaware. GS Capital Partners VI Fund, L.P. is a Delaware limited partnership, which is controlled by its general partner, GSCP VI Advisors, L.L.C., a Delaware limited liability company. GS Capital Partners VI Parallel, L.P. is a Delaware limited partnership, which is controlled by its general partner, GS VI Advisors, L.L.C., a Delaware limited liability company. GS Global Infrastructure Partners I, L.P. and GS Institutional Infrastructure Partners I, L.P. are Delaware limited partnerships that are controlled by the same general partner, GS Infrastructure Advisors 2006, L.L.C., a Delaware limited liability company. (Fig. 5.)

The Goldman Funds that may participate as direct investors in the transaction include three entities formed outside the United States.¹² GS Capital Partners VI Offshore Fund, L.P. is a Cayman Islands exempted limited partnership that is controlled by its sole general partner, GSCP VI Offshore Advisors, L.L.C., a Delaware limited liability company. GS International Infrastructure Partners I, L.P. is a Cayman Islands exempted limited partnership that is controlled by its sole general partner, GS Infrastructure Advisors 2006, L.L.C., a Delaware limited liability company. (Fig. 5.) GS Capital Partners VI GmbH & Co. KG is a German limited partnership.

¹² For reasons not relevant to this Application, one or more of the foreign Goldman Funds identified herein might not be among the Goldman Funds that participate in the transaction (even assuming that the remaining Goldman Funds do participate). For purposes of this Application, it is assumed that all three of these Goldman Funds formed in other nations will participate in order to afford the Commission full review of the proposed significant investors. If one or more of the foreign Goldman Funds does not participate, the actual foreign investment in the transaction will diminish.

Goldman, Sachs Management GP GmbH, a German company with limited liability and indirect subsidiary of Goldman, acts as the sole general partner of GS Capital Partners VI GmbH & Co. KG and GS Advisors VI, L.L.C., a Delaware limited liability company, acts as the managing limited partner of GS Capital Partners VI GmbH & Co. KG. (Fig. 5.) These Goldman Fund partnerships that are formed in foreign nations are controlled by their managing partners, which in turn are ultimately controlled, directly or indirectly, by Goldman, a Delaware corporation controlled by a majority of U.S. citizen directors. Based upon their actual equity investment upon consummation of the transaction, if they participate, these foreign entities will each own less than 7% of the membership interests of Texas Energy GP.

The limited partners of each of the Goldman Funds are a diverse group of passive co-investors, who have no rights in that capacity to control the funds' activities.

The management and control of each of the Goldman Funds are vested exclusively in their respective general partners and their investment manager, which are wholly-owned direct and indirect subsidiaries of Goldman. The investment manager of each of the Goldman Funds is Goldman, Sachs & Co., a New York limited partnership and wholly-owned subsidiary of Goldman. (Fig. 5.)

ii) The Lehman Entities

The Lehman Entities are indirectly controlled by Lehman, a publicly-traded Delaware corporation. The current governance structure of the Lehman Entities, discussed in detail in the following paragraphs, is illustrated in simplified form in Figure 6. Lehman is a financial services firm whose activities include investment banking. Its headquarters is in New York and it

maintains significant offices in other financial centers around the world. A majority of the executive officers and nine of the ten directors of Lehman are U.S. citizens.¹³

LB I Group Inc. is a Delaware corporation and wholly-owned subsidiary of Lehman Brothers Inc., a wholly-owned subsidiary of Lehman. Lehman Brothers Co-Investment Partners L.P. is a Delaware limited partnership controlled by its general partner, Lehman Brothers Co-Investment Associates L.P., a Delaware limited partnership, which in turn is controlled by its general partner, Lehman Brothers Co-Investment Associates L.L.C., a Delaware limited liability company and wholly-owned subsidiary of Lehman. (Fig. 6.) The limited partners of Lehman Brothers Co-Investment Partners L.P. are a diverse group of passive co-investors.

Pursuant to an agreement with KKR 2006 Fund and TPG V Fund, the Lehman Entities have committed, subject to satisfaction of certain conditions, to invest up to a certain amount of equity in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon the consummation of the transaction, the Lehman Entities will own up to approximately 12% of the membership interests of Texas Energy GP. Any investment made by the Lehman Entities in the acquisition of TXU Corp. will reduce proportionately the investments, and membership interests in Texas Energy GP, of the KKR Funds and the Texas Pacific Group Funds, within the ranges of interests identified above for the KKR Funds and Texas Pacific Group Funds, respectively.

iii) The Passive LLC Owners

In addition to the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities, the Commission is asked to approve the inclusion among the members of Texas Energy GP of a limited number of other investors (the "Passive LLC Owners") with membership interests subject to the following limitations. (Fig. 2.) These membership interests would not

¹³ The remaining director of Lehman is a citizen of the United Kingdom.

entitle such investors to any right to manage, direct, or otherwise control the activities of Texas Energy GP, Texas Energy LP, TXU Corp., or any TXU Corp. subsidiary, and no such Passive LLC Owner (and its affiliates) will be permitted to own 5% or more of the total membership interests of Texas Energy GP.¹⁴ In addition, the governing agreements of Texas Energy GP will provide that only the Controlling Owners will have the right to appoint the directors of TXU Corp. and otherwise control the activities of Texas Energy LP, and thus indirectly TXU Corp. and its subsidiaries, including TXU Power. As noted above, the KKR Funds, Texas Pacific Group Funds, and Goldman Funds also will have certain negative consent rights over extraordinary actions by TXU Corp. and its subsidiaries.

While the Passive LLC Owners' membership interests in Texas Energy GP will be voting interests to the extent all members are required to vote on any matter pursuant to law or otherwise, in fact as a contractual matter all right to manage, direct, or otherwise control the activities of Texas Energy GP, Texas Energy LP, TXU Corp., or TXU Corp. subsidiaries (including TXU Power) will reside with the Controlling Owners. The Passive LLC Owners will have minimal consent rights over amendments to the governing agreements of Texas Energy GP, to be exercised based on their pro rata ownership of the membership interests, which will be less than 5% for each Passive LLC Owner and its affiliates. Those consent rights will be limited to matters directly related to the Passive LLC Owners' economic and other specified rights in Texas Energy GP. In particular, the consent of the members would be required for any amendment to the governing agreements of Texas Energy GP that would impose new transfer restrictions on membership interests or restrict the members' right to participate in extraordinary events, such as "tag-along" sales, that are provided under the agreements. In addition, the consent of any

¹⁴ In addition to the 5% limit on investment in Texas Energy GP, no such Passive LLC Owner will, with its affiliates, have a 10% or greater economic interest, directly or indirectly, in Texas Energy LP.

member would be required for any amendment to the governing agreements for Texas Energy GP that by its express terms would have a disproportionate material adverse effect on the rights, obligations, powers, or interests of that member relative to other members in their capacities as such.

The Passive LLC Owners' ownership interests of less than 5% each, combined with the contractual control rights to be provided to the Controlling Owners under the governing agreements for Texas Energy GP, will ensure that the Passive LLC Owners will have no right to manage, direct, or otherwise control the activities of Texas Energy GP, Texas Energy LP, TXU Corp., or TXU Corp. subsidiaries. Subject to these terms and conditions, the Commission is asked to approve the participation of such Passive LLC Owners in the transaction.

At the present time, in addition to the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities, only three large financial entities have entered into agreements committing them (or their affiliates) to invest in the transaction to acquire TXU Corp. and thus obtain corresponding membership interests in Texas Energy GP: (1) Citigroup Global Markets Inc. ("Citigroup"), a broker-dealer subsidiary of the Citigroup Inc. financial services enterprise; (2) J.P. Morgan Ventures Corporation ("JPMorgan"), an equity investment arm of the JPMorgan Chase & Co. financial services enterprise; and (3) Morgan Stanley & Co. Incorporated ("Morgan Stanley"), the broker-dealer subsidiary of Morgan Stanley, a publicly-traded financial services enterprise. Each of these financial entities is expected to "sell down" some or all of its equity commitment, and in all events upon the closing of the transaction each will own less than 5% of the total membership interests in Texas Energy GP.

2. Texas Energy LP's Limited Partners

Texas Energy LP currently has two limited partners; on or before the Closing Date additional limited partners will be added. The current and currently anticipated limited partners

of Texas Energy LP are identified below. Holders of limited partnership interests in Texas Energy LP are not entitled by those interests to manage its business or control its actions.¹⁵ Nor do the limited partners of Texas Energy LP have any voting rights in its controlling general partner, Texas Energy GP, as a result of their limited partnership interests in Texas Energy LP.

As described in further detail below, it is anticipated that upon the closing of the transaction the following entities will be the non-controlling limited partners of Texas Energy LP, and the Commission is asked to approve the participation of these entities accordingly:¹⁶

Expected Limited Partners of Texas Energy LP at Closing	
<u>Entities</u>	<u>Equity Interest</u> ¹⁷
KKR 2006 Fund L.P., KKR PEI Investments, L.P., KKR Private Equity Investors, L.P., KKR Financial Corp., KKR Strategic Capital Fund, L.P., other investment vehicles affiliated with KKR	45%
TPG Partners V, L.P., TPG Partners IV, L.P., TPG FOF V-A, L.P., TPG FOF V-B, L.P., other investment vehicles affiliated with Texas Pacific Group	39%
Co-Investment Entity (or entities) controlled by KKR and Texas Pacific Group	55%
GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Capital Partners VI GmbH & Co. KG, GS Capital Partners VI Offshore Fund, L.P., GS International Infrastructure Partners I, L.P., GS Global Infrastructure Partners I, L.P., GS Institutional Infrastructure Partners I, L.P., other investment vehicles affiliated with Goldman	20%
LB I Group Inc., Lehman Brothers Co-Investment Partners L.P., other investment vehicles affiliated with Lehman	7%
Citigroup Global Markets Inc. and affiliate(s)	<7%

¹⁵ The Limited Partnership Agreement of Texas Energy LP provides that no limited partner, in his or her capacity as such, shall have the right to take part in the management or control of the business of the partnership. As discussed below, the limited partners will in that capacity have only limited consent rights to protect certain economic interests in the partnership, consistent with their status as passive investors.

¹⁶ See note 5 concerning the Goldman Funds and Lehman Entities.

¹⁷ The sum of the aggregate equity interests represented in this table exceeds 100% given the ranges of potential interests for several of the investors.

J.P. Morgan Ventures Corporation and affiliate(s)	<7%
Morgan Stanley & Co. Incorporated and affiliate(s)	<7%
Other Passive LP Owners	<10% each

a. Current Texas Energy LP Limited Partners

Currently, the only limited partners of Texas Energy LP are KKR 2006 Fund and TPG V Fund.

i) The KKR Funds

KKR 2006 Fund has entered into an agreement with Texas Energy LP, for itself and other investment vehicles affiliated with KKR, pursuant to which the KKR Funds have committed to invest in the transaction to acquire TXU Corp. Depending on their actual equity investment upon consummation of the transaction, the KKR Funds will own up to approximately 45% of the limited partnership interests of Texas Energy LP.

KKR 2006 Fund has assigned a portion of its equity commitment to KPE. KPE will invest into Texas Energy LP through KKR PEI Investments, L.P., of which KPE is the sole limited partner. KPE has accordingly entered into an agreement with the KKR 2006 Fund, pursuant to which it has committed to invest a certain amount of equity in the transaction. Upon the closing of the transaction, however, KPE will own less than 5% of the limited partnership interests of Texas Energy LP.

KKR 2006 Fund also may assign portions of its equity commitment to KKR Financial Corp. and KKR Strategic Capital Fund, L.P. Depending upon their actual equity investments upon consummation of the transaction, if any, KKR Financial Corp. and KKR Strategic Capital Fund, L.P. each will own less than 5% of the limited partnership interests of Texas Energy LP.

ii) The Texas Pacific Group Funds

TPG V Fund has entered into an agreement with Texas Energy LP, for itself and other Texas Pacific Group Funds, pursuant to which the Texas Pacific Group Funds have committed to invest in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon consummation of the transaction, the Texas Pacific Group Funds will own up to approximately 39% of the limited partnership interests of Texas Energy LP.

b. Expected Texas Energy LP Limited Partners

i) The Goldman Funds

Pursuant to an agreement with KKR 2006 Fund and TPG V Fund, certain of the Goldman Funds have committed, subject to satisfaction of conditions, to invest in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon consummation of the transaction, the Goldman Funds will own up to approximately 20% of the limited partnership interests of Texas Energy LP. Any investment made by the Goldman Funds in the acquisition of TXU Corp. will reduce proportionately the investments, and limited partnership interests in Texas Energy LP, of the KKR Funds and the Texas Pacific Group Funds.

ii) The Lehman Entities

Pursuant to an agreement with KKR 2006 Fund and TPG V Fund, the Lehman Entities have committed, subject to satisfaction of certain conditions, to invest in the transaction to acquire TXU Corp. Depending upon their actual equity investment upon consummation of the transaction, the Lehman Entities will own up to approximately 7% of the limited partnership interests of Texas Energy LP. Any investment made by the Lehman Entities in the acquisition of TXU Corp. will reduce proportionately the investments, and limited partnership interests in Texas Energy LP, of the KKR Funds and the Texas Pacific Group Funds.

iii) The Passive LP Owners

In addition to the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities, a limited number of other investors (the “Passive LP Owners”) may acquire passive limited partnership interests in Texas Energy LP. (Fig. 2.) These Passive LP Owners may acquire such limited partnership interests directly in Texas Energy LP or indirectly through investment vehicles formed to hold such limited partnership interests. Some of the Passive LP Owners also may be Passive LLC Owners, or may hold passive ownership interests in the various investment funds (e.g., the KKR Funds and the Texas Pacific Group Funds) that own limited partnership interests in Texas Energy LP.

The limited partnership interests held by Passive LP Owners will be essentially economic interests only and as such passive. Under the Limited Partnership Agreement of Texas Energy LP, the Passive LP Owners will have no voting or governance rights over Texas Energy LP. The Passive LP Owners will have minimal consent rights over amendments to the Limited Partnership Agreement, to be exercised based on their pro rata ownership of the limited partnership interests. Those rights will be limited to matters necessary to protect the limited partners’ economic and other specified rights in Texas Energy LP. In particular, the consent of the limited partners would be required for any amendment to the Limited Partnership Agreement that would impose new transfer restrictions on limited partnership interests or restrict the limited partners’ right to participate in extraordinary events, such as “tag-along” sales, that are provided under the agreement. In addition, the consent of any limited partner would be required for any amendment to the Limited Partnership Agreement that by its express terms would have a disproportionate material adverse effect on the rights, obligations, powers, or interests of such limited partner relative to the other limited partners in their capacities as such.

In all events, no Passive LLC Owner or Passive LP Owner (or group of affiliated owners) will hold ownership interests entitling such owner and its affiliates to 10% or more of the combined direct or indirect economic interests in Texas Energy LP, whether as a Passive LLC Owner, a Passive LP Owner, or both.

Pursuant to agreements with Texas Energy LP, Citigroup, JPMorgan, and Morgan Stanley have each committed, individually or together with affiliated entities, to invest in the transaction to acquire TXU Corp. Depending upon their actual equity investments upon consummation of the transaction, each of these financial entities would own up to approximately 7% of the limited partnership interests of Texas Energy LP. Each of these financial entities, however, is expected to “sell down” some or all of its equity commitment to below 5% of the limited partnership interests in Texas Energy LP.

KKR and Texas Pacific Group currently intend to form one or more co-investment entities (“Co-Investment Entity”) to become limited partners of Texas Energy LP. Any such Co-Investment Entity is expected to be a Delaware business entity (limited liability company or limited partnership) formed for the purpose of providing an investment vehicle for passive economic investors to participate in the ownership of Texas Energy LP.¹⁸ Each Co-Investment Entity will be controlled by affiliates of KKR and/or Texas Pacific Group, which will own no (or only limited) economic interests in the Co-Investment Entity, but will manage and control its activities as managing member(s) or general partner(s) (as appropriate to the entity). The principal economic interests of any Co-Investment Entity will be owned by its passive members or limited partners. At the present time, a number of investors have been invited to invest in

¹⁸ Whether a Co-Investment Entity is organized as a Delaware limited liability company or Delaware limited partnership will not affect its rights as a limited partner of Texas Energy LP. Moreover, the status of Passive LP Owners who invest in a Co-Investment Entity will not materially change depending on whether they are members of a limited liability company or limited partners in a limited partnership.

such a Co-Investment Entity. At the closing of the transaction, one or more Co-Investment Entities controlled by KKR and Texas Pacific Group will own up to approximately 55% of the limited partnership interests of Texas Energy LP.

3. Further Background on Controlling Owners

The Commission previously has considered and approved transfers of indirect control of licenses to investment funds controlled by KKR and Texas Pacific Group. Investment funds affiliated with KKR and Texas Pacific Group participated in the indirect acquisition of Texas Genco, LP in 2004. Investment fund vehicles affiliated with KKR and Texas Pacific Group each indirectly acquired approximately 24.8% of Texas Genco; two other private equity investment funds each indirectly acquired approximately 24.8% of Texas Genco, with the remaining roughly 0.8% indirectly acquired by management participants. As partial indirect owners of Texas Genco, the KKR and Texas Pacific Group funds belonged to a group that collectively indirectly controlled the licensee of a 44% interest in the South Texas Project Electric Generating Station operated pursuant to NRC licenses NPF-76 and NPF-80. The Commission approved the indirect transfer of control of those licenses to Texas Genco and its investors, including investment funds affiliated with KKR and Texas Pacific Group, by an Order dated April 4, 2005.¹⁹ Texas Pacific Group also participated in the proposed acquisition of Portland General Electric (“PGE”) in 2004. Partnerships affiliated with Texas Pacific Group would have indirectly owned 79.9% of the equity interest and 5% of the voting interest in PGE, the licensee of the Trojan Nuclear Plant operated pursuant to NRC license NPF-1 and the Trojan Independent Spent Fuel Storage Installation operated pursuant to NRC license SNM-2509 under the terms of that proposed transaction. Although the transaction ultimately was not consummated, the Commission

¹⁹ Three of the proposed directors of TXU Corp., Messrs. Lipschultz, Goltz, and MacDougall, served as directors of Texas Genco while the investment funds affiliated with KKR and Texas Pacific Group were part of the ownership group of that licensee.

approved the indirect transfer of control of that license to the proposed acquirer of PGE and its investors, including certain Texas Pacific Group investment funds, by an Order dated February 14, 2005.

D. Organization and Management

1. Places of Establishment and Places of Business

The places of establishment and principal places of business of the proposed shareholder of TXU Corp. (Texas Energy LP), its general partner (Texas Energy GP), and that general partner’s members (other than Passive LLC Owners) are set forth in the following table:

Entity	Place of Formation	Principal Place of Business
Texas Energy Future Holdings Limited Partnership	Delaware	New York/Texas
Texas Energy Future Capital Holdings LLC	Delaware	New York/Texas
KKR 2006 Fund L.P.	Delaware	New York
KKR PEI Investments, L.P., KKR Private Equity Investors, L.P.	Guernsey	Guernsey
KKR Financial Corp.	Maryland	California
KKR Strategic Capital Fund, L.P.	Delaware	California
TPG Partners V, L.P., TPG Partners IV, L.P., TPG FOF V-A, L.P., TPG FOF V-B, L.P.	Delaware	Texas
GS Capital Partners VI Fund, L.P., GS Capital Partners VI Parallel, L.P., GS Global Infrastructure Partners I, L.P., GS Institutional Infrastructure Partners I, L.P.	Delaware	New York
GS Capital Partners VI Offshore Fund, L.P., GS International Infrastructure Partners I, L.P.	Cayman Islands	New York
GS Capital Partners VI GmbH & Co. KG	Germany	New York ²⁰
LB I Group Inc., Lehman Brothers Co-Investment Partners L.P.	Delaware	New York

²⁰ GS Capital Partners VI GmbH & Co. KG is controlled by its managing limited partner, GS VI Advisors, L.L.C., which maintains its principal place of business in New York.

2. Directors and Executive Officers

Texas Energy LP is a limited partnership with no directors or officers; its business is managed by its sole general partner, Texas Energy GP.

Texas Energy GP is managed by its members. Currently, the members of Texas Energy GP are KKR 2006 Fund and TPG V Fund. As discussed in the Section IV.C(1)(b), the Goldman Funds and Lehman Entities will become members of Texas Energy GP on or before the Closing Date upon satisfying certain conditions. Citigroup, JP Morgan, and Morgan Stanley also are expected to become members of Texas Energy GP on or before the Closing Date, but will, like Passive LLC Owners, own small (<5%) membership interests. At the closing of the transaction, the Controlling Owners will collectively control Texas Energy GP, by contractual provisions granting them affirmative rights to appoint the directors of TXU Corp., negative approval rights over extraordinary actions at TXU Corp., and by their combined ownership of a substantial majority of the membership interests in Texas Energy GP.

The officers of Texas Energy GP are Marc S. Lipschultz, President; Michael MacDougall, President; Frederick M. Goltz, Vice President – Corporate Development; Jonathan D. Smidt, Vice President and Treasurer; and Clive Bode, Vice President and Secretary, all but one of whom are U.S. citizens.²¹ Biographies of these individuals are included Attachment 6.

V. FOREIGN OWNERSHIP OR CONTROL

Consistent with Sections 103d, 104d, and 184 of the Act, after the closing of the proposed transaction, Texas Energy LP, which will be the sole shareholder of TXU Corp. and thus the indirect parent of licensee TXU Power, will not be owned, controlled, or dominated by any alien, foreign corporation, or foreign government. This conclusion is demonstrated by a functional analysis of the governance structure of Texas Energy LP and its investors, consistent with the

²¹ As previously noted, Mr. Smidt is a citizen of South Africa.

Commission's Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355 (Sept. 28, 1999) ("SRP").

Twelve of the thirteen individuals who will be appointed to TXU Corp.'s Board of Directors upon closing of the transaction are U.S. citizens; the thirteenth is a citizen of South Africa. See Section III.D(2)(a). The executive officers and management personnel from the existing TXU organization, each of whom Texas Energy LP anticipates will continue in positions of substantially comparable management and operational responsibility following the closing of the transaction, are all U.S. citizens. See Section III.D(2)(b).

The appointment of one citizen of South Africa to be a director of TXU Corp. will have no material impact on TXU Power's current compliance with foreign ownership, control, or influence ("FOCI") regulations. The CPSES facility security manager will update TXU Power's FOCI information disclosure to the NRC as required by 10 CFR 95.

Texas Energy LP is a Delaware limited partnership domiciled in the United States. As discussed above, the business activities of Texas Energy LP are controlled by its general partner, Texas Energy GP, a Delaware limited liability company domiciled in the United States. Four of the five officers of Texas Energy GP are U.S. citizens. See Section IV.D.2. Texas Energy GP will not be controlled by any foreign entities or other foreign persons.

As detailed in Section IV.C(1) above, the members of Texas Energy GP at the time of the closing of the transaction will be U.S. business entities domiciled in the United States with the exception of minority membership interests held by two Goldman Fund limited partnerships formed in the Cayman Islands, one Goldman Fund entity formed in Germany, and one KKR Fund entity formed in Guernsey.²² The Goldman Fund limited partnerships that are formed and

²² See note 12 regarding the assumption that all the foreign Goldman Funds will participate, notwithstanding actual uncertainty.

domiciled in foreign nations are controlled by their general partners, which in turn are ultimately controlled, directly or indirectly, by Goldman, a Delaware corporation controlled by a majority of U.S. citizen directors. (Fig. 5.) KPE, the KKR Fund entity formed overseas, will own less than 5% of the membership interests of Texas Energy GP. Each one of the Goldman Funds formed overseas, if it participates in the transaction, will own less than 7% of the membership interests of Texas Energy GP. Examined from a functional perspective, given the overall investment and governance structure of Texas Energy GP, such partial foreign ownership of Texas Energy GP by affiliates of the Controlling Owners does not constitute impermissible foreign ownership, control, or domination of TXU Power.²³

Other non-U.S. entities may, after the date of this Application, agree and be allowed to invest in Texas Energy GP as Passive LLC Owners. None of these foreign entities, however, will be permitted to own 5% or more of the membership interests in Texas Energy GP. Thus, any such foreign Passive LLC Owners will, individually and collectively, have minority membership interests. Moreover, such Passive LLC Owners will have none of the contractual governance rights vested in the Controlling Owners, such as the power to designate directors of TXU Corp. As a result of their small ownership interests and lack of contractual governance rights, any foreign Passive LLC Owners that hereafter invest will not have the ability to control Texas Energy GP, Texas Energy LP, TXU Corp., or TXU Corp.'s subsidiaries, including TXU Power.

²³ See SRP § 3.2, 64 Fed. Reg. at 52,358 (“An applicant that is partially owned by a foreign entity, for example, partial ownership of 50% or greater, may still be eligible for a license if certain conditions are imposed, such as requiring that officers and employees of the applicant responsible for special nuclear material must be U.S. citizens.”); SRP § 4.2, 64 Fed. Reg. at 52,359 (information to be considered includes “[w]hether any foreign interest controls, or is in a position to control the election, appointment, or tenure of any of the applicant’s directors, officers, or executive personnel”).

In addition to such minority, non-controlling direct foreign investments in Texas Energy GP, various foreign entities and other foreign persons will invest in Texas Energy GP indirectly by participating as passive co-investors in the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities. Such indirect foreign investors will hold passive, non-controlling interests in those investment funds. The maximum percentage of passive foreign investment in the domestic KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities respectively are set forth in the table below.

Texas Energy GP Members	Foreign Interests in Domestic Funds²⁴	Foreign Controlled?
KKR Funds*	<44%	No
Texas Pacific Group Funds	<41%	No
Goldman Funds*	<21%	No
Lehman Entities	<3%	No

*excluding foreign entities discussed in text above (KPE, GS Capital Partners VI Offshore Fund, L.P., GS International Infrastructure Partners I, L.P., and GS Capital Partners VI GmbH & Co. KG)²⁵

It bears emphasizing that such indirect foreign investment in the transaction is passive. Because of the investment and governance structure of Texas Energy GP and Texas Energy LP, such partial foreign investment does not constitute impermissible foreign ownership, control, or domination of TXU Power.²⁶

²⁴ In determining these percentages, if there is uncertainty whether an indirectly-invested economic interest should be attributed to a foreign entity or other foreign person, or the source of capital is uncertain, that economic interest has been regarded as if foreign. Thus, these percentages reflect conservative estimates that likely overstate actual foreign economic interests.

²⁵ If KPE and the Goldman Funds formed in foreign nations are added to the domestic entities reflected in this table, then the percentage of foreign investment in the total investment of the KKR Funds and Goldman Funds would be less than 52% and less than 46%, respectively.

²⁶ The SRP indicates that a functional analysis of actual ability to control, rather than mere aggregate economic interests, should be considered in determining whether foreign persons or entities have impermissible control. SRP § 3.2, 64 Fed. Reg. at 52,358 (“Even though a foreign entity contributes 50% or more, of the costs of constructing a reactor [and otherwise actively participates in certain decisions] ... these facts alone do not require a finding that the applicant is under foreign control.”); see also id. (“The Commission has stated that the words

Insofar as Citigroup, JPMorgan, and Morgan Stanley each will hold less than 5% of the membership interests of Texas Energy GP, any indirect foreign co-investors in their respective investment vehicles would represent a *de minimis* fraction of the economic interests of Texas Energy GP.

The non-controlling limited partners of Texas Energy LP at the time of the closing of the transaction will be corporations, limited liability companies, and limited partnerships, including limited partnership interests held by the above-mentioned investment funds domiciled in the Cayman Islands, Germany, and Guernsey. Other foreign-domiciled entities also may be allowed to become Passive LP Owners. Such owners of limited partnership interests in Texas Energy LP do not have the right to control the activities of Texas Energy LP or its general partner, Texas Energy GP; management and control of Texas Energy LP will vest solely in its general partner, Texas Energy GP, and be exercised by the Controlling Owners. Thus, the limited partners of Texas Energy LP that are foreign entities (as well as other Passive LP Owners) do not have the ability to control Texas Energy LP or, indirectly, TXU Power.

The limited partners or other passive investors in the proposed Co-Investment Entity are expected to consist predominately of existing limited partners in the KKR Funds and the Texas Pacific Group Funds, and any Co-Investment Entity will be controlled by KKR and Texas Pacific Group.

In the aggregate, not more than 55% of the total economic interest in Texas Energy GP and Texas Energy LP will be held directly or indirectly by foreign entities or other foreign persons investing as Passive LLC Owners, Passive LP Owners, or passive co-investors through the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities or, in the

'owned, controlled, or dominated' mean relationships where the will of one party is subjugated to the will of another. General Electric Co., 3 AEC at 101.").

case of Texas Energy LP, one or more Co-Investment Entities. As holders of limited partnership interests in the funds, like other passive co-investors, such foreign investors have no rights to control the business activities of the investment funds and thus no ability to exercise control through them over Texas Energy GP and Texas Energy LP.²⁷

Moreover, such direct and indirect foreign investment in Texas Energy GP and Texas Energy LP will be dispersed among a variety of foreign investors, no one of which will represent more than 9% of the total economic interest in Texas Energy GP and Texas Energy LP. As such, the investment by any individual foreign investor should be considered *de minimis* for the NRC's purposes in evaluating the foreign investment involved in the indirect license transfer described in this Application.

Notwithstanding passive foreign investment, Texas Energy GP will exercise 100% control over Texas Energy LP and the Controlling Owners of Texas Energy GP (with the exception of KPE and the foreign Goldman Funds) are domestic entities that are controlled by domestic entities and U.S. citizens. Thus, no foreign person or entity will have the power, direct or indirect, to control or direct matters affecting the management or operations of Texas Energy LP, TXU Corp., or TXU Power. Accordingly, the passive foreign investment participation in the limited partners of Texas Energy LP and the members of Texas Energy GP will not be inimical to the common defense and security of the United States.

In order to further negate any issue concerning foreign ownership or control, all of the executive officers of TXU Corp. and the officers of TXU Generation Management Company LLC, the general partner of TXU Power, will be U.S. citizens. See Section III.D(2)(b).

²⁷ Each of the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities have policies that prohibit investment by persons and entities subject to sanctions administered by the U.S. Department of Treasury Office of Foreign Asset Control, and, to the knowledge of the funds' managers, none of their investors is officed or domiciled in a nation on the NRC's list of embargoed nations in 10 CFR 110.28.

Analyzed in accordance with the SRP, there is no reason to believe that Texas Energy LP is owned, controlled, or dominated by any alien, foreign corporation, or foreign government. Thus, the transfer of control of TXU Corp. to Texas Energy LP, and the resulting transfer to Texas Energy LP of indirect control of licensee TXU Power, will not result in any foreign ownership, domination, or control of TXU Power within the meaning of the Act.

VI. TECHNICAL QUALIFICATIONS

The technical qualifications of TXU Power are not affected by the proposed indirect transfer of control. There will be no physical changes to CPSES and no changes in the officers, personnel, or day-to-day operations of CPSES. No material changes are expected to affect the organizations at other sites that support CPSES. In the aggregate, functions, responsibilities, and reporting relationships within and among the nuclear organizations, especially as they relate to activities important to safe operation of CPSES, will continue to be clear and unambiguous, and the functions of these organizations will be unaffected.

VII. FINANCIAL QUALIFICATIONS

A. Projected Operating Revenues and Operating Costs

The following information confirms that TXU Power will continue to 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).

TXU Power is providing a pro forma Balance Sheet and Projected Income Statement for CPSES as a stand-alone operation for the five-year period from January 1, 2007 through December 31, 2011. Copies of the Projected Income Statement, related schedules, and pro forma Opening Balance Sheet are contained in Attachment 1A. TXU Power requests that Attachment

1A be withheld from public disclosure, as described in the Section 2.390 Affidavits provided as Attachment 7. (Redacted versions of these documents, suitable for public disclosure, are contained in Attachment 1.) These financial data demonstrate that CPSES alone possesses, or has reasonable assurance of obtaining, funds necessary to cover its estimated operating costs during this period.

TXU Power is providing similar pro forma balance sheet and projected income information regarding TXU Power as a whole (including its coal-fired generation assets) as further evidence of its financial qualifications as licensee.²⁸ These financial statements account for the costs of servicing anticipated new debt associated with the proposed transaction insofar as such debt is allocated to TXU Power. Copies of these financial statements are contained in Attachment 2A. (Redacted versions of these documents, suitable for public disclosure, are contained in Attachment 2.) TXU Power requests that Attachment 2A be withheld from public disclosure, as described in the Section 2.390 Affidavits provided as Attachment 7. These data further demonstrate that, even considering debt incurred in connection with the transaction, TXU Power possesses, or has reasonable assurance of obtaining, funds necessary to comply with its responsibilities as licensee.

TXU Power also is providing pro forma balance sheet and projected income information regarding Texas Energy LP in Attachment 3A. TXU Power requests that Attachment 3A be withheld from public disclosure, as described in the Section 2.390 Affidavits provided as Attachment 7. Redacted versions of these documents, suitable for public disclosure, are contained in Attachment 3.

²⁸ These pro forma financial statements do not indicate values and revenues associated with gas-fired generation assets that may be transferred to other TXU Corp. subsidiaries after the closing of the transaction.

As discussed in Section III.D(2)(c), a new intermediate holding company within the TXU Corp. subsidiary structure (“Luminant Holdco”) is proposed to be formed to directly or indirectly own and control the Luminant Subsidiaries. Luminant Holdco will be the parent of TXU Power, which will be reorganized and renamed Luminant Generation Company LLC. (Fig. 2.) TXU Power is providing a pro forma balance sheet and projected income information representing the expected financial qualifications of Luminant Holdco as parent of the Luminant Subsidiaries as Attachment 4A. TXU Power requests that Attachment 4A be withheld from public disclosure, as described in the Section 2.390 Affidavits provided as Attachment 7. Redacted versions of these documents, suitable for public disclosure, are contained in Attachment 4.

Information concerning TXU Corp. as a whole is contained in the TXU Corp. 2006 10-K.

The pro forma Projected Income Statements show that anticipated revenues from sales of energy from CPSES provide reasonable assurance of an adequate source of funds to meet the needs and obligations for CPSES’s ongoing operating and maintenance expenses. Furthermore, the pro forma Projected Income Statements for TXU Power as a whole (including its coal-fired generation assets) demonstrate its capacity to meet its own operating expenses as well as those of CPSES’s ongoing operating and maintenance expenses. The financial statements for Luminant Holdco also demonstrate that it would be financially qualified to occupy the position of parent of TXU Power.

Finally, the financial statements demonstrate that, following the transaction, TXU Corp. and its shareholder Texas Energy LP will continue to be financially qualified to own TXU Power. TXU Power will continue, by itself and through its affiliates, to sell its generation in the ERCOT wholesale power markets. The Projected Income Statements through 2011 show that anticipated revenues from sales of energy from TXU Power’s existing capacity provide

assurance that TXU Power will have an adequate source of funds to support its operating expenses, including support for CPSES on an ongoing basis.

B. Decommissioning Funding

The financial qualifications of TXU Power to continue to own the 100% undivided ownership interest in CPSES are further demonstrated by the fact that TXU Power will continue to provide financial assurance for decommissioning funding in accordance with 10 CFR 50.75(e)(1)(i) and (ii), using the external sinking fund method with access to non-bypassable charges to retail electric providers. TXU Power currently maintains and will continue to maintain decommissioning trust funds that have been established to provide funding for decontamination and decommissioning for CPSES. These funds totaled over \$208 million for Unit 1 and over \$239 million for Unit 2 as of December 31, 2006. TXU Power will continue to maintain these external sinking funds segregated from its assets and outside its administrative control in accordance with the requirements of 10 CFR 50.75(e)(1)(i) and (ii).

In addition, TXU Power will continue to receive contributions to those trust funds pursuant to a non-bypassable charge (within the meaning of 10 CFR 50.75(e)(1)(ii)(B)). These decommissioning funding arrangements were specifically approved by the Public Utility Commission of Texas (“PUCT”). Below is a table of these future contributions:

Years	Unit 1 Annual Contribution	Unit 2 Annual contribution
2007 through 2029	\$7.1 million	\$8.1 million
2030	\$1.8 million	\$8.1 million
2031		\$8.1 million
2032		\$2.0 million

These arrangements, as further shown in TXU Power's March 29, 2007, biannual 50.75(f) report, assure that TXU Power will have the total amount of funds estimated to be needed for decommissioning pursuant to 10 CFR 50.75(c), 50.75(f), and 50.82.

VIII. ANTITRUST INFORMATION

This Application post-dates the issuance of the CPSES operating licenses, and therefore no antitrust review is required or authorized. Based upon the Commission's decision in *Kansas Gas and Electric Co., et al.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999), the Atomic Energy Act of 1954, as amended, does not require or authorize antitrust reviews of post-operating license transfer applications.

IX. RESTRICTED DATA AND CLASSIFIED NATIONAL SECURITY INFORMATION

The proposed transfers do not contain any Restricted Data or other Classified National Security Information or result in any change in access to such Restricted Data or Classified National Security Information. TXU Power's existing restrictions on access to Restricted Data and Classified National Security Information are unaffected by the proposed transfers. In compliance with Section 145(a) of the Act, the applicants agree that restricted or classified defense information will not be provided to any individual until the Office of Personnel Management investigates and reports to the NRC on the character, associations, and loyalty of such individual, and the NRC determines that permitting such person to have access to Restricted Data will not endanger the common defense and security of the United States.

X. ENVIRONMENTAL CONSIDERATIONS

The requested consent to indirect transfer of control of the CPSES licenses is exempt from environmental review because it falls 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 indirect transfer does not involve any substantive amendment to the facility operating licenses or other change, and it will not directly affect the actual operation of CPSES in any substantive way. The proposed transfer does 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, and involves no 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 has no environmental impact.

XI. PRICE-ANDERSON INDEMNITY AND NUCLEAR INSURANCE

The proposed indirect transfer of control does not affect the existing Price-Anderson indemnity agreement for CPSES, and does not affect the required nuclear property damage insurance pursuant to 10 CFR 50.54(w) and nuclear energy liability insurance pursuant to Section 170 of the Act and 10 CFR Part 140.

XII. PROPOSED LICENSE AMENDMENTS FOR NAME CHANGE

The conforming License Amendment Request ("LAR") is included as Attachment 8 of this Application. Attachments 9 and 10 contain page markups of the CPSES Unit 1 Operating License (NPF-87) and CPSES Unit 2 Operating License (NPF-89) to replace TXU Generation Company LP with Luminant Generation Company LLC on the licenses. Attachments 11 and 12 contain the CPSES Unit 1 and Unit 2 Licenses with the proposed changes incorporated.

TXU Power respectfully requests that the NRC approve the conforming administrative amendments pursuant to 10 CFR 50.92 and 10 CFR 2.1315 by September 1, 2007. Such consent should be made immediately effective upon issuance and, in order to be coordinated with the indirect transfer of control, should permit implementation at any time until July 10, 2008. TXU

Power will inform the NRC if there are any significant changes in the status of any other required approvals or any other developments that have an impact on the schedule.

XIII. EFFECTIVE DATE AND OTHER REQUIRED REGULATORY APPROVALS

TXU and Texas Energy LP plan to implement the indirect transfer of control of TXU Power and its licenses for CPSES on a closing date to take place as soon after September 1, 2007, as all required regulatory approvals and rulings are received and/or waiting periods have expired. The proposed transaction is subject to approval by the Federal Energy Regulatory Commission ("FERC"). Also, notifications are required to be filed with the Federal Trade Commission and the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), and applicable rules and regulations. The FERC is expected to be asked to review the transaction on a schedule that would allow for its approval by late July 2007, and it is expected that the HSR Act waiting period will have expired or been terminated by mid-July 2007. Therefore, NRC's approval is expected to be the final approval necessary prior to closing.

Accordingly, TXU Power respectfully requests, on behalf of Texas Energy LP and itself, that NRC review this Application on a schedule that will permit the issuance of NRC consent to the indirect transfer of control by September 1, 2007. Such consent should be made immediately effective upon issuance and permit the indirect transfer of control at any time until July 10, 2008. TXU Power will inform the NRC if there are any significant changes in the status of any other required approvals, any other developments that have an impact on the schedule, or any substantive changes to the facts and circumstances described herein.

XIV. CONCLUSION

The information set forth in this Application and its attachments demonstrates that the proposed indirect transfer of control and administrative license amendments will not be inimical

to the common defense and security or result in any undue risk to public health and safety.

Based upon that information, TXU Power respectfully requests, on behalf of Texas Energy LP and itself, that the NRC issue an Order consenting to the indirect transfer of control of the Facility Operating License Nos. NPF-87 and NPF-89, for TXU Power's 100% undivided ownership interest in CPSES, and approving the administrative license amendments to reflect the proposed change of the licensee's name to Luminant Generation Company LLC.

FIGURE 1

Simplified Organizational Diagram Pre-Closing

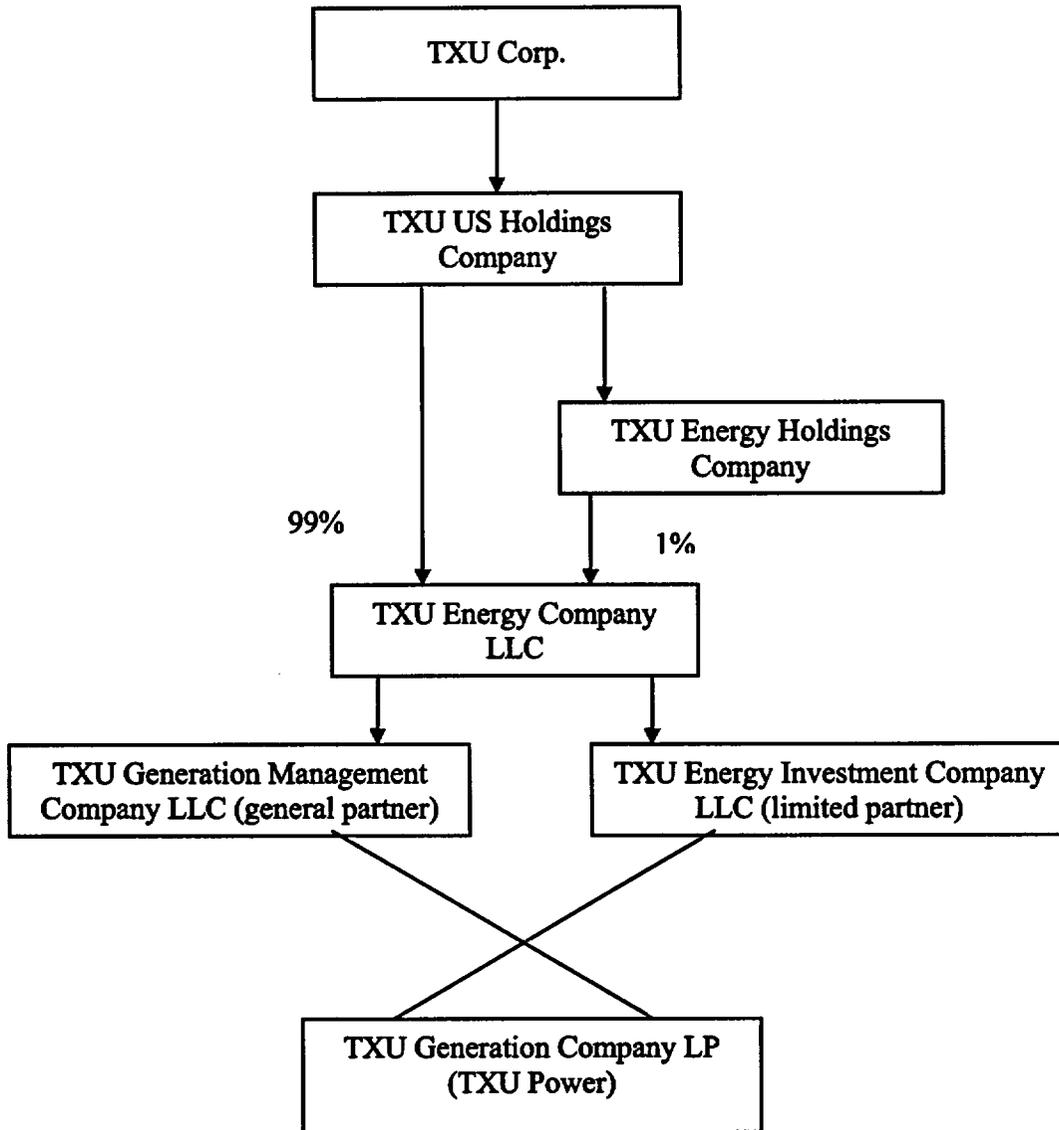
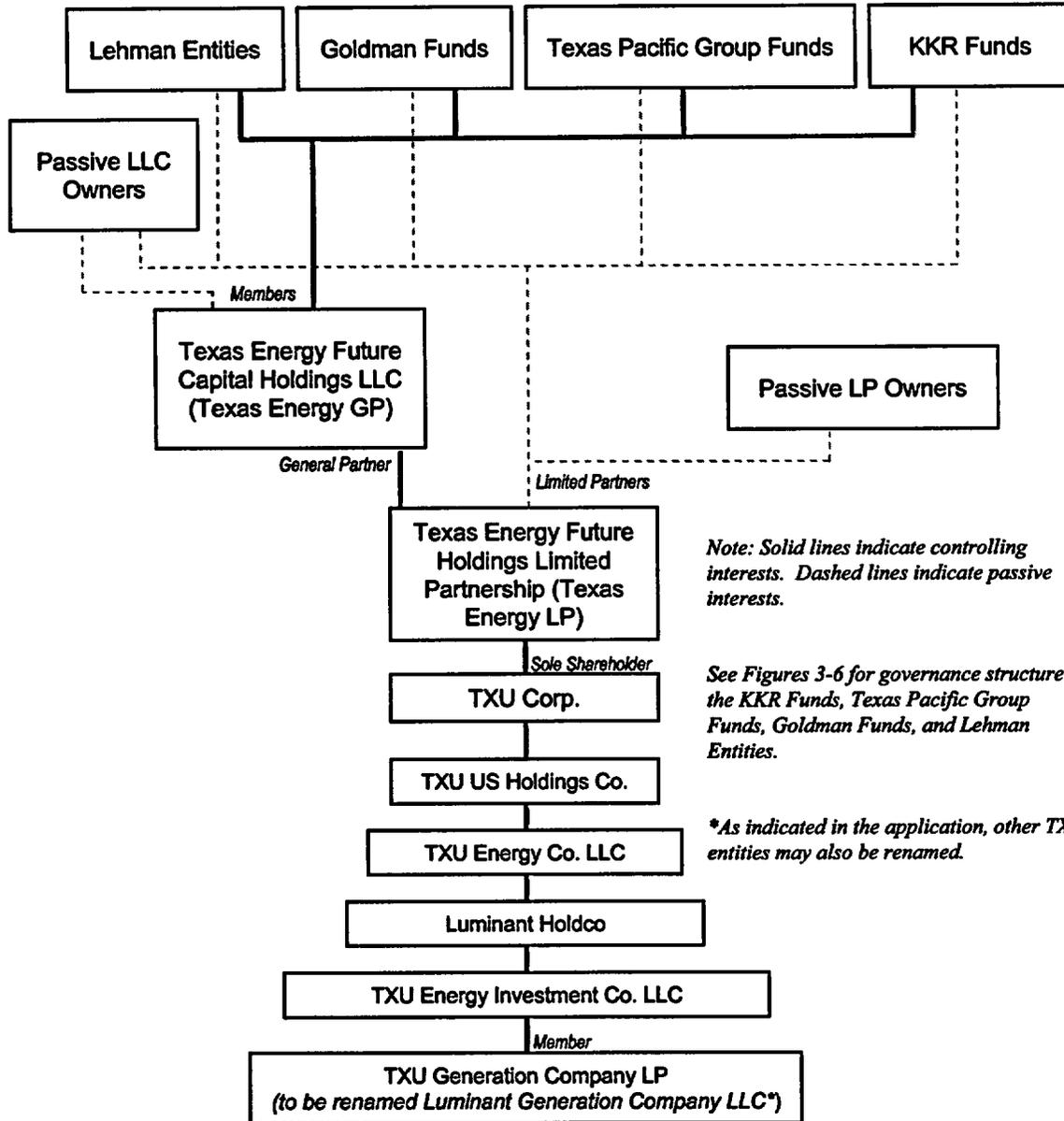


FIGURE 2

Simplified Organizational Diagram Post-Closing



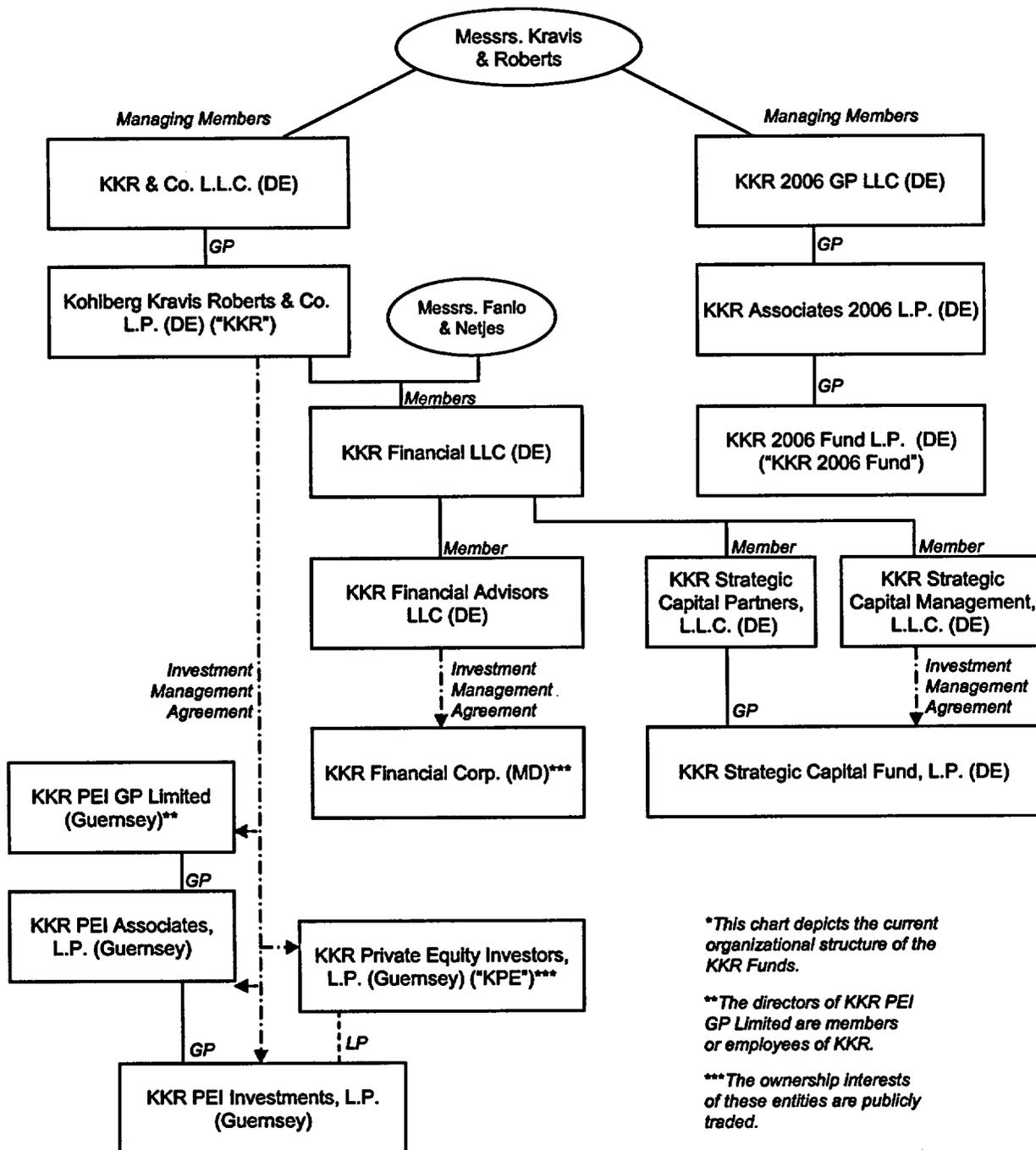
Note: Solid lines indicate controlling interests. Dashed lines indicate passive interests.

See Figures 3-6 for governance structure of the KKR Funds, Texas Pacific Group Funds, Goldman Funds, and Lehman Entities.

**As indicated in the application, other TXU entities may also be renamed.*

FIGURE 3

Simplified Governance Structure of KKR Funds*



*This chart depicts the current organizational structure of the KKR Funds.

**The directors of KKR PEI GP Limited are members or employees of KKR.

***The ownership interests of these entities are publicly traded.

FIGURE 4

Simplified Governance Structure of Texas Pacific Group Funds

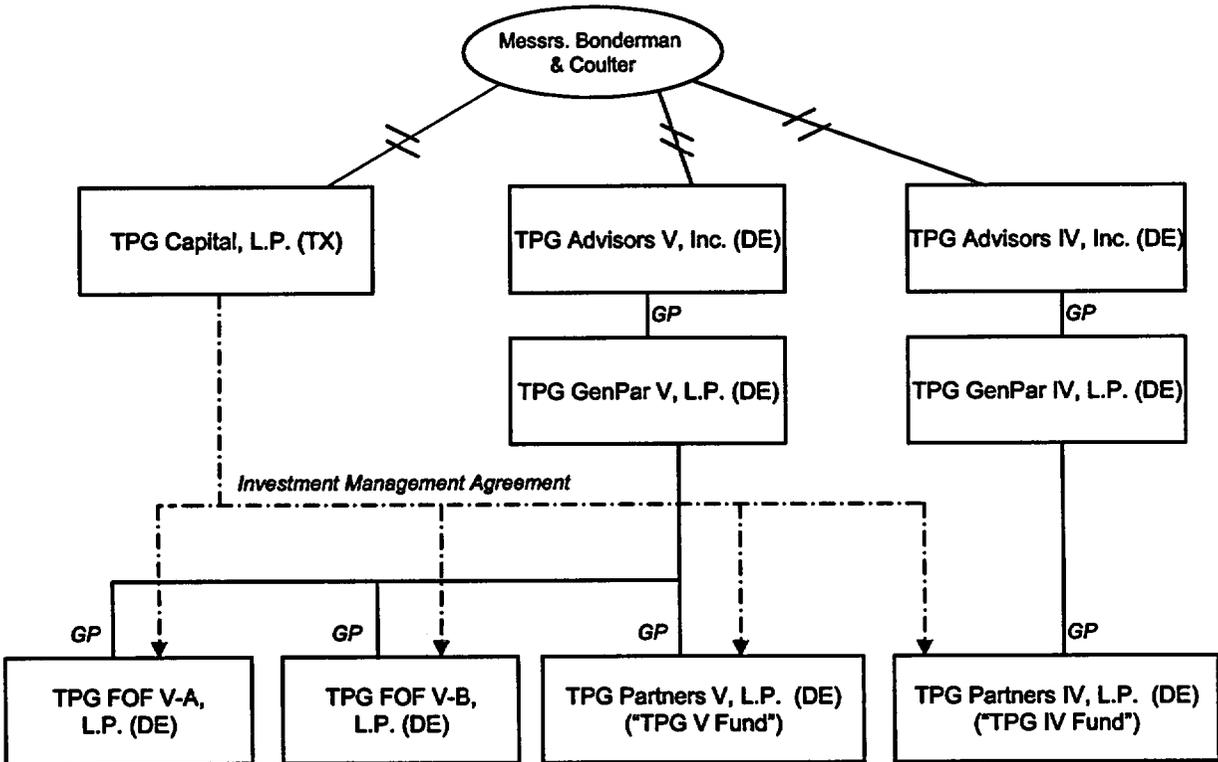


FIGURE 5

Simplified Governance Structure of Goldman Funds

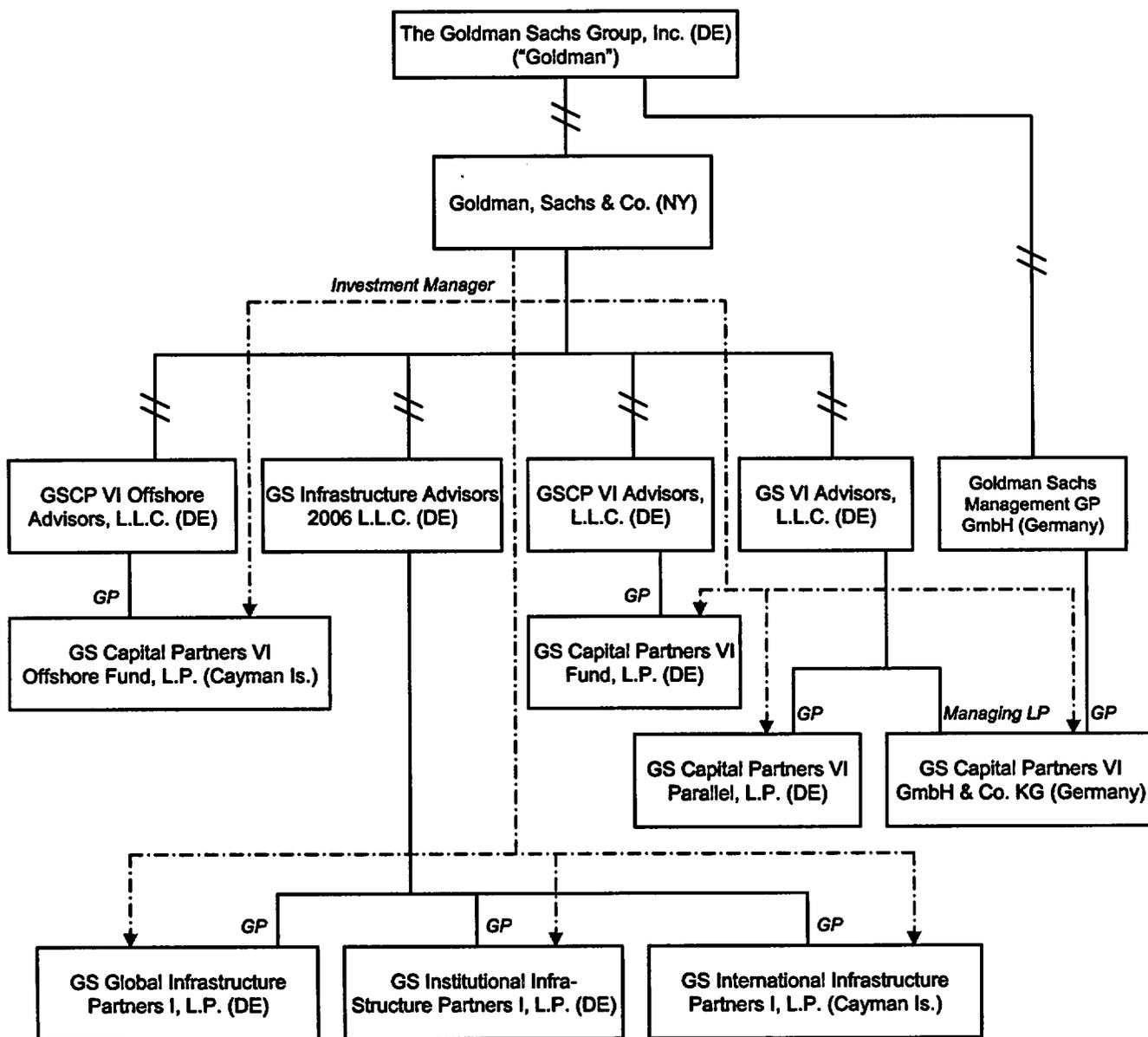
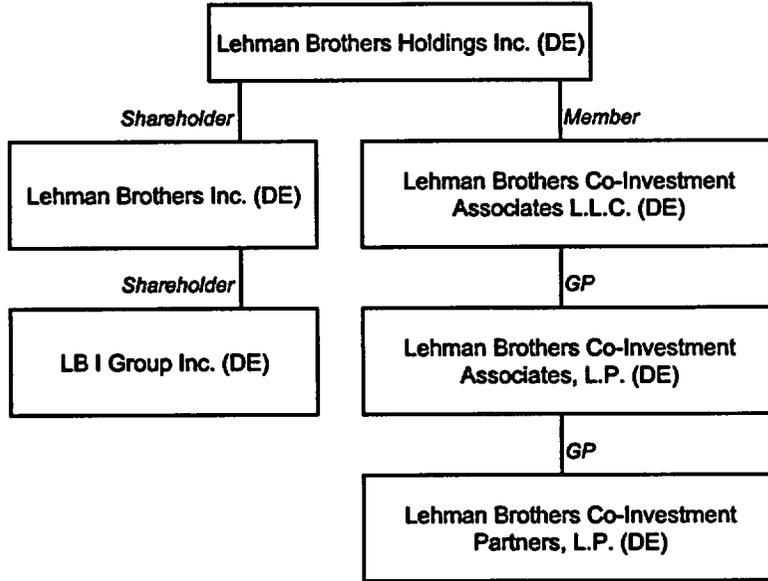


FIGURE 6

Simplified Governance Structure of Lehman Entities



ATTACHMENT 1

Pro Forma Balance Sheet and Projected Income Statement for Comanche Peak Units

Comanche Peak Units
Unaudited Pro Forma Balance Sheet
As of December 31, 2006
(\$ in millions)

	<u>2006</u> <u>Historical (a)</u>	<u>Pro Forma</u> <u>Adjustments</u>	<u>Adjusted</u> <u>Comanche</u> <u>Peak Pro</u> <u>Forma</u>
Cash and cash equivalents			
Restricted cash			
Trade accounts receivable - net			
Trade accounts receivable - affiliate			
Income taxes receivable			
Advances to affiliates - net			
Inventories			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Accumulated deferred income taxes			
Margin deposits related to commodity positions			
Other current assets			
Total current assets			
Restricted cash			
Investments			
Advances to parent			
Property, plant and equipment - net			c
Intangible assets and Goodwill			
Nuclear fuel, net of amortization			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Accumulated deferred income taxes			
Other noncurrent assets			
Total assets			
Short-term borrowings			
Long-term debt due currently			
Trade accounts payable			
Trade accounts payable - affiliates			
Advances to Affiliates			
Notes to Affiliates			
Cash flow hedge and other derivative liabilities			
Margin deposits related to commodity positions			
Accumulated deferred income taxes			
Accrued taxes other than income			
Other current liabilities			
Total current liabilities			
Accumulated deferred income taxes			
Investment tax credits			
Commodity contract liabilities			
Notes or other liabilities due affiliates			
Cash flow hedge and other derivative liabilities			
Long-term debt, less amounts due currently			
Other noncurrent liabilities and deferred credits			
Total liabilities			
Shareholders' equity			d
Total liabilities and shareholders' equity			

<Notes>

- 1) This schedule presents the pro forma purchase adjustments required by Texas Energy Future acquisition of TXU Corp.
- 2) Actual amounts will vary from pro forma amounts presented after completion of a third party valuation.

a -Historical Presentation - represents a Comanche Peak unaudited balance sheet as of December 31, 2006.

b - not used

c - Property, plant, and equipment - represents the pro forma adjustment to record power generation assets and other property at its fair value. This adjustment also includes the elimination of existing accumulated depreciation recorded to date as the property will now have a new cost basis to be depreciated. This adjustment was determined by using TXU's estimates and assumptions for the fair value of operating assets based on current market indicators for pricing for fuels, electricity, and other information.

Fair Value of Comanche Peak
Net PPE of Comanche Peak at 12/31/06
Required Proforma Adjustment

=====
=====

d - Shareholders' equity - represents pro forma adjustments for eliminating the historical shareholders equity and the establishment of the new equity.

Comanche Peak Units

\$ millions, unless noted

INCOME STATEMENT ¹

Revenues
 Fuel & Purchased Power
 Gross Margin

 Operations & Maintenance
 General & Administrative
 Other Income / (Expense)
 EBITDA

 Depreciation & Amortization
 EBIT

 Interest Expense
 Interest Income & Special Projects
 EBT

 Tax Expense
 Net Income

	2007E	2008E	2009E	2010E	2011E

CASH FLOW STATEMENT ¹

Net Income
 Depreciation & Amortization
 Deferred Taxes & ITC
 Change in Working Capital
 Change in Other Assets & Liabilities
 Operating Cash Flow

 Existing Asset Capital Expenditures (including nuclear fuel)
 Free Cash Flow Before Construction and Retrofit Program ²

 Construction and environmental retrofit capital expenditures ³
 Free Cash Flow ⁴

- ¹ Financial Statements represent an operational view and therefore exclude purchase accounting adjustments for the proposed transaction and non-operating special items for 2007 related to the transaction, cancellation of the reference plant program, deferred project costs, and 1-time hedging costs.
- ² Excludes construction and environmental retrofit capital expenditures detailed below.
- ³ Construction and environmental retrofit capital expenditures based on total amounts related to the construction of TXU's Oak Grove and Sandow 5 new coal units, and environmental retrofit capital expenditures related to upgrading emissions control equipment at existing TXU coal units (which is being done in conjunction with the construction of the new coal units).
- ⁴ Commitments for \$x.x billion of delayed draw term loan facilities are available to support any funding requirements associated with the new-build and environmental retrofit capital expenditures. In addition, commitments for \$x.x billion of revolving credit facilities are available for any operational purposes.

Comanche Peak Units

\$ millions, unless noted

COMPOSITION OF REVENUE PROJECTIONS

Nameplate Capacity (End of Year)

Coal - merchant	[MW]
Coal - contract	[MW]
Nuclear	[MW]
Total	[MW]

Production, net of auxiliary load

Coal - merchant	[TWh]
Coal - contract	[TWh]
Nuclear	[TWh]
Total	[TWh]

Pricing Assumptions (December 31, 2006)

Gas price (NYMEX)	[\$ / MMBtu]
Heat Rate Achieved (NYMEX)	[MMBtu / MWh]
7*24 Power price ERCOT pricing	[\$ / MWh]

Commodity Exposure - Natural Gas

Baseload exposure	[Million MMBtu]
Baseload forward power sales (Alcoa)	[Million MMBtu]
Natural gas hedges allocated ⁵	[Million MMBtu]
Net natural gas exposure	[Million MMBtu]
Sensitivity to +/- \$1 move	[\$ MM]

Commodity Exposure - Heat Rate

Baseload exposure	[TWh]
Baseload forward power sales	[TWh]
Baseload Net heat rate exposure	[TWh]
Sensitivity to +/- 0.25X HR change	[\$ MM]

Revenue summary

Baseload asset revenues	[\$ MM]
Other deregulated revenues	[\$ MM]
Regulated revenues	[\$ MM]
Intercompany eliminations	[\$ MM]
Total	[\$ MM]

2007E	2008E	2009E	2010E	2011E
-------	-------	-------	-------	-------

ATTACHMENT 2

Pro Forma Balance Sheet and Projected Income Statement for TXU Power

TXU Power
Unaudited Consolidated Pro Forma Balance Sheet
As of December 31, 2006
(\$ in millions)

	<u>2006</u> <u>Historical (a)</u>	<u>Pro Forma</u> <u>Adjustments</u>	<u>Adjusted TXU</u> <u>Power Pro</u> <u>Forma</u>
Cash and cash equivalents			
Restricted cash			
Trade accounts receivable - net			
Trade accounts receivable - affiliate			
Income taxes receivable			
Advances to affiliates - net			
Inventories			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Accumulated deferred income taxes			
Margin deposits related to commodity positions			
Other current assets			
Total current assets			
Restricted cash			
Investments			
Advances to parent			
Property, plant and equipment - net			c
Intangible assets and Goodwill			d, e
Regulatory assets - net			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Accumulated deferred income taxes			
Other noncurrent assets			
Total assets		f	
Short-term borrowings			
Long-term debt due currently			
Trade accounts payable			
Trade accounts payable - affiliates			
Advances to Affiliates			
Notes to Affiliates			
Cash flow hedge and other derivative liabilities			
Margin deposits related to commodity positions			
Accumulated deferred income taxes			
Accrued taxes other than income			
Other current liabilities			
Total current liabilities			
Accumulated deferred income taxes			g
Investment tax credits			
Commodity contract liabilities			
Notes or other liabilities due affiliates			
Cash flow hedge and other derivative liabilities			
Long-term debt, less amounts due currently			h
Other noncurrent liabilities and deferred credits			i
Total liabilities			
Shareholders' equity			
Total liabilities and shareholders' equity		j	

<Notes>

- 1) This schedule presents the pro forma purchase adjustments required by Texas Energy Future acquisition of TXU Corp.
- 2) Actual amounts will vary from pro forma amounts presented after completion of a third party valuation.

TXU Power Index to Financial Statements

a -Historical Presentation - represents a TXU Power without gas plants unaudited balance sheet as of December 31, 2006. The Deferred Tax liability of TXU Energy has been reflected as an adjustment to the historical numbers.

b - not used

c - Property, plant, and equipment - represents the pro forma adjustment to record power generation assets and other property at its fair value. This adjustment also includes the elimination of existing accumulated depreciation recorded to date as the property will now have a new cost basis to be depreciated. This adjustment was determined by using TXU's estimates and assumptions for the fair value of operating assets based on current market indicators for pricing for fuels, electricity, and other information.

Fair Value of TXU Power Related Assets
Net PPE of TXU Power at 12/31/06
Required Proforma Adjustment

d & e - Intangible assets & Goodwill - represents pro forma adjustments to record the fair value of intangible assets and goodwill related to contracts, customers, and other identifiable and separable intangible assets along with excess purchase price over the fair value of the net assets acquired in the acquisition. These values were developed using TXU's estimates and assumptions for current market indicators for electricity prices and fuel prices.

Goodwill - The purchase price was based on an allocation of the TXU Energy purchase price allocated from TXU Corp. based on the valuations of the different businesses owned by TXU Energy.

Total estimated purchase price allocated from TXU Power

Purchase price
Less Debt portion not acquired (incremental debt)
Adjusted Purchase Price paid with Equity
Less FV of Net Assets before Goodwill
Goodwill

Goodwill
Total Intangible assets and goodwill adjustment

f - Noncurrent Assets - represents deferred financing costs related to the new debt offerings.

Deferred Financing Costs

g - Deferred Taxes adjustments to account for the differences between book and tax created as a result of the fair value step up required under FAS 141.

Net FMV adjustments to Tangible and Identifiable Intangibles
Tax Rate
Deferred Tax Liability Adjustment

h - Debt - represents pro forma adjustments for an allocation of the new debt issued by TXU Energy and secured by the assets and guarantees of the subsidiaries. The debt was allocated based on the valuation of the different businesses owned by TXU Energy.

Proforma Adjustments
Issuance of LT Debt
Total Proforma Adjustments

i - Other noncurrent liabilities - represents pro forma adjustments to record various unfavorable operating contracts related to transactions that contain unfavorable pricing terms. The amounts related to power sales agreements, fuel procurement agreements, operating leases, and other contracts that are not recorded on the historical financial statements at their fair value.

Fair Value of unfavorable contracts

j - Shareholders' equity - represents pro forma adjustments for eliminating the historical shareholders equity of TXU Corp and the establishment of the new equity contributed by the Sponsors. This amount is exclusive of the debt used to finance the transaction.

TXU Power

\$ millions, unless noted

INCOME STATEMENT ¹

Revenues
 Fuel & Purchased Power
 Gross Margin

 Operations & Maintenance
 General & Administrative
 Other Income / (Expense)
 EBITDA

 Depreciation & Amortization
 EBIT

 Interest Expense
 Interest Income & Special Projects
 EBT

 Tax Expense
 Net Income

	2007E	2008E	2009E	2010E	2011E

CASH FLOW STATEMENT ¹

Net Income
 Depreciation & Amortization
 Deferred Taxes & ITC
 Change in Working Capital
 Change in Other Assets & Liabilities
 Operating Cash Flow

 Existing Asset Capital Expenditures (including nuclear fuel)
 Free Cash Flow Before Construction and Retrofit Program ²

 Construction and environmental retrofit capital expenditures ³
 Free Cash Flow ⁴

- ¹ Financial Statements represent an operational view and therefore exclude purchase accounting adjustments for the proposed transaction and non-operating special items for 2007 related to the transaction, cancellation of the reference plant program, deferred project costs, and 1-time hedging costs.
- ² Excludes construction and environmental retrofit capital expenditures detailed below.
- ³ Construction and environmental retrofit capital expenditures based on total amounts related to the construction of TXU's Oak Grove and Sandow 5 new coal units, and environmental retrofit capital expenditures related to upgrading emissions control equipment at existing TXU coal units (which is being done in conjunction with the construction of the new coal units).
- ⁴ Commitments for \$x.x billion of delayed draw term loan facilities are available to support any funding requirements associated with the new-build and environmental retrofit capital expenditures. In addition, commitments for \$x.x billion of revolving credit facilities are available for any operational purposes.

TXU Power

\$ millions, unless noted

COMPOSITION OF REVENUE PROJECTIONS

Nameplate Capacity (End of Year)

Coal - merchant	[MW]
Coal - contract	[MW]
Nuclear	[MW]
Total	[MW]

Production, net of auxiliary load

Coal - merchant	[TWh]
Coal - contract	[TWh]
Nuclear	[TWh]
Total	[TWh]

Pricing Assumptions (December 31, 2006)

Gas price (NYMEX)	[\$ / MMBtu]
Heat Rate Achieved (NYMEX)	[MMBtu / MWh]
7*24 Power price ERCOT pricing	[\$ / MWh]

Commodity Exposure - Natural Gas

Baseload exposure	[Million MMBtu]
Baseload forward power sales (Alcoa)	[Million MMBtu]
Natural gas hedges allocated ⁵	[Million MMBtu]
Net natural gas exposure	[Million MMBtu]
Sensitivity to +/- \$1 move	[\$ MM]

Commodity Exposure - Heat Rate

Baseload exposure	[TWh]
Baseload forward power sales	[TWh]
Baseload Net heat rate exposure	[TWh]
Sensitivity to +/- 0.25X HR change	[\$ MM]

Revenue summary

Baseload asset revenues	[\$ MM]
Other deregulated revenues	[\$ MM]
Regulated revenues	[\$ MM]
Intercompany eliminations	[\$ MM]
Total	[\$ MM]

2007E	2008E	2009E	2010E	2011E
-------	-------	-------	-------	-------

⁵ Hedges are allocated based on the percent of merchant generation relative to the entire merchant generation portfolio, but do not reside at the plant or TXU Power level

ATTACHMENT 3

Pro Forma Balance Sheet and Projected Income Statement for Texas Energy LP

Texas Energy LP
Unaudited Consolidated Pro Forma Balance Sheet
As of December 31, 2006
(\$ in millions)

	<u>2006</u> <u>Historical (a)</u>	<u>Pro Forma</u> <u>Adjustments</u>	<u>Adjusted</u> <u>Texas Energy</u> <u>LP Pro Forma</u>
Cash and cash equivalents			
Restricted cash			
Trade accounts receivable - net			
Income taxes receivable			
Inventories			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Accumulated deferred income taxes			
Margin deposits related to commodity positions			
Other current assets			
Total current assets			
Restricted cash			
Investments			
Property, plant and equipment - net			c
Intangible assets and Goodwill			d, e
Regulatory assets - net			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Other noncurrent assets			f
Total assets			
Short-term borrowings			h
Long-term debt due currently			h
Trade accounts payable			
Commodity contract liabilities			
Cash flow hedge and other derivative liabilities			
Margin deposits related to commodity positions			
Other current liabilities			
Total current liabilities			
Accumulated deferred income taxes			g
Investment tax credits			
Commodity contract liabilities			
Cash flow hedge and other derivative liabilities			
Long-term debt, less amounts due currently			h
Other noncurrent liabilities and deferred credits			i
Total liabilities			
Shareholders' equity			j
Total liabilities and shareholders' equity			

<Notes>

- 1) This schedule presents the pro forma purchase adjustments required by Texas Energy Future acquisition of TXU Corp.
- 2) Actual amounts will vary from pro forma amounts presented after completion of a third party valuation.

a - Historical Presentation - represents TXU Corp.'s historical audited consolidated balance sheet from its 2006 Form 10K as of December 31, 2006

b - not used

c - Property, plant, and equipment - represents the pro forma adjustment to record power generation assets and other property at its fair value. Transmission and distribution assets are considered to be at fair value due to the regulatory recovery of these assets based on historical costs. This adjustment also includes the elimination of existing accumulated depreciation recorded to date as the property will now have a new cost basis to be depreciated. This adjustment was determined by using TXU's estimates and assumptions for the fair value of operating assets based on current market indicators for pricing for fuels, electricity, and other information.

Fair Value of Electric Delivery PPE (based on historical costs)	
Fair Value of Corp, Retail, and Wholesale (based on historical costs)	
Fair Value of Generation Related Assets	_____
Total PPE at fair value	_____
Net PPE of TXU Corp. At 12/31/06 per 10K	_____
Required Proforma Adjustment	=====

d & e - Intangible assets & Goodwill - represents pro forma adjustments to record the fair value of intangible assets and goodwill related to contracts, customers, and other identifiable and separable intangible assets along with excess purchase price over the fair value of the net assets acquired in the acquisition. These values were developed using TXU's estimates and assumptions for current market indicators for electricity prices and fuel prices.

Identified Intangible assets	
Fair Value of Retail Residential and Business Customers	
Fair Value of Wholesale Accrual Contracts	_____
Total Identified Intangible assets	=====

Goodwill - The purchase price was calculated by using the consideration of \$69.25 per share offered by the Sponsors multiplied by the existing outstanding shares of TXU Corp., as well as adding transaction costs. The purchase price of the transaction (in millions) was calculated as follows:

Cash consideration (\$69.25 per share) * 470 million shares	
Equity transaction costs per the Sponsors	_____
Total estimated purchase price	=====

Purchase price	
Less Debt portion not acquired (incremental debt less fees)	_____
Adjusted Purchase Price paid with Equity	_____
Less FV of Net Assets before Goodwill	_____
Goodwill	=====

Identified Intangible assets and goodwill adjustment	
Goodwill	
Less: TXU Corp original goodwill	_____
Total Intangible assets and goodwill adjustment	=====

f - Noncurrent Assets - represents deferred financing costs related to the new debt offerings.

Deferred Financing Costs	=====
--------------------------	-------

g - Deferred Taxes adjustments to account for the differences between book and tax created as a result of the fair value step up required under FAS 141.

Net FMV adjustments to Tangible and Identifiable Intangibles	
Tax Rate	_____
Deferred Tax Liability Adjustment	=====

h - Debt - represents pro forma adjustments for the issuance of new debt pursuant to the transaction

Proforma Adjustments

Paid down of Short-term Debt at Energy

Paid down of Current Portion of LT Debt at Energy

Issuance of LT Debt

Total Proforma Adjustments

=====

Incremental Debt Use for Purchase Price

New Debt Issued at Energy

New Debt Issued at TXU Corp

Debt Paid Off at Energy

Debt Paid Off at Corp

Debt Paid Off at US Holdings

Total Incremental Debt Issued for Purchase Price

=====

I - Other noncurrent liabilities - represents pro forma adjustments to record various unfavorable operating contracts related to transactions that contain unfavorable pricing terms. The amounts related to power sales agreements, fuel procurement agreements, operating leases, and other contracts that are not recorded on the historical financial statements at their fair value.

Fair Value of unfavorable contracts

J - Shareholders' equity - represents pro forma adjustments for eliminating the historical shareholders equity of TXU Corp and the establishment of the new equity contributed by the Sponsors. This amount is exclusive of the debt used to finance the transaction.

Texas Energy LP
\$ millions, unless noted

INCOME STATEMENT ¹

Revenues
 Fuel & Purchased Power
 Gross Margin

Operations & Maintenance
 General & Administrative
 Other Income / (Expense)
 EBITDA

Depreciation & Amortization
 EBIT

Interest Expense
 Interest Income & Special Projects
 EBT

Tax Expense
 Net Income

	2007E	2008E	2009E	2010E	2011E
Revenues					
Fuel & Purchased Power					
Gross Margin					
Operations & Maintenance					
General & Administrative					
Other Income / (Expense)					
EBITDA					
Depreciation & Amortization					
EBIT					
Interest Expense					
Interest Income & Special Projects					
EBT					
Tax Expense					
Net Income					

CASH FLOW STATEMENT ¹

Net Income
 Depreciation & Amortization
 Deferred Taxes & ITC
 Change in Working Capital
 Change in Other Assets & Liabilities
 Operating Cash Flow

Existing Asset Capital Expenditures (including nuclear fuel)
 Free Cash Flow Before Construction and Retrofit Program ²

Construction and environmental retrofit capital expenditures ³
 Free Cash Flow ⁴

Net Income					
Depreciation & Amortization					
Deferred Taxes & ITC					
Change in Working Capital					
Change in Other Assets & Liabilities					
Operating Cash Flow					
Existing Asset Capital Expenditures (including nuclear fuel)					
Free Cash Flow Before Construction and Retrofit Program ²					
Construction and environmental retrofit capital expenditures ³					
Free Cash Flow ⁴					

¹ Financial Statements represent an operational view and therefore exclude purchase accounting adjustments for the proposed transaction and non-operating special items for 2007 related to the transaction, cancellation of the reference plant program, deferred project costs, and 1-time hedging costs.

² Excludes construction and environmental retrofit capital expenditures detailed below.

³ Construction and environmental retrofit capital expenditures based on total amounts related to the construction of TXU's Oak Grove and Sandow 5 new coal units, and environmental retrofit capital expenditures related to upgrading emissions control equipment at existing TXU coal units (which is being done in conjunction with the construction of the new coal units).

⁴ Commitments for \$x.x billion of delayed draw term loan facilities are available to support any funding requirements associated with the new-build and environmental retrofit capital expenditures. In addition, commitments for \$x.x billion of revolving credit facilities are available for any operational purposes.

Texas Energy LP

\$ millions, unless noted

COMPOSITION OF REVENUE PROJECTIONS

Nameplate Capacity (End of Year)

Coal - merchant	[MW]
Coal - contract	[MW]
Nuclear	[MW]
Total	[MW]

Production, net of auxiliary load

Coal - merchant	[TWh]
Coal - contract	[TWh]
Nuclear	[TWh]
Total	[TWh]

Pricing Assumptions (December 31, 2006)

Gas price (NYMEX)	[\$ / MMBtu]
Heat Rate Achieved (NYMEX)	[MMBtu / MWh]
7*24 Power price ERCOT pricing	[\$ / MWh]

Commodity Exposure - Natural Gas

Baseload exposure	[Million MMBtu]
Baseload forward power sales (Alcoa)	[Million MMBtu]
Natural gas hedges	[Million MMBtu]
Net natural gas exposure	[Million MMBtu]
Sensitivity to +/- \$1 move	[\$ MM]

Commodity Exposure - Heat Rate

Baseload exposure	[TWh]
Baseload forward power sales	[TWh]
Baseload Net heat rate exposure	[TWh]
Sensitivity to +/- 0.25X HR change	[\$ MM]

Revenue summary

Baseload asset revenues	[\$ MM]
Other deregulated revenues	[\$ MM]
Regulated revenues	[\$ MM]
Intercompany eliminations	[\$ MM]
Total	[\$ MM]

2007E	2008E	2009E	2010E	2011E
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ATTACHMENT 4

Pro Forma Balance Sheet and Projected Income Statement for Luminant Holdco

Luminant Holdco
Unaudited Combined Pro Forma Balance Sheet
As of December 31, 2006
(\$ in millions)

	<u>2006</u> <u>Historical (a)</u>	<u>Pro Forma</u> <u>Adjustments</u>	<u>Adjusted</u> <u>Luminant</u> <u>Holdco Pro</u> <u>Forma</u>
Cash and cash equivalents			
Restricted cash			
Trade accounts receivable - net			
Trade accounts receivable - affiliate			
Income taxes receivable			
Advances to affiliates - net			
Inventories			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Accumulated deferred income taxes			
Margin deposits related to commodity positions			
Other current assets			
Total current assets			
Restricted cash			
Investments			
Advances to parent			
Property, plant and equipment - net			c
Intangible assets and Goodwill			d, e
Regulatory assets - net			
Commodity contract assets			
Cash flow hedge and other derivative assets			
Other noncurrent assets			f
Total assets			
Short-term borrowings			
Long-term debt due currently			
Trade accounts payable			
Trade accounts payable - affiliates			
Notes due to affiliates			
Commodity contract liabilities			
Cash flow hedge and other derivative liabilities			
Margin deposits related to commodity positions			
Accrued income taxes payable to parent			
Accrued taxes other than income			
Other current liabilities			
Total current liabilities			
Accumulated deferred income taxes			g
Investment tax credits			
Commodity contract liabilities			
Notes or other liabilities due affiliates			
Cash flow hedge and other derivative liabilities			
Long-term debt, less amounts due currently			h
Other noncurrent liabilities and deferred credits			i
Total liabilities			
Shareholders' equity			j
Total liabilities and shareholders' equity			

<Notes>

- 1) This schedule presents the pro forma purchase adjustments required by Texas Energy Future acquisition of TXU Corp.
- 2) Actual amounts will vary from pro forma amounts presented after completion of a third party valuation.

a - Historical Presentation - represents a combined Luminant unaudited consolidated balance sheet as of December 31, 2006. An allocation of the Deferred Tax liability of TXU Energy has been reflected as an adjustment to the historical numbers.

b - not used

c - Property, plant, and equipment - represents the pro forma adjustment to record power generation assets and other property at its fair value. This adjustment also includes the elimination of existing accumulated depreciation recorded to date as the property will now have a new cost basis to be depreciated. This adjustment was determined by using TXU's estimates and assumptions for the fair value of operating assets based on current market indicators for pricing for fuels, electricity, and other information.

Fair Value of Wholesale (based on historical costs)	
Fair Value of Generation Related Assets	_____
Total PPE at fair value	_____
Net PPE at 12/31/06	_____
Required Proforma Adjustment	=====

d & e - Intangible assets & Goodwill - represents pro forma adjustments to record the fair value of intangible assets and goodwill related to contracts, customers, and other identifiable and separable intangible assets along with excess purchase price over the fair value of the net assets acquired in the acquisition. These values were developed using TXU's estimates and assumptions for current market indicators for electricity prices and fuel prices.

Identified Intangible assets	
Fair Value of Wholesale Accrual Contracts	_____
Total Identified Intangible assets	=====

Goodwill - The purchase price was based on an allocation of the TXU Energy purchase price allocated from TXU Corp. based on the valuations of the different businesses owned by TXU Energy.

Total estimated purchase price allocated from TXU Energy	_____
Purchase price	_____
Less Allocated Debt push down from TXU Energy (less fees)	_____
Adjusted Purchase Price paid with Equity	_____
Less FV of Net Assets before Goodwill	_____
Goodwill	=====

Identified Intangible assets and goodwill adjustment	
Goodwill	_____
Total Intangible assets and goodwill adjustment	=====

f - Noncurrent Assets - represents deferred financing costs related to the new debt offerings.

Deferred Financing Costs	=====
--------------------------	-------

g - Deferred Taxes adjustments to account for the differences between book and tax created as a result of the fair value step up required under FAS 141.

Net FMV adjustments to Tangible and Identifiable Intangibles	
Tax Rate	_____
Deferred Tax Liability Adjustment	=====

h - Debt - represents pro forma adjustments for an allocation of the new debt issued by TXU Energy and secured by the assets and guarantees of the subsidiaries. The debt was allocated based on the valuation of the different businesses owned by TXU Energy.

Proforma Adjustments	
Issuance of LT Debt	_____
Total Proforma Adjustments	=====

i - Other noncurrent liabilities - represents pro forma adjustments to record various unfavorable operating contracts related to transactions that contain unfavorable pricing terms. The amounts related to power sales agreements, fuel procurement agreements, operating leases, and other contracts that are not recorded on the historical financial statements at their fair value.

Fair Value of unfavorable contracts	=====
-------------------------------------	-------

j - Shareholders' equity - represents pro forma adjustments for eliminating the historical shareholders equity of TXU Corp and the establishment of the new equity contributed by the Sponsors. This amount is exclusive of the debt used to finance the transaction.

Luminant Holdco
\$ millions, unless noted

INCOME STATEMENT ¹

Revenues
 Fuel & Purchased Power
 Gross Margin

 Operations & Maintenance
 General & Administrative
 Other Income / (Expense)
 EBITDA

 Depreciation & Amortization
 EBIT

 Interest Expense
 Interest Income & Special Projects
 EBT

 Tax Expense
 Net Income

	2007E	2008E	2009E	2010E	2011E

CASH FLOW STATEMENT ¹

Net Income
 Depreciation & Amortization
 Deferred Taxes & ITC
 Change in Working Capital
 Change in Other Assets & Liabilities
 Operating Cash Flow

 Existing Asset Capital Expenditures (including nuclear fuel)
 Free Cash Flow Before Construction and Retrofit Program ²

 Construction and environmental retrofit capital expenditures ³
 Free Cash Flow ⁴

¹ Financial Statements represent an operational view and therefore exclude purchase accounting adjustments for the proposed transaction and non-operating special items for 2007 related to the transaction, cancellation of the reference plant program, deferred project costs, and 1-time hedging costs.
² Excludes construction and environmental retrofit capital expenditures detailed below.
³ Construction and environmental retrofit capital expenditures based on total amounts related to the construction of TXU's Oak Grove and Sandow 5 new coal units, and environmental retrofit capital expenditures related to upgrading emissions control equipment at existing TXU coal units (which is being done in conjunction with the construction of the new coal units).
⁴ Commitments for \$x.x billion of delayed draw term loan facilities are available to support any funding requirements associated with the new-build and environmental retrofit capital expenditures. In addition, commitments for \$x.x billion of revolving credit facilities are available for any operational purposes.

Luminant Holdco

\$ millions, unless noted

COMPOSITION OF REVENUE PROJECTIONS

Nameplate Capacity (End of Year)

Coal - merchant	[MW]
Coal - contract	[MW]
Nuclear	[MW]
Total	[MW]

Production, net of auxiliary load

Coal - merchant	[TWh]
Coal - contract	[TWh]
Nuclear	[TWh]
Total	[TWh]

Pricing Assumptions (December 31, 2006)

Gas price (NYMEX)	[\$ / MMBtu]
Heat Rate Achieved (NYMEX)	[MMBtu / MWh]
7*24 Power price ERCOT pricing	[\$ / MWh]

Commodity Exposure - Natural Gas

Baseload exposure	[Million MMBtu]
Baseload forward power sales (Alcoa)	[Million MMBtu]
Natural gas hedges	[Million MMBtu]
Net natural gas exposure	[Million MMBtu]
Sensitivity to +/- \$1 move	[\$ MM]

Commodity Exposure - Heat Rate

Baseload exposure	[TWh]
Baseload forward power sales	[TWh]
Baseload Net heat rate exposure	[TWh]
Sensitivity to +/- 0.25X HR change	[\$ MM]

Revenue summary

Baseload asset revenues	[\$ MM]
Other deregulated revenues	[\$ MM]
Regulated revenues	[\$ MM]
Intercompany eliminations	[\$ MM]
Total	[\$ MM]

2007E	2008E	2009E	2010E	2011E
-------	-------	-------	-------	-------

ATTACHMENT 5

**Agreement and Plan of Merger Among TXU Corp., Texas Energy LP, and
Texas Energy Merger Sub Corp**

AGREEMENT AND PLAN OF MERGER
Among
TXU CORP.,
TEXAS ENERGY FUTURE HOLDINGS LIMITED PARTNERSHIP
and
TEXAS ENERGY FUTURE MERGER SUB CORP
Dated as of February 25, 2007

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I The Merger; Closing; Effective Time	1
The Merger	1
Closing	2
Effective Time	2
ARTICLE II Certificate of Formation and Bylaws of the Surviving Corporation	2
The Certificate of Formation	2
The Bylaws	2
ARTICLE III Directors and Officers of the Surviving Corporation	3
Directors	3
Officers	3
ARTICLE IV Effect of the Merger on Capital Stock; Exchange of Certificates	3
Effect on Capital Stock	3
Exchange of Certificates	4
Treatment of Stock Plans	6
Adjustments to Prevent Dilution	7
Treatment of the Convertible Notes	8
ARTICLE V Representations and Warranties	8
Representations and Warranties of the Company	8
Representations and Warranties of Parent and Merger Sub	27
ARTICLE VI Covenants	32
Interim Operations	32
Acquisition Proposals	37
Proxy Statement.	41
Shareholders Meeting	41
Filings; Other Actions; Notification.	42
Access and Reports	47
Stock Exchange De-listing	47
Publicity	47
Employee Benefits	48
Expenses	49
Indemnification; Directors' and Officers' Insurance	49
Convertible Senior Notes	50
Takeover Statutes	50
Parent Vote	51
Financing	51
Treatment of Certain Notes	54
Termination of Certain Other Indebtedness	56

	<u>Page</u>
Existing Hedging Arrangements	56
Section 16(b)	56
Resignation of Directors	57
Notice of Current Events	57
 ARTICLE VII Conditions	 57
Conditions to Each Party's Obligation to Effect the Merger	57
Conditions to Obligations of Parent and Merger Sub	58
Conditions to Obligation of the Company	58
 ARTICLE VIII Termination	 59
Termination by Mutual Consent	59
Termination by Either Parent or the Company	59
Termination by the Company	59
Termination by Parent	60
Effect of Termination and Abandonment	61
 ARTICLE IX Miscellaneous and General	 63
Survival	63
Modification or Amendment	63
Waiver of Conditions	63
Counterparts	63
GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL	63
Notices	64
Entire Agreement	66
No Third Party Beneficiaries	66
Obligations of Parent and of the Company	66
Remedies	67
Transfer Taxes	67
Definitions	67
Severability	67
Interpretation; Construction	68
Assignment	68
 Annex A	 A-1
Defined Terms	
 Exhibit A	 Form of Guarantee

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (hereinafter called this "Agreement"), dated as of February 25, 2007, among TXU Corp., a Texas corporation (the "Company"), Texas Energy Future Holdings Limited Partnership, a Delaware limited partnership ("Parent"), and Texas Energy Future Merger Sub Corp, a Texas corporation and a wholly owned subsidiary of Parent ("Merger Sub," the Company and Merger Sub sometimes being hereinafter collectively referred to as the "Constituent Corporations").

RECITALS

WHEREAS, Parent, the board of directors of Merger Sub, and the board of directors of the Company, following the unanimous recommendation of the Strategic Transactions Committee of the board of directors of the Company (the "Transactions Committee"), have unanimously (by all directors voting) approved this Agreement and the merger of Merger Sub with and into the Company (the "Merger") upon the terms and subject to the conditions set forth in this Agreement and have authorized the execution hereof, and the board of directors of the Company has adopted a resolution unanimously (by all directors voting) recommending that this Agreement and the plan of merger set forth in this Agreement be approved by the shareholders of the Company.

WHEREAS, contemporaneously with the execution and delivery of this Agreement, and as a condition to the willingness of the Company to enter into this Agreement, each of KKR 2006 Fund L.P., TPG Partners V, L.P., Citigroup Global Markets Inc. and Morgan Stanley & Co. Incorporated (the "Guarantors") are each entering into a guarantee in favor of the Company in the form attached hereto as Exhibit A (the "Guarantee"), pursuant to which the Guarantors are severally guaranteeing certain obligations of Parent and Merger Sub in connection with this Agreement.

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

The Merger: Closing: Effective Time

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, in accordance with the provisions of Chapter 10 of the Texas Business Organizations Code (the "TBOC"), and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation"), and the Company shall continue its corporate existence under the Laws of the State of Texas, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth in Article II. The Merger shall have the effects provided by this Agreement and the TBOC and other applicable Law. Without

limiting the foregoing, and subject thereto, from and after the Effective Time, the Merger shall have the effects specified in Section 10.008 of the TBOC.

1.2 Closing. Unless otherwise mutually agreed in writing between the Company and Parent, the closing for the Merger (the "Closing") shall take place at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York, at 9:00 a.m. (Eastern Time) on the second business day following the day on which the last to be satisfied or waived of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions) shall be satisfied or waived in accordance with this Agreement; provided, however, that if the Marketing Period has not ended at the time of the satisfaction or waiver of the conditions set forth in Article VII (excluding conditions that by their nature, cannot be satisfied until the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), the Closing shall occur on the date following the satisfaction or waiver of such conditions that is the earliest to occur of (a) a date during the Marketing Period to be specified by Merger Sub on no less than two business days' notice to the Company, (b) the final day of the Marketing Period and (c) the Termination Date. The date on which the Closing actually occurs is hereinafter referred to as the "Closing Date". For purposes of this Agreement, the term "business day" shall mean any day ending at 11:59 p.m. (Eastern Time) other than a Saturday or Sunday or a day on which banks are required or authorized to close in the City of New York.

1.3 Effective Time. As soon as practicable following the Closing, the Company and Parent will cause a certificate of merger (the "Certificate of Merger") to be executed and delivered to the Secretary of State of the State of Texas for filing as provided under Section 10.153 of the TBOC. The Merger shall become effective at the time when the Certificate of Merger has been duly filed by the office of the Secretary of State of the State of Texas and a written acknowledgement of filing has been delivered by the office of the Secretary of State of the State of Texas pursuant to Section 4.002 of the TBOC, or at such later date as Parent and the Company shall agree and specify in the Certificate of Merger (the "Effective Time").

ARTICLE II

Certificate of Formation and Bylaws of the Surviving Corporation

2.1 The Certificate of Formation. At the Effective Time, the certificate of formation of the Company shall be amended in its entirety to read in the form of the certificate of formation of Merger Sub as in effect immediately prior to the execution of this Agreement, except that the name of the Surviving Corporation shall be "TXU Corp.", and, as amended, shall be the certificate of formation of the Surviving Corporation (the "Charter"), until thereafter amended as provided therein or by applicable Law.

2.2 The Bylaws. The parties hereto shall take all actions necessary so that the bylaws of the Company in effect immediately prior to the Effective Time shall be amended so as to read in their entirety in the form of the bylaws of Merger Sub, and, as so amended, shall be the

bylaws of the Surviving Corporation (the "Bylaws"), until thereafter amended as provided therein or by applicable Law.

ARTICLE III

Directors and Officers of the Surviving Corporation

3.1 Directors. The parties hereto shall take all actions necessary so that the directors of Merger Sub at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the Bylaws.

3.2 Officers. The officers of the Company at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and Bylaws.

ARTICLE IV

Effect of the Merger on Capital Stock:

Exchange of Certificates

4.1 Effect on Capital Stock. At the Effective Time, as a result of the Merger and without any action on the part of the Company, the holder of any capital stock of the Company or the sole shareholder of Merger Sub:

(a) Merger Consideration. Each share of the Common Stock, no par value, of the Company (a "Share" or, collectively, the "Shares") issued and outstanding immediately prior to the Effective Time other than (i) Shares owned by Parent, Merger Sub or any other direct or indirect wholly-owned Subsidiary of Parent and Shares owned by the Company or any direct or indirect wholly-owned Subsidiary of the Company, and in each case not held on behalf of third parties and (ii) Shares that are owned by shareholders who have not voted such Shares in favor of the Merger and who have otherwise taken all of the steps required by Subchapter H of Chapter 10 of the TBOC to properly exercise and perfect such shareholders' dissenters rights ("Dissenting Shareholders") (each Share referred to in clause (i) or clause (ii) being an "Excluded Share" and collectively, "Excluded Shares") shall be converted into the right to receive \$69.25 per Share in cash (the "Per Share Merger Consideration"). At the Effective Time, all of the Shares (other than Shares to remain outstanding pursuant to Section 4.1(b)) shall cease to be outstanding, shall be cancelled and shall cease to exist, and each certificate (a "Certificate") formerly representing any of the Shares (other than Excluded Shares) shall thereafter represent only the right to receive the Per Share Merger Consideration, without interest, and each certificate formerly representing Shares owned by Dissenting Shareholders shall thereafter only represent the right to receive the payment to which reference is made in Section 4.2(f).

(b) Cancellation of Excluded Shares. Each Excluded Share referred to in Section 4.1(a)(i) or 4.1(a)(ii) (other than any Shares owned by any wholly-owned Subsidiary of

the Company (including for these purposes TXU US Holdings Company), which shall remain outstanding) shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding, shall be cancelled without payment of any consideration therefor and shall cease to exist, subject to the right of the holder of any Excluded Share referred to in Section 4.1(a)(ii) to receive the payment to which reference is made in Section 4.2(f).

(c) Merger Sub. At the Effective Time, each share of common stock, no par value, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into one share of common stock, no par value, of the Surviving Corporation.

4.2 Exchange of Certificates.

(a) Paying Agent. Prior to the Closing Date, the Company shall use its reasonable best efforts to enter into a paying agent agreement with a paying agent selected by Parent with the Company's prior approval (such approval not to be unreasonably withheld, conditioned or delayed) (the "Paying Agent"). At the Closing, Parent shall deposit, or shall cause to be deposited, with the Paying Agent, for the benefit of the holders of Shares, a cash amount in immediately available funds necessary for the Paying Agent to make payments under Section 4.1(a) (such cash being hereinafter referred to as the "Exchange Fund"), provided that to the extent such deposits are being funded with the proceeds of the Debt Financing, Parent must deposit or cause to be deposited such funds by no later than immediately after the Effective Time. The Paying Agent shall invest the Exchange Fund as directed by Parent, provided that such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's, respectively, in certificates of deposit, bank repurchase agreements or banker's acceptances of commercial banks with capital exceeding \$1 billion, or in money market funds having a rating in the highest investment category granted by a recognized credit rating agency at the time of investment. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the amounts payable under Section 4.1(a) shall be promptly returned to the Surviving Corporation. To the extent that there are any losses with respect to any such investments, or the Exchange Fund diminishes for any reason below the level required for the Paying Agent to make prompt cash payment under Section 4.1(a), Parent shall, or shall cause the Surviving Corporation to, promptly replace or restore the cash in the Exchange Fund so as to ensure that the Exchange Fund is at all times maintained at a level sufficient for the Paying Agent to make such payments under Section 4.1(a).

(b) Exchange Procedures. As promptly as practicable after the Effective Time, the Surviving Corporation shall cause the Paying Agent to mail to each holder of record of Shares evidenced by Certificates (other than holders of Excluded Shares) (i) a letter of transmittal in customary form specifying that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates (or affidavits of loss in lieu thereof as provided in Section 4.2(e)) to the Paying Agent, such letter of transmittal to be in such form and have such other provisions as Parent and the Company may reasonably agree, and (ii) instructions for use in effecting the surrender of the Certificates (or affidavits of loss in lieu thereof as provided in Section 4.2(e)) in exchange for the Per Share Merger Consideration. Upon surrender of a Certificate (or affidavit of loss in lieu thereof as provided in Section 4.2(e))

to the Paying Agent in accordance with the terms of such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor a cash amount in immediately available funds (after giving effect to any required Tax withholdings as provided in Section 4.2(g)) equal to (x) the number of Shares represented by such Certificate (or affidavit of loss in lieu thereof as provided in Section 4.2(e)) multiplied by (y) the Per Share Merger Consideration, and the Certificate so surrendered shall forthwith be cancelled. No interest will be paid or accrued on any amount payable upon due surrender of the Certificates. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, a check for any cash to be exchanged upon due surrender of the Certificate may be issued to such transferee if the Certificate formerly representing such Shares is presented to the Paying Agent, accompanied by all documents reasonably required to evidence and effect such transfer and to evidence that any applicable stock transfer taxes have been paid or are not applicable. As promptly as practicable after the Effective Time, the Paying Agent will mail to each holder of Shares represented by book-entry on the records of the Company or the Company's transfer agent, on behalf of the Company ("Book-Entry Shares"), other than Excluded Shares, a check in the amount of the number of Shares held by such holder as Book-Entry Shares multiplied by the Per Share Merger Consideration.

(c) Transfers. From and after the Effective Time, there shall be no transfers on the stock transfer books of the Company of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate is presented to the Surviving Corporation, Parent or the Paying Agent for transfer, it shall be cancelled and exchanged for the cash amount in immediately available funds to which the holder thereof is entitled pursuant to and in accordance with this Article IV.

(d) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains unclaimed by the shareholders of the Company for 180 days after the Effective Time shall be delivered to the Surviving Corporation upon demand. Any holder of Shares (other than Excluded Shares) who has not theretofore complied with this Article IV shall thereafter look only to the Surviving Corporation for payment of the Per Share Merger Consideration (after giving effect to any required Tax withholdings as provided in Section 4.2(g)) upon due surrender of its Certificates (or affidavits of loss in lieu thereof as provided in Section 4.2(e)), without any interest thereon. Notwithstanding the foregoing, none of the Surviving Corporation, Parent, the Paying Agent or any other Person shall be liable to any former holder of Shares for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar Laws. Any amounts remaining unclaimed by holders of any Shares at such date as is immediately prior to the time at which such amounts would otherwise escheat to or become property of any Governmental Entity shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of any claims or interests of any such holders or their successors, assigns or personal representatives previously entitled thereto. For the purposes of this Agreement, the term "Person" shall mean any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

(e) Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person

claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such Person of a bond in customary amount and upon such terms as may be required by Parent as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Paying Agent will issue a check in the amount (after giving effect to any required Tax withholdings as provided in Section 4.2(g)) equal to the number of Shares represented by such lost, stolen or destroyed Certificate multiplied by the Per Share Merger Consideration.

(f) Dissenting Shares. Notwithstanding any other provision contained in this Agreement, Shares that are issued and outstanding as of the Effective Time and that are held by a shareholder who has not voted such shares in favor of the Merger and who has otherwise taken all of the steps required by Subchapter H of Chapter 10 of the TBOC to properly exercise and perfect such shareholder's dissenter's rights shall be deemed to have ceased to represent any interest in the Surviving Corporation as of the Effective Time and shall be entitled to those rights and remedies set forth in Subchapter H of Chapter 10 of the TBOC; provided, however, that in the event that a shareholder of the Company fails to perfect, withdraws or otherwise loses any such right or remedy granted by the TBOC, the Shares held by such shareholder shall be converted into and represent only the right to receive the Per Share Merger Consideration specified in this Agreement. The Company shall give Parent (i) prompt notice of any written demands for payment for Shares, attempted withdrawals of such demands, and any other instruments served pursuant to applicable Law that are received by the Company with respect to shareholders' rights to dissent and (ii) the opportunity to participate in and direct all negotiations and proceedings with respect to any such demands. The Company shall not, without the prior written consent of Parent, voluntarily make any payment with respect to, or settle or offer to settle any such demands.

(g) Withholding Rights. Each of Parent and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code, or any other applicable state, local or foreign Tax Law. To the extent that amounts are so withheld by the Surviving Corporation or Parent, as the case may be, such withheld amounts (i) shall be remitted by Parent or the Surviving Corporation, as applicable, to the applicable Governmental Entity, and (ii) shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made by the Surviving Corporation or Parent, as the case may be.

(h) No Further Dividends. No dividends or other distributions with respect to capital stock of the Surviving Corporation with a record date on or after the Effective Time shall be paid to the holder of any unsurrendered Certificate or Book-Entry Shares.

4.3 Treatment of Stock Plans.

(a) Restricted Stock Awards. Except to the extent otherwise agreed to by Parent and the holder thereof, immediately prior to the Effective Time, all restricted stock awards ("Restricted Shares") granted pursuant to the Stock Plans or otherwise that remain unvested shall automatically become fully vested and free of any forfeiture restrictions and each Restricted Share shall be considered an outstanding Share for all purposes of this Agreement, including the

right to receive the Per Share Merger Consideration in accordance with Section 4.1(a) and subject to the provisions of Section 4.2(g). To the extent that the award agreement relating to any Restricted Shares provides that the number of such shares that will vest will depend on the achievement of targets measured by total shareholder return, the number of Restricted Shares that will vest in accordance with the prior sentence shall be determined in the same manner as specified in Section 4.3(b).

(b) Performance Awards. Except as provided in Section 4.3(c) or to the extent otherwise agreed to by Parent and the holder thereof, immediately prior to the Effective Time, all performance awards ("Performance Awards") granted under the Stock Plans that remain unvested shall automatically become fully vested and free of any forfeiture restrictions immediately prior to the Effective Time and, at the Effective Time, shall be paid out, in a lump sum cash payment equal to the product of (x) the number of Shares payable pursuant to each such Performance Award, based on performance through the Effective Time as determined by the Organization & Compensation Committee of the board of directors of the Company measured by the Per Share Merger Consideration (with awards measured on absolute performance adjusted for the duration of the performance period through the Effective Time), and (y) the Per Share Merger Consideration (the "Performance Award Merger Consideration") in accordance with Section 4.1(a) and subject to the provisions of Section 4.2(g).

(c) Performance Awards Held by Designated Officers. Notwithstanding Section 4.3(b), except to the extent otherwise agreed to by Parent and the holder thereof, immediately prior to the Effective Time, all Performance Awards held by the members of the Company's Designated Officers (as defined in Section 5.1(h)) that remain unvested shall automatically (i) become fully vested and free of any forfeiture restrictions immediately prior to the Effective Time, (ii) be converted at the Effective Time into a cash amount in the same manner as specified in Section 4.3(b) and (iii) be paid out in cash in a lump sum at the end of each such award's currently existing performance period, subject to the provisions of Section 4.2(g).

(d) Share-Based Benefits Under Deferred Compensation Plans. At the Effective Time, each right of any kind, contingent or accrued, to receive payments or benefits measured by the value of Shares under any Company Benefit Plans, other than Restricted Shares and Performance Awards, shall entitle the beneficiary thereof to receive an amount in cash equal to the product of (x) the total number of Shares subject thereto immediately prior to the Effective Time and (y) the Per Share Merger Consideration.

(e) Corporate Actions. At or prior to the Effective Time, the Company, the board of directors of the Company and the organization and compensation committee of the board of directors of the Company, as applicable, shall adopt resolutions to implement the provisions of Sections 4.3(a), 4.3(b), 4.3(c) and 4.3(d).

4.4 Adjustments to Prevent Dilution. In the event that the Company changes the number of Shares or securities convertible or exchangeable into or exercisable for Shares issued and outstanding prior to the Effective Time as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, issuer

tender or exchange offer, or other similar transaction, provided that no such action shall be taken in violation of Section 6.1, the Per Share Merger Consideration shall be equitably adjusted.

4.5 Treatment of the Convertible Notes. The Floating Rate Convertible Senior Notes due 2033 of the Company (the "Convertible Senior Notes") shall be treated as set forth in Section 6.12.

ARTICLE V

Representations and Warranties

5.1 Representations and Warranties of the Company. Except as set forth in reasonable detail in the Company's Annual Report on Form 10-K for the year ended December 31, 2005, the Company's Quarterly Reports on Form 10-Q for the periods ended March 31, 2006, June 30, 2006 and September 30, 2006, the Company's Current Reports on Form 8-K filed since January 1, 2006 and the Company's proxy statement on Schedule 14A filed with the SEC on April 5, 2006, in each case, filed with the SEC prior to the date hereof (other than disclosures in the "Risk Factors" sections thereof or any such disclosures included in such filings that are cautionary, predictive or forward-looking in nature) (it being agreed that such disclosures shall not be exceptions to Sections 5.1(b)(i), 5.1(c) and 5.1(d)(i)), or in the corresponding sections or subsections of the disclosure letter delivered to Parent by the Company prior to entering into this Agreement (the "Company Disclosure Letter") (it being agreed that disclosure of any item in any section or subsection of the Company Disclosure Letter shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent, provided that no such disclosure shall be deemed to qualify Section 5.1(f)(i) or Section 6.1 unless expressly set forth in Section 5.1(f)(i) or Section 6.1, as applicable, of the Company Disclosure Letter), the Company hereby represents and warrants to Parent and Merger Sub that:

(a) Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease, use and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation or similar entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, qualified or in good standing, or to have such power or authority, would not be, individually or in the aggregate, reasonably expected to have a Company Material Adverse Effect. The Company has made available to Parent complete and correct copies of the Company's and its Significant Subsidiaries' certificates of incorporation and bylaws or comparable governing documents, each as amended to the date hereof, and each as so made available is in effect on the date hereof.

As used in this Agreement, the term (i) "Subsidiary" means, with respect to any Person, any other Person of which at least a majority of the securities or other ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions is directly or indirectly owned or controlled by such Person and/or by one or more of its Subsidiaries; provided, however, that neither TXU

Europe Limited, nor any entity directly or indirectly owned by TXU Europe Limited shall be deemed to be a "Subsidiary" of the Company or any of the Company's Subsidiaries for purposes of this Agreement; (ii) "Significant Subsidiary" has the meaning set forth in Rule 1.02(w) of Regulation S-X under the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, as amended (the "Exchange Act"); (iii) "Affiliate" means, with respect to any Person, any other Person, directly or indirectly, controlling, controlled by, or under common control with, such Person. For purposes of this definition, the term "control" (including the correlative terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and (iv) "Company Material Adverse Effect" means a material adverse change or effect on the financial condition, business, assets, or results of operations of the Company and its Subsidiaries taken as a whole; provided, however, that none of the following shall constitute or be taken into account in determining whether there has been or is a Company Material Adverse Effect:

(A) changes in general economic or political conditions or the securities, credit or financial markets in general in the United States or in the State of Texas or changes that are the result of acts of war or terrorism (other than such acts that cause any damage or destruction to or render physically unusable any facility or property of the Company or any of its Subsidiaries);

(B) any adoption, implementation, promulgation, repeal, modification, reinterpretation or proposal of any rule, regulation, ordinance, order, protocol or any other Law of or by any national, regional, state or local Governmental Entity (including, for the avoidance of doubt, ERCOT);

(C) changes or developments in national, regional or state wholesale or retail markets for fuel, including, without limitation, changes in natural gas or other commodity prices or in the hedging markets therefor, or related products;

(D) changes or developments in national, regional or state wholesale or retail electric power prices;

(E) system-wide changes or developments in national, regional or state electric transmission or distribution systems, other than changes or developments involving physical damage or destruction to or rendering physically unusable facilities or properties;

(F) changes that are the result of factors generally affecting any business in which the Company and its Subsidiaries operate, other than changes or developments involving physical damage or destruction to or rendering physically unusable facilities or properties;

(G) any loss or threatened loss of, or adverse change or threatened adverse change in, the relationship of the Company or any of its Subsidiaries with its customers, employees, regulators, financing sources or suppliers to the extent caused by the pendency or the announcement of the transactions contemplated by this Agreement;

(H) changes or effects to the extent relating to the entry into, pendency of actions contemplated by, or the performance of obligations required by this Agreement or

consented to by Parent, including any change in the Company's credit ratings to the extent relating thereto and any actions taken by the Company and its Subsidiaries that is not in violation of this Agreement to obtain approval from any Governmental Entity for consummation of the Merger;

(I) changes in any Law or GAAP or interpretation thereof after the date hereof;

(J) any failure by the Company to meet any internal or public projections or forecasts or estimates of revenues or earnings for any period ending on or after the date of this Agreement, provided that the exception in this clause shall not prevent or otherwise affect a determination that any change, effect, circumstance or development underlying such failure has resulted in, or contributed to, a Company Material Adverse Effect;

(K) changes or developments arising out of or related to any proceeding or action by or before a Governmental Entity to the extent affecting the plans of the Company and its Subsidiaries for the development of new generation capacity in the State of Texas, including any litigation with respect thereto; and

(L) a decline in the price or trading volume of the Company common stock on the New York Stock Exchange (the "NYSE") or the Chicago Stock Exchange, provided that the exception in this clause shall not prevent or otherwise affect a determination that any change, effect, circumstance or development underlying such decline has resulted in, or contributed to, a Company Material Adverse Effect;

provided, further, that (x) matters, changes or developments set forth in clauses (A) through (F) above (other than action of the Public Utility Commission of Texas (the "PUCT")) may be taken into account in determining whether there has been or is a Company Material Adverse Effect to the extent such matters, changes or developments have a disproportionate (taking into account the relative size of the Company and its Subsidiaries and affected businesses of the Company and its Subsidiaries as compared to the other relevant entities and businesses) adverse affect on the Company as compared to other entities engaged in the relevant business in Texas or other relevant geographic area and are not otherwise excluded by clauses (G) through (L) from what may be taken into account in such determination, and (y) in no event shall any of the foregoing clauses (A) through (L) operate to exclude from the determination of whether there has been or is a Company Material Adverse Effect any Material Baseload Divestiture Requirement. For purposes of this Agreement, "Material Baseload Divestiture Requirement" shall mean any requirement imposed by a statute enacted into Law by the legislature of the State of Texas after the date of this Agreement, or any legally binding regulatory or administrative action taken pursuant to authority granted by such a new statute, that the Company or its Subsidiaries divest, or submit to capacity auctions for, a material amount of the Company's approximately 8,137 Mw as of the date hereof of baseload solid fuel (coal, lignite and nuclear) generation capacity, and the effects of any Material Baseload Divestiture Requirement shall take into account the after-tax proceeds or other consideration or benefits that the Company and its Subsidiaries would reasonably be expected to receive in connection with any such divestiture or capacity auction.

(b) Capital Structure.

(i) The authorized capital stock of the Company consists of 1,000,000,000 Shares, of which 459,269,419 Shares were outstanding as of the close of business on February 23, 2007 and 50,000,000 shares of serial preference stock, par value \$25 per share, none of which were outstanding as of the date hereof and, except for those Shares issuable or reserved for issuance as described below, no Shares have been issued since the close of business on February 23, 2007 through the date hereof. All of the outstanding Shares have been duly authorized and are validly issued, fully paid and nonassessable. As of February 23, 2007, other than up to 9,228,291.884 Shares issuable pursuant to the terms of outstanding awards under the TXU Corp. 2005 Omnibus Incentive Plan, the Company's Long-Term Incentive Compensation Plan and the TXU Thrift Plan (collectively, the "Stock Plans") and 1,523,916 Shares issuable, at the Company's option, upon conversion of the Convertible Senior Notes, the Company has no Shares issuable or reserved for issuance and no rights to acquire Shares under the Stock Plans have been issued since February 23, 2007 and through the date hereof. As of the date hereof, there were no options to purchase Shares issued and outstanding. Except as set forth in this Section 5.1(b)(i), there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, performance units, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company or any of its Significant Subsidiaries to issue or sell any shares of capital stock or other equity securities of the Company or any of its Significant Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any equity securities of the Company or any of its Significant Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding.

(ii) None of the Subsidiaries of the Company own any Shares. Section 5.1(b)(ii) of the Company Disclosure Letter sets forth a list, as of the date hereof, of the Company's Subsidiaries and entities (other than Subsidiaries) in which the Company or a Subsidiary of the Company owns a 5% or greater equity interest, the value of which is in excess of \$25,000,000, as of the date hereof and the Company's indirect interest in CapGemini Energy Limited Partnership (each a "Company Joint Venture"). Each of the outstanding shares of capital stock or other equity securities of each of the Company's Subsidiaries is duly authorized, validly issued, fully paid and nonassessable and, except for directors' qualifying shares and such failure to have such ownership would not reasonably be expected to have a Company Material Adverse Effect. The ownership interest in each Subsidiary and interest in each Company Joint Venture is owned by the Company or by a direct or indirect wholly owned Subsidiary of the Company, free and clear of any lien, charge, pledge, security interest, claim or other encumbrance (each, a "Lien"). Neither the Company nor any of its Subsidiaries has entered into any commitment, arrangement or agreement, or are otherwise obligated, to contribute capital, loan money or otherwise provide funds or make additional investments in any other Person, other than any such commitment, arrangement or agreement in the ordinary course of business consistent with past practice, with respect to wholly owned Subsidiaries of the Company or pursuant to a Contract binding on the Company or any of its Subsidiaries made available to Parent or Merger Sub. For purposes of this Agreement,

a wholly owned Subsidiary of the Company shall include any Subsidiary of the Company of which all of the shares of capital stock, other than director qualifying shares, are owned by the Company (or one or more wholly owned Subsidiaries of the Company).

(iii) Upon any issuance of any Shares in accordance with the terms of the Stock Plans, such Shares will be duly authorized, validly issued, fully paid and nonassessable. Except for the Convertible Senior Notes, the Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the shareholders of the Company on any matter.

(iv) There are no shareholder agreements, voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party or by which it is bound relating to the voting or registration of any equity securities of the Company or any of its Subsidiaries.

(c) Corporate Authority; Approval and Fairness.

(i) The Company has all requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement and, subject only to approval of this Agreement by the holders of two-thirds of the outstanding Shares entitled to vote on such matter at a shareholders' meeting duly called and held for such purpose (the "Requisite Company Vote"), to perform its obligations under this Agreement and to consummate the Merger. This Agreement has been duly executed and delivered by the Company and constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles (the "Bankruptcy and Equity Exception").

(ii) The board of directors of the Company at a meeting duly called and held, and following the unanimous recommendation of the Transactions Committee, has (A) unanimously (by all directors voting) determined that it is in the best interests of the Company's shareholders to enter into this Agreement, approved and adopted this Agreement and adopted a resolution recommending that this Agreement be approved by the shareholders of the Company (the "Company Recommendation"), (B) unanimously (by all directors voting) directed that this Agreement be submitted to the shareholders of the Company for their approval at a shareholders' meeting duly called and held for such purpose and (C) received the opinions of each of its financial advisors, Credit Suisse Securities (USA) LLC and Lazard Frères & Co. LLC, to the effect that, as of the date of such opinions, the Per Share Merger Consideration to be received by the holders of the Shares in the Merger is fair from a financial point of view to such holders. It is agreed and understood that such opinions may not be relied on by Parent or Merger Sub. The board of directors of the Company has taken all action so that Parent will not be an "affiliated shareholder" (as such term is defined in Section 21.602 of the TBOC) or prohibited from entering into or consummating a "business combination" (as such term is defined in Section 21.604 of the TBOC) with the Company as a result of the execution of

this Agreement or the consummation of the transactions in the manner contemplated hereby.

(d) Governmental Filings; No Violations; Certain Contracts.

(i) Other than the filings and/or notices (A) pursuant to Section 1.3, (B) required as a result of facts and circumstances solely attributable to Parent or Merger Sub, (C) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and the expiration or earlier termination of applicable waiting periods thereunder, (D) under the Exchange Act, (E) under rules promulgated by the NYSE and the Chicago Stock Exchange, (F) with the Federal Energy Regulatory Commission ("FERC") pursuant to Section 203 of the Federal Power Act and the approval of FERC thereunder (the "FERC Approval"), (G) with the Federal Communications Commission (the "FCC") for the transfer of radio licenses and point-to-point private microwave licenses held indirectly by the Company and the approval of the FCC for such transfer (the "FCC Approval") and (H) with the Nuclear Regulatory Commission (the "NRC") for approval of any indirect license transfer deemed to be created by the Merger and the approval of the NRC for such transfer (the "NRC Approval" and, together with the other approvals referred to in Subsections (C) through (G) of this Section 5.1(d)(i), the "Company Approvals"), no notices, reports or other filings are required to be made by the Company with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by the Company from, any federal, state or local, domestic or foreign governmental or regulatory authority, agency, commission, body, arbitrator, court, regional transmission organization, ERCOT, or any other legislative, executive or judicial governmental entity (each a "Governmental Entity"), in connection with the execution, delivery and performance of this Agreement by the Company and the consummation of the Merger and the other transactions contemplated hereby, except those, the failure to make or obtain which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement.

(ii) The execution, delivery and performance of this Agreement by the Company do not, and the consummation of the Merger and the other transactions contemplated hereby will not, constitute or result in (A) a breach or violation of, or a default under, or otherwise contravene or conflict with, the certificate of formation or bylaws of the Company or the comparable governing documents of any of its Subsidiaries, (B) with or without notice, lapse of time or both, a breach or violation of, a termination, cancellation (or right of termination or amendment) or a default under, the creation or acceleration of any obligations under the requirement of any consent under, the requirement of any loss of any benefit under, or the creation of a Lien on any of the assets of the Company or any of its Significant Subsidiaries pursuant to, any material agreement, lease, license, contract, note, mortgage, indenture, credit agreement, arrangement or other obligation (each, a "Contract") binding upon the Company or any of its Subsidiaries or any license from a Governmental Entity to which the Company or any of its Significant Subsidiaries is subject or (C) assuming compliance with the matters referred to in Section 5.1(d)(i), a violation of any Law to which the Company or any of

its Subsidiaries is subject, except, in the case of clause (B) or (C) above and, in the case of clause (A) above, with respect to Subsidiaries other than Significant Subsidiaries, for any such breach, violation, termination, cancellation, default, creation, acceleration, consent, loss or change that would not, individually or in the aggregate, be reasonably expected to have a Company Material Adverse Effect or prevent, materially delay or materially impair the consummation of the transactions contemplated by this Agreement.

(e) Company Reports: Financial Statements.

(i) The Company has filed or furnished, as applicable, on a timely basis, all forms, statements, certifications, reports and other documents required to be filed or furnished by it with the Securities and Exchange Commission (the "SEC") pursuant to the Exchange Act or the Securities Act of 1933 and the rules and regulations promulgated thereunder, as amended (the "Securities Act") since December 31, 2003 (the "Applicable Date") (the forms, statements, certifications, reports and documents filed or furnished since the Applicable Date and those filed or furnished subsequent to the date hereof, including any amendments thereto, the "Company Reports"). Each of the Company Reports, including any financial statements or schedules included therein, at the time of its filing or being furnished complied or, if not yet filed or furnished, will comply in all material respects with the requirements of the Securities Act and the Exchange Act applicable to the Company Reports. As of their respective dates (or, if amended prior to the date hereof, as of the date of such amendment), the Company Reports did not, and any Company Reports filed with or furnished to the SEC subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading. As of the date of this Agreement, there are no material outstanding or unresolved comments received from the SEC staff with respect to the Company Reports.

(ii) The Company is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the NYSE and the Chicago Stock Exchange.

(iii) Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports as amended prior to the date hereof (including the related notes and schedules) fairly presents in all material respects, or, in the case of Company Reports filed after the date hereof, will fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of its date and each of the statements of consolidated income, comprehensive income, cash flows and shareholders' equity included in or incorporated by reference into the Company Reports (including any related notes and schedules), as finally amended prior to the date hereof, fairly presents in all material respects, or in the case of Company Reports filed after the date hereof, will fairly present in all material respects the financial position, results of operations and cash flows, as the case may be, of the Company and its consolidated Subsidiaries for the periods set forth therein (subject, in the case of unaudited statements, to notes and normal year-end adjustments), in each case in accordance with U.S. generally accepted accounting principles ("GAAP"), except as may be noted therein.

(iv) Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (A) the Company maintains disclosure controls and procedures required by Rule 13a-15 or 15d-15 under the Exchange Act that are effective to ensure that information required to be disclosed by the Company is recorded and reported on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC and other public disclosure documents (including the Company's chief executive officer and chief financial officer) and (B) the Company has disclosed, based on its most recent evaluation prior to the date of this Agreement, to the Company's outside auditors and the audit committee of the board of directors of the Company (1) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (2) any fraud, known to the Company, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(v) Section 5.1(e)(v) of the Company Disclosure Letter sets forth a list of the Contracts and other arrangements containing the material commitments and obligations of the Company as of the date of this Agreement in respect of the development, engineering, construction and operation of new power generation facilities that is accurate in all material respects.

(f) Absence of Certain Changes

(i) Since September 30, 2006 there has not been any change in the financial condition, business, assets, or results of operations of the Company and its Subsidiaries that, individually or in the aggregate, has had or would be reasonably expected to have, a Company Material Adverse Effect.

(ii) Since September 30, 2006 and through the date of this Agreement, the Company and its Subsidiaries have conducted their respective businesses only in, and have not engaged in any material transaction other than according to the ordinary and usual course of such businesses and without limiting the foregoing, there has not been:

(A) any damage, destruction or other casualty loss with respect to any asset or property owned, leased or otherwise used by the Company or any of its Subsidiaries, whether or not covered by insurance that, individually or in the aggregate, has had or would reasonably be expected to have, a Company Material Adverse Effect;

(B) other than regular quarterly dividends on Shares and on the shares of preferred stock of TXU US Holdings Company, any declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company or any of its Subsidiaries (except for dividends or other distributions by any direct or indirect wholly-owned Subsidiary to the Company or to any wholly-owned Subsidiary of the Company); or

(C) any material change in any method of accounting or accounting practice by the Company or any of its Subsidiaries, other than as required by GAAP.

(g) Litigation and Liabilities

(i) There are no civil, criminal or administrative actions, suits, claims, hearings, arbitrations, investigations, inquiries, audits or other proceedings pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries, and, to the Knowledge of the Company, as of the date hereof, no such proceedings are pending or threatened against any of the Company Joint Ventures, in each case that individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect or prevent or materially delay or impair the consummation of the transaction contemplated by this Agreement. None of the Company, any of its Subsidiaries or, to the Knowledge of the Company, as of the date hereof, any of the Company Joint Ventures is a party to or subject to the provisions of any judgment, settlement, order, writ, injunction, decree or award of any Governmental Entity specifically imposed upon the Company, any of its Subsidiaries or any of the Company Joint Ventures or any of their respective businesses, assets or properties which, individually or in the aggregate, would reasonably be expected to have a Company Material Adverse Effect or prevent or materially delay or impair the consummation of the transaction contemplated by this Agreement.

(ii) Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), other than liabilities and obligations (A) set forth in the Company's consolidated balance sheet as of December 31, 2006, including the notes thereto, included in the draft Annual Report on Form 10-K for the year ended December 31, 2006 attached to Section 5.1(g)(ii) of the Company Disclosure Letter, (B) incurred in the ordinary course of business since December 31, 2006, (C) incurred in connection with the Merger or any other transaction or agreement contemplated by this Agreement, (D) of a nature not required to be shown on a balance sheet prepared in accordance with GAAP, pursuant to any Contract or other similar arrangement binding upon the Company or any of its Subsidiaries, (E) that are expressly within the scope of any other representation or warranty in this Section 5.1 or are expressly excluded from such representation and warranty as a result of the scope of any materiality qualification applicable to such representation or warranty (provided that any matter arising after the date hereof shall not be deemed to be within the scope of or excluded from any representation or warranty given at or as of the date hereof or any date prior to the date hereof), or (F) that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

The term "Knowledge" when used in this Agreement with respect to the Company shall mean the actual knowledge of those persons set forth in Section 5.1(g) of the Company Disclosure Letter.

(h) Employee Benefits

(i) (A) All material benefit and compensation plans, contracts, policies or arrangements covering current or former employees and officers of the Company and its Subsidiaries (the "Employees") and/or current or former directors of the Company and its Subsidiaries under which the Company or its Subsidiaries are subject to continuing financial obligations, including, but not limited to, "employee benefit plans" within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and deferred compensation, employment, change in control, severance, stock option, stock purchase, stock appreciation rights, stock based, incentive and bonus plans, agreements, programs, policies or arrangements sponsored, contributed to, or entered into by the Company or its Subsidiaries or for which the Company or its Subsidiaries could be reasonably expected to have any present or future liability (the "Benefit Plans") are listed on Section 5.1(h)(i)(A) of the Company Disclosure Letter, and each Benefit Plan which has received a favorable opinion letter from the Internal Revenue Service National Office has been separately identified.

(B) True and complete copies of all Benefit Plans listed on Section 5.1(h)(i)(A) of the Company Disclosure Letter have been made available to Parent and to the extent applicable, the following have also been made available to Parent: (1) any related trust agreement or other funding instrument now in effect or required in the future as a result of the transaction contemplated in this Agreement or otherwise; (2) the most recent determination letter; (3) any summary plan description and (4) for the most recent year (x) the Form 5500 and attached schedules, (y) audited financial statements and (z) actuarial valuation reports related to an Employee Benefit Plan.

(ii) All Benefit Plans, other than "multiemployer plans" within the meaning of Section 3(37) of ERISA (each, a "Multiemployer Plan") and, to the Knowledge of the Company, all Multiemployer Plans are in substantial compliance with their respective terms and ERISA, the Internal Revenue Code of 1986, as amended (the "Code") and other applicable Laws. Each Benefit Plan (other than any Multiemployer Plan) which is subject to ERISA (an "ERISA Plan") that is an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA (a "Pension Plan") intended to be qualified under Section 401(a) of the Code, has received a favorable determination letter from the Internal Revenue Service (the "IRS") or has applied to the IRS for such favorable determination letter under Section 401(b) of the Code, and the Company is not aware of any circumstances likely to result in the loss of the qualification of such ERISA Plan under Section 401(a) of the Code. Neither the Company nor any of its Subsidiaries has engaged in a transaction with respect to any ERISA Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject the Company or any Subsidiary to a tax or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA in an amount which would be material.

(iii) Neither the Company nor any of its Subsidiaries has or is reasonably expected to incur any material liability under Subtitle C or D of Title IV of ERISA with respect to any ongoing, frozen or terminated "single-employer plan", within

the meaning of Section 4001(a)(15) of ERISA, currently or formerly maintained by any of them, or the single-employer plan of any entity which is considered one employer with the Company under Section 4001 of ERISA or Section 414 of the Code (an "ERISA Affiliate"). No Benefit Plan is a Multiemployer Plan and the Company and its Subsidiaries have not incurred and do not expect to incur any material withdrawal liability with respect to a Multiemployer Plan under Subtitle E of Title IV of ERISA (regardless of whether based on contributions of an ERISA Affiliate).

(iv) As of the date hereof, there is no material pending or, to the Knowledge of the Company, threatened litigation relating to the Benefit Plans, other than routine claims for benefits. Other than pursuant to a CBA, neither the Company nor any of its Subsidiaries has any obligations for retiree health and life benefits under any Benefit Plan.

(v) Neither the execution of this Agreement, the approval of the Merger by the shareholders of the Company nor the consummation of the transactions contemplated hereby will (A) entitle any Designated Officer to severance pay or any material increase in severance pay upon any termination of employment after the date hereof, or (B) accelerate the time of payment or vesting or result in any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, increase the amount payable or result in any other material obligation pursuant to, any of the Benefit Plans, or (C) result or could result in payment under any Benefit Plans that would not be deductible under Section 280G of the Code.

The term "Designated Officer" when used in this Agreement shall mean, except as otherwise set forth in Section 5.1(h) of the Company Disclosure Letter, an "officer" of the Company for purposes of Rule 16a-1(f) under the Exchange Act. Section 5.1(h) of the Company Disclosure Letter contains a correct and complete list of the Designated Officers as of the date of this Agreement.

(i) Compliance with Laws; Licenses. The businesses of each of the Company and its Subsidiaries and, to the Knowledge of the Company as of the date hereof, the businesses, as of the date hereof, of each of the Company Joint Ventures have not been since the Applicable Date, and are not being, conducted in violation of any federal, state, local or foreign law, statute or ordinance, common law, or any rule, regulation, standard, judgment, order, writ, injunction, decree, arbitration award, agency requirement, license or permit of any Governmental Entity (collectively, "Laws"), except for violations that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect. Except with respect to regulatory matters that are the subject of Section 6.5 hereof, no investigation or review by any Governmental Entity with respect to the Company or any of its Subsidiaries is pending or, to the Knowledge of the Company, threatened, nor has any Governmental Entity indicated an intention to conduct the same, except for such investigations or reviews, the outcome of which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The Company and its Subsidiaries each has obtained and is in compliance with all permits, certifications, approvals, registrations, consents, authorizations, franchises, variances, exemptions and orders issued or granted by a Governmental Entity ("Licenses") necessary to conduct its business as presently conducted, except those the absence of which would not,

individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, such Licenses are in full force and effect, and no suspension or cancellation of such Licenses is pending or, to the Knowledge of the Company, threatened, except where such failure to be in full force and effect, suspension or cancellation would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(j) Takeover Statutes. No "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation (each, a "Takeover Statute ") or any anti-takeover provision in the Company's certificate of formation or bylaws is applicable to the Company, the Shares, the Merger or the other transactions contemplated by this Agreement.

(k) Environmental Matters. Except for such matters that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect:

(i) The Company and its Subsidiaries are in compliance with all applicable Environmental Laws, and none of them has received any written communication since February 1, 2002 from any Governmental Entity that alleges that any of them is not in material compliance with Environmental Laws.

(ii) Each of the Company and its Subsidiaries has obtained and possesses all environmental Licenses, including all required air emissions allowances, and all water rights (collectively, the "Environmental Permits "), necessary for the operation of its facilities in existence as of the date hereof and the conduct of its business as conducted as of the date hereof, and all such Environmental Permits are in good standing or, where applicable, a renewal application has been timely filed for review by the relevant Governmental Entity, and each of the Company and its Subsidiaries is in compliance with all terms and conditions of the Environmental Permits granted to it.

(iii) There is no Environmental Claim (A) pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or (B) to the Knowledge of the Company, pending or threatened against any real or personal property that the Company or any of its Subsidiaries owns, leases or uses.

(iv) To the Knowledge of the Company, there has been no Release of any Hazardous Substance that has or would reasonably be expected to result in (A) any Environmental Claim against the Company or any of its Subsidiaries or against any Person (including any predecessor of the Company or any of its Subsidiaries) whose liability for such claim the Company or any of its Subsidiaries has or allegedly has retained or assumed either by operation of Law or by Contract, or (B) any requirement on the part of the Company or any of its Subsidiaries to undertake Remedial Action.

(v) To the Knowledge of the Company, the Company and its Subsidiaries have disclosed to Parent all circumstances or conditions which, as of the date hereof, are reasonably expected to result in (A) any Environmental Claim against any of them or (B) any obligation of any of them in excess of \$5,000,000 currently required, or known to be required in the future, to incur costs for installing pollution control

equipment or conducting environmental remediation under or to comply with applicable Environmental Laws.

As used herein, the term "Environmental Claim" means any and all actions, suits, claims, demands, demand letters, directives, written notices of noncompliance or violation by any Person, hearings, arbitrations, investigations or other proceedings alleging potential liability (including potential responsibility for or liability for enforcement costs, investigatory costs, cleanup costs, governmental response costs, removal costs, remedial costs, natural resource damages, property damages, personal injuries, fines or penalties) arising out of, based on or resulting from (A) the presence, or Release or threatened Release into the environment, or alleged presence, Release or threatened Release into the environment, of any Hazardous Substance at any location, whether or not owned, operated, leased or managed by the Company or any of its Subsidiaries; or (B) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

As used herein, the term "Environmental Law" means any and all Laws relating to (A) pollution, the protection of the environment (including air, surface water, groundwater, soil, land surface or subsurface strata, and natural resources) or protection of human health and safety as it relates to the environment, or (B) the use, treatment, storage, transport, handling, release or disposal of any harmful or deleterious substances.

As used herein, the term "Hazardous Substance" means any substance listed, defined, designated or classified as hazardous, toxic or radioactive under any applicable Environmental Law including petroleum and any derivative or by-products thereof, and any other substance regulated pursuant to, or the presence or exposure to which would reasonably be expected to form the basis for liability under, any applicable Environmental Law.

As used herein, the term "Release" means any spilling, emitting, leaking, pumping, pouring, emptying, injecting, escaping, dumping, disposing, discharging, or leaching into the environment, or into or out of any property owned, operated or leased by the applicable party.

As used herein, the term "Remedial Action" means all actions, including any capital expenditures required by a Governmental Entity or required under any Environmental Law, to (A) clean up, remove, treat, or in any other way ameliorate or address any Hazardous Substance in the environment; (B) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Substance so it does not endanger or threaten to endanger the public health or welfare or the indoor or outdoor environment; (C) perform pre-remedial studies and investigations or post-remedial monitoring and care pertaining or relating to a Release; or (D) bring the applicable party into compliance with any Environmental Law.

(l) Taxes.

(i) The Company and each of its Subsidiaries (A) have prepared in good faith and duly and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them, and all such filed Tax Returns are complete and accurate, except in each case where such failures to so prepare

or file Tax Returns, or the failure of such filed Tax Returns to be complete and accurate, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect; (B) have paid all Taxes that are required to be paid or that the Company or any of its Subsidiaries are obligated to withhold from amounts owing to any employee, creditor or third party, except with respect to matters contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP and except where such failure to so pay or remit, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect; (C) have made adequate provision in the applicable financial statements in accordance with GAAP for any material Tax that is not yet due and payable for all taxable periods, or portions thereof, ending on or before the date of this Agreement; and (D) have not waived any statute of limitations with respect to any material amount of Taxes or agreed to any extension of time with respect to any material amount of Tax assessment or deficiency.

(ii) As of the date hereof, there are not pending or threatened in writing, any audits (or other similar proceedings initiated by a Governmental Entity) in respect of Taxes due from or with respect to the Company or any of its Subsidiaries or Tax matters to which the Company or any Subsidiary is a party, which (if determined adversely to the Company) could reasonably be expected to have a Company Material Adverse Effect. The Company has made available to Parent true and correct copies of the United States federal income Tax Returns filed by the Company and its Subsidiaries for each of the fiscal years ended December 31, 2005, 2004, and 2003.

(iii) There are no Tax sharing agreements (or similar agreements) to which the Company or any of its Subsidiaries is a party to or by which the Company or any of its Subsidiaries is bound (other than agreements exclusively between or among the Company and its Subsidiaries).

(iv) None of the Company or any of its Subsidiaries has engaged in any reportable transaction under Section 6011 of the Code and the Treasury Regulations promulgated thereunder.

(v) No actions have been taken by the Company or any of its Subsidiaries that would reasonably be expected to, individually or in the aggregate, have jeopardized the qualification of the interest as tax-exempt on any tax-exempt bonds that relate to any assets of the Company or any of its Subsidiaries.

(vi) No closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign law) has been entered into by or with respect to Company or any of its Subsidiaries with respect to any material Tax and neither the Company nor any of its Subsidiaries has requested or received a private letter ruling from the IRS or comparable rulings from other taxing authorities.

For purposes of this Section 5.1(I), the term "Subsidiary" shall include TXU Europe Limited and any entity directly or indirectly owned by TXU Europe Limited. As used in this Agreement, (A) the term "Tax" (including, with correlative meaning, the term "Taxes")

includes (1) all federal, state, local and foreign income, profits, franchise, gross receipts, environmental, margin, customs duty, capital stock, severances, stamp, payroll, sales, employment, unemployment, disability, use, property, withholding, excise, production, value added, occupancy and other taxes, duties or assessments of any nature whatsoever, together with all interest, penalties and additions imposed with respect to such amounts and any interest in respect of such penalties and additions, (2) any liability for payment of amounts described in clause (1), whether as a result of transferee liability or joint and several liability for being a member of an affiliated, consolidated, combined or unitary group for any period, and (3) any liability for the payment of amounts described in clause (1) or (2) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to pay or indemnify any other Person, and (B) the term "Tax Return" includes all returns and reports (including elections, declarations, disclosures, schedules, estimates and information returns) required to be supplied to a Tax authority relating to Taxes.

(m) Labor Matters. Neither the Company nor any of its Subsidiaries (i) has agreed to recognize any labor union or labor organization, nor has any labor union or labor organization been certified as the exclusive bargaining representative of any employees of the Company or any of its Subsidiaries; (ii) is a party to or otherwise bound by, or currently negotiating, any collective bargaining agreement or other Contract with a labor union or labor organization (a "CBA"); or (iii) is the subject of any material proceeding asserting that the Company or any of its Subsidiaries has committed an unfair labor practice or seeking to compel it to bargain with any labor union or labor organization, nor, to the Knowledge of the Company as of the date hereof, is any such proceeding threatened. There is not now, nor has there been since the Applicable Date any labor strike, dispute, walk-out, work stoppage, slow-down or lockout involving the Company or any of its Subsidiaries nor, to the Knowledge of the Company, is any such controversy threatened in writing as of the date hereof. To the Knowledge of the Company, as of the date hereof, there is no campaign being conducted to solicit cards from employees of the Company or any of its Subsidiaries to authorize representation by a labor organization. As of the date hereof, neither the Company nor any of its Subsidiaries have closed any plant or facility, effectuated any layoffs of employees or implemented any early retirement, separation or window program since the Applicable Date, nor has any such action or program been announced for the future in any case that would reasonably be expected to give rise to any material liability under the United States Worker Adjustment and Retraining Notification Act or the rules and regulations thereunder, except for any liabilities that were satisfied on or prior to September 30, 2006.

(n) Intellectual Property. (i) To the Knowledge of the Company, (A) the Company and its Subsidiaries have sufficient rights to use all material Intellectual Property used in its business as presently conducted, and (B) no person is violating any material Intellectual Property owned by the Company except as would not reasonably be expected to result in a Company Material Adverse Effect.

(ii) For purposes of this Agreement, the following term has the following meaning:

"Intellectual Property" means any intellectual property, including trademarks, service marks Internet domain names, logos, trade dress, trade names, and all goodwill associated

therewith and symbolized thereby, inventions, discoveries, patents, processes, technologies, confidential information, trade secrets, know-how, copyrights and copyrightable works, software, databases and related items.

(o) Insurance. All material fire and casualty, general liability, business interruption, product liability, and sprinkler and water damage insurance policies or other material insurance policies maintained by the Company or any of its Subsidiaries (“Insurance Policies”) are in full force and effect and all premiums due with respect to all Insurance Policies have been paid, with such exceptions that, individually or in the aggregate, would not reasonably be expected to have a Company Material Adverse Effect.

(p) Regulatory Matters. (i) *General*. As of the date of this Agreement, the Company is an exempt holding company under the Public Utility Holding Company Act of 2005. As of the date of this Agreement, TXU Energy Holdings is subject to regulation under the Atomic Energy Act of 1954, as amended, as a licensee or the owner of a licensee, under Texas utility Law as a “power generation company,” a “retail electric provider” and a “power marketer” (as such terms are defined under PURA) and under the ERCOT Protocols as a “resource entity,” a “load serving entity” and a “qualified scheduling entity” (as such terms are defined in the ERCOT Protocols), and holds a tariff for sales of power at wholesale at market-based rates from FERC and has associated contracts as identified in Schedule 5.1(p). As of the date of this Agreement, TXU Electric Delivery is subject to regulation under Texas utility Law as a “public utility,” an “electric utility” and a “transmission and distribution utility” (as such terms are defined under PURA) and under the ERCOT Protocols as a “transmission and/or distribution service provider” (as such term is defined in the ERCOT Protocols), and its associated contracts tariffs and other facilities listed in Schedule 5.1(p) are subject to FERC jurisdiction under FERC orders. TXU Electric Delivery also holds franchises granted by municipalities and other Governmental Entities for the placement of utility facilities in or along public rights of way. As of the date of this Agreement, except as set forth in the immediately preceding sentences, the Company and its Subsidiaries are not subject to regulation as a public utility, public utility holding company or public service company (or similar designation) by any Governmental Entity.

As used in this Agreement, the term (A) “TXU Energy Holdings” means TXU Energy Company LLC, a Subsidiary of the Company, and/or its consolidated Subsidiaries, (B) “TXU Electric Delivery” means TXU Electric Delivery Company, a Subsidiary of the Company, and/or its consolidated Subsidiary, TXU Electric Delivery Transition Bond Company LLC, (C) “PURA” means the Texas Public Utility Regulatory Act, as amended, (D) “ERCOT Protocols” means the documents adopted by the Electric Reliability Council of Texas, Inc. (“ERCOT”), including any attachments or exhibits referenced therein, as amended from time to time that contain the scheduling, operating, planning, reliability, and settlement (including Customer registration) policies, rules, guidelines, procedures, standards, and criteria of ERCOT, and (E) “ERCOT Region” means the geographic area under the jurisdiction of the PUCT that is served by transmission and/or distribution providers that are not synchronously interconnected with electric utilities outside of the State of Texas.

(i) *Comanche Peak Compliance*. The operation of Comanche Peak nuclear-powered generation Unit 1 and Unit 2 (together, “Comanche Peak”) is and has

since January 1, 2002 been conducted in compliance in all material respects with applicable health, safety, regulatory and other legal requirements. Such legal requirements include, but are not limited to, the NRC Facility Operating Licenses for Comanche Peak issued pursuant to 10 C.F.R. Chapter I, and all regulations, requirements and orders related in any way thereto; and all obligations of the Company, as the owner of Comanche Peak, pursuant to contracts with the United States Department of Energy for the disposal of spent nuclear fuel and high-level radioactive waste, and any Laws of the State of Texas or any agency thereof. As of the date hereof, to the Knowledge of the Company, the operations of Comanche Peak are not the subject of any outstanding notice of violation or material request for information from the NRC or any other agency with jurisdiction over such facility. Comanche Peak maintains, and is in compliance in all material respects with, emergency plans designed to protect the health and safety of the public in the event of an unplanned release of radioactive materials and such plans are in compliance in all material respects with the NRC's rules and regulations.

(ii) *Exempt Wholesale Generator Status.* TXU Energy Holdings is, and has been determined by order of FERC to be, an Exempt Wholesale Generator ("EWG") under the Energy Policy Act of 2005 (the "EPAAct 2005"), and neither such order nor TXU Energy Holdings' status as an EWG under the EPAAct 2005 is the subject of any pending or, to the Knowledge of the Company, threatened judicial or administrative proceeding to revoke or modify such status. To the Knowledge of the Company, there are no facts that are reasonably likely to cause TXU Energy Holdings to lose its status as an EWG under the EPAAct 2005.

(iii) *Qualified Decommissioning Fund.*

(A) With respect to all periods commencing on or after January 1, 1997 and ending on or prior to the Closing Date: (1) the Company's Qualified Decommissioning Fund consists of one or more trusts that are validly existing and in good standing under the laws of their respective jurisdictions of formation with all requisite authority to conduct their affairs as they now do; (2) the Company's Qualified Decommissioning Fund satisfies the requirements necessary for such fund to be treated as a "Nuclear Decommissioning Reserve Fund" within the meaning of Code Section 468A(a) and as a "Nuclear Decommissioning Fund" and a "Qualified Nuclear Decommissioning Fund" within the meaning of Treas. Reg. Section 1.468A-1(b)(3); (3) the Company's Qualified Decommissioning Fund is in compliance in all material respects with all applicable rules and regulations of any Governmental Entity having jurisdiction, including the NRC, the PUCT and the IRS, (4) the Company's Qualified Decommissioning Fund has not engaged in any acts of "self-dealing" as defined in Treas. Reg. Section 1.468A-5(b)(2); (5) no "excess contribution", as defined in Treas. Reg. Section 1.468A-5(c)(2)(ii), has been made to the Company's Qualified Decommissioning Fund which has not been withdrawn within the period provided under Treas. Reg. Section 1.468A-5(c)(2)(i); and (6) the Company has made timely and valid elections to make annual contributions to the Company's Qualified Decommissioning Fund since its inception and the Company has heretofore delivered copies of such elections to Parent. As used in this Agreement, the term

“Qualified Decommissioning Fund” means all amounts contributed to qualified funds for administrative costs and costs incurred in connection with the entombment, dismantlement, removal and disposal of the structures, systems and components of a unit of common facilities, including all costs incurred in connection with the preparation for decommissioning, such as engineering and other planning expenses incurred with respect to the unit of common facilities after actual decommissioning occurs, such as physical security and radiation monitoring expenses, as part of TXU Electric Delivery’s cost of service required by PURA or as approved by the PUCT.

(B) The Company has heretofore delivered to Parent a copy of its Decommissioning Trust Agreements as in effect on the date hereof.

(C) With respect to all periods commencing on or after January 1, 2002 and ending on or prior to the Closing Date, (1) the Company and/or Mellon Bank, N.A., the Trustee of the Company’s Qualified Decommissioning Fund (the “Trustee”) has/have filed or caused to be filed with the NRC, the IRS and any other Governmental Entity all material forms, statements, reports, documents (including all exhibits, amendments and supplements thereto) required to be filed by the Company and/or the Trustee of the Company’s Qualified Decommissioning Fund; (2) there are no interim rate orders that may be retroactively adjusted or retroactive adjustments to interim rate orders that may affect amounts that Parent may contribute to the Company’s Qualified Decommissioning Fund or may require distributions to be made from the Company’s Qualified Decommissioning Fund. The Company has delivered to Parent a copy of the schedule of ruling amounts most recently issued by the IRS for the Company’s Qualified Decommissioning Fund and a complete copy of the request that was filed with the IRS to obtain such schedule of ruling amounts and a copy of any pending request for revised ruling amounts, in each case together with all exhibits, amendments and supplements thereto.

(D) The Company has made available to Parent a statement of assets prepared by the Trustee for the Company’s Qualified Decommissioning Fund as of December 31, 2006 and as of January 31, 2007 and will make such a statement available as of the most recently available month end preceding the Closing, and such statements fairly presented and will fairly present as of such dates the financial position of each of the Company’s Qualified Decommissioning Funds. The Company has made available to Parent information from which Parent can determine the Tax basis of all assets in the Company’s Qualified Decommissioning Fund and will make such a statement available as of the most recently available month end preceding the Closing.

(E) The Company has made available to Parent all material contracts and agreements to which the Trustee, in its capacity as such, is a party.

(iv) *Nonqualified Decommissioning Funds*. As of the date hereof, the Company does not maintain any funds in any nonqualified decommissioning trusts.

(vi) *Foreign Ownership, Control or Influence.* Each officer and director of TXU Generation Company LP and any entity of which TXU Generation Company LP is a Subsidiary is a U.S. citizen.

(q) **Derivative Products.** (i) (A) To the Knowledge of the Company, as of the date hereof, all Derivative Products entered into for the account of the Company or any of its Subsidiaries on or prior to the date hereof were entered into in accordance with (x) established risk parameters, limits and guidelines and in compliance with the risk management policies approved by management of the Company and in effect on the date hereof (the “TXU Trading Policies”), with exceptions having been handled in all material respects according to the Company’s risk management processes as in effect at the time at which such exceptions were handled, to limit the level of risk that the Company or any of its Subsidiaries is authorized to take, individually and in the aggregate, with respect to Derivative Products and monitor compliance with such risk parameters and (y) applicable Law and policies of any Governmental Entity.

(B) All Derivative Products entered into after the date hereof for the account of the Company or any of its Subsidiaries will be entered into in accordance with (x) the TXU Trading Policies with exceptions being handled in all material respects according to the Company’s risk management processes as in effect at the time at which such exceptions will be handled, to limit the level of risk that the Company or any of its Subsidiaries is authorized to take, individually and in the aggregate, with respect to Derivative Products and monitor compliance with such risk parameters and (y) applicable Law and policies of any Governmental Entity.

(i) The Company has made available to Parent a true and complete copy of the TXU Trading Policies, and the TXU Trading Policies contain a true and complete description of the practice of the Company and its Subsidiaries with respect to Derivative Products, as of the date hereof.

(ii) (A) Section 5.1(q)(iii)(A) of the Company Disclosure Letter sets forth a summary of the Company’s natural gas and heat rate positions as of February 16, 2007. The Company has made available to Parent pricing and other supporting information relating to the positions summarized on Schedule 5.1(q)(iii)(A) of the Company Disclosure Letter.

(B) Since February 16, 2007 and through the date of this Agreement, the Company has not entered into any Derivative Products outside of the normal course of business.

For purposes of this Agreement, “Derivative Product” means (i) any swap, cap, floor, collar, futures contract, forward contract, option and any other derivative financial instrument or Contract, based on any commodity, security, instrument, asset, rate or index of any kind or nature whatsoever, whether tangible or intangible, including electricity (including capacity and ancillary services products related thereto), natural gas, crude oil, coal and other commodities, emissions allowances, renewable energy credits, currencies, interest rates and indices and (ii) forward contracts for delivery of electricity (including capacity and ancillary

services products related thereto), natural gas, crude oil, petcoke, lignite, coal and other commodities and emissions and renewable energy credits.

(r) Brokers and Finders. Neither the Company nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finders' fees in connection with the Merger or the other transactions contemplated in this Agreement except that the Company has employed Credit Suisse Securities (USA) LLC and Lazard Frères & Co. LLC as its financial advisors pursuant to engagement letters with the Company, copies of which have been provided to Parent prior to the date hereof or, in lieu thereof, redacted copies containing the material contents thereof including, without limitation, the provisions setting forth the fees payable thereunder and any commitments for future engagements have been provided to Parent prior to the date hereof.

(s) Real Property. Except as would not be reasonably expected to have a Company Material Adverse Effect, the Company and its Subsidiaries have either good title, in fee or valid leasehold, easement or other rights, to the land, buildings, wires, pipes, structures and other improvements thereon and fixtures thereto, necessary to permit the Company and its Subsidiaries to conduct their business as currently conducted free and clear of any Liens, options, rights of first refusal or other similar encumbrances.

(t) Company Material Contracts. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) neither the Company nor any Subsidiary of the Company is in breach of or default under the terms of any Contract that would be required to be filed by the Company as a "material contract" (as such term is defined in item 601(b)(10) of Regulation S-K of the SEC, except for any such Contract that is a Benefit Plan or would be a Benefit Plan but for the word "material" in the definition thereof) (each such Contract a "Company Material Contract"), (ii) as of the date hereof, to the Knowledge of the Company, no other party to any Company Material Contract is in breach of or default under the terms of any Company Material Contract and (iii) each Company Material Contract is a valid and binding obligation of the Company or its Subsidiary that is a party thereto and, to the Knowledge of the Company, is in full force and effect unless terminated in accordance with its terms.

5.2 Representations and Warranties of Parent and Merger Sub. Except as set forth in the corresponding sections or subsections of the disclosure letter delivered to the Company by Parent prior to entering into this Agreement (the "Parent Disclosure Letter") (it being agreed that disclosure of any item in any section or subsection of the Parent Disclosure Letter shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent), Parent and Merger Sub each hereby represent and warrant to the Company that:

(a) Organization, Good Standing and Qualification. Each of Parent and Merger Sub is a legal entity duly formed, validly existing and in good standing under the Laws of its respective jurisdiction of formation and has all requisite corporate, limited partnership or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation or limited partnership in each jurisdiction where the ownership, leasing or

operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so organized, qualified or in such good standing, or to have such power or authority, would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Parent and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement. Parent has made available to the Company a complete and correct copy of the certificate of formation and bylaws of Merger Sub as in effect on the date of this Agreement.

(b) **Corporate Authority.** No vote of holders of limited partnership interests of Parent is necessary to approve this Agreement and the Merger and the other transactions contemplated hereby. Each of Parent and Merger Sub has all requisite corporate or limited partnership power and authority and has taken all corporate or limited partnership action necessary in order to execute, deliver and perform its obligations under this Agreement, subject only to the adoption of this Agreement by Parent as the sole shareholder of Merger Sub (the "Requisite Parent Vote"), which will occur immediately following the execution of this Agreement, and to consummate the Merger. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and is a valid and binding agreement of, Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the Bankruptcy and Equity Exception.

(c) **Governmental Filings; No Violations; Etc.**

(i) Other than the FERC Approval, the NRC Approval and the FCC Approval and filings in respect thereof and the filings and/or notices (A) pursuant to Section 1.3, (B) required as a result of facts or circumstances solely attributable to the Company or its Subsidiaries, a direct or indirect change of control thereof or the operation of their businesses and (C) under the HSR Act (other than those in clauses (A) and (B), all such approvals being collectively the "Parent Approvals"), no notices, reports or other filings are required to be made by Parent or Merger Sub with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by Parent or Merger Sub from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the Merger and the other transactions contemplated hereby, except those, the failure to make or obtain which would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Parent and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement.

(ii) The execution, delivery and performance of this Agreement by Parent and Merger Sub do not, and the consummation by Parent and Merger Sub of the Merger and the other transactions contemplated hereby will not, constitute or result in (A) a breach or violation of, or a default under, the certificate of incorporation or formation or certificate of limited partnership or bylaws or comparable governing documents of Parent or Merger Sub or the comparable governing instruments of any of its Subsidiaries, (B) with or without notice, lapse of time or both, a breach or violation of, a termination (or right of termination) or a default under, the creation or acceleration of any obligations under, or the creation of a Lien on any of the assets of Parent or any of its

Subsidiaries pursuant to, any Contracts binding upon Parent or any of its Subsidiaries or any Laws or governmental or non-governmental permit or license to which Parent or any of its Subsidiaries is subject, (C) assuming compliance with the matters referred to in Section 5.2(c)(i), a violation of any Law to which Parent or any of its Subsidiaries is subject, except, in the case of clause (B) or (C) above, for any breach, violation, termination, default, creation, acceleration or change that would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Parent or Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement.

(d) Litigation. As of the date of this Agreement, there are no civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending or, to the knowledge of Parent, threatened against Parent or Merger Sub that seek to enjoin, or would reasonably be expected to have the effect of preventing, making illegal, or otherwise interfering with, any of the transactions contemplated by this Agreement, except as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Parent and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement.

(e) Financing. Section 5.2(e)(i) of the Parent Disclosure Letter sets forth a true and complete copy of the commitment letter, dated as of the date of this Agreement, among Citigroup Global Markets Inc., Goldman Sachs Credit Partners L.P., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Lehman Brothers Inc., Lehman Brothers Commercial Bank, Lehman Commercial Paper Inc. and Morgan Stanley Senior Funding, Inc. (the "Debt Financing Commitment"), pursuant to which lenders party thereto have committed, subject to the terms and conditions set forth therein, to lend the amounts set forth therein for the purposes of financing the transactions contemplated by this Agreement and related fees and expenses (the "Debt Financing"). Section 5.2(e)(ii) of the Parent Disclosure Letter sets forth true and complete copies of the equity commitment letters, dated as of the date of this Agreement, from (i) KKR 2006 Fund L.P., (ii) TPG Partners V, L.P., (iii) J.P. Morgan Ventures Corporation, (iv) Citigroup Global Markets Inc. and (v) Morgan Stanley & Co. Incorporated (collectively, the "Equity Financing Commitments" and together with the Debt Financing Commitment, the "Financing Commitments"), pursuant to which the investor parties thereto have committed, subject to the terms and conditions set forth therein, to invest the amounts set forth therein (the "Equity Financing" and together with the Debt Financing, the "Financing"). Prior to the date hereof, (i) none of the Financing Commitments has been amended or modified, (ii) no such amendment or modification is contemplated, and (iii) the respective commitments contained in the Financing Commitments have not been withdrawn or rescinded in any respect. Merger Sub has fully paid any and all commitment fees or other fees in connection with the Financing Commitments that are payable on or prior to the execution hereof. The Financing Commitments are in full force and effect as of the date hereof and are the legal, valid and binding obligations of Merger Sub and, to the knowledge of Parent, of the other parties thereto. Notwithstanding anything in this Agreement to the contrary, one or more Debt Financing Commitment may, in accordance with the provisions of this Agreement, be superseded at the option of Parent after the date of this Agreement but prior to the Effective Time by instruments (the "New Debt Financing Commitments") replacing existing Debt Financing Commitment, provided that the terms of the New Debt Financing Commitments shall not (a) expand upon the conditions precedent to the

Financing as set forth in the Debt Financing Commitment or (b) otherwise delay the Closing. In such event, the term "Financing Commitments" as used herein shall be deemed to include the Financing Commitments that are not so superseded at the time in question and the New Debt Financing Commitments to the extent then in effect. There are no conditions precedent or other contingencies related to the funding of the full amount of the Financing, other than as set forth in or contemplated by the Financing Commitments. As of the date hereof, no event has occurred that, with or without notice, lapse of time or both, would constitute a default on the part of Parent or Merger Sub under any of the Financing Commitments. As of the date hereof, Parent has no reason to believe that any of the conditions to the Financing contemplated by the Financing Commitments will not be satisfied or that the Financing will not be made available to Parent on the Closing Date. Assuming the Financing Commitments are funded, Parent and Merger Sub will have at and after the Closing funds sufficient to pay the aggregate Per Share Merger Consideration (and any repayment or refinancing of debt contemplated by this Agreement or the Financing Commitments) and any other amounts required to be paid in connection with the consummation of the transactions contemplated hereby, and to pay all related fees and expenses.

(f) Capitalization of Merger Sub. The authorized capital stock of Merger Sub consists solely of 1,000 shares of Common Stock, no par value, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly-owned Subsidiary of Parent. Merger Sub has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement, including the Financing.

(g) Parent's ERCOT Generation. Parent and its "affiliates" (as defined in Section 11.003(2) of the Texas Utilities Code as in effect on the date hereof) do not directly or indirectly own, control or have under construction any electric generation facilities that offer electricity for sale in the ERCOT Region or that are located in, or are capable of delivering electricity for sale to, the ERCOT Region. Neither Parent nor its "affiliates" (as defined in Section 11.003(2) of the Texas Utilities Code as in effect on the date hereof) have a present intention to acquire or construct any electric generation facilities offering, or capable of offering electricity for sale to, the ERCOT Region, except through the Company or its Subsidiaries.

(h) Foreign Ownership, Control or Influence. Each officer and manager of the sole general partner of Parent is a U.S. citizen, and to the knowledge of Parent, none of the members owning 5% or more of the limited liability company interests in the sole general partner of Parent is, or is controlled by, a foreign Person or entity. To the knowledge of Parent after due inquiry, none of the limited partners owning singularly or collectively 10% or more of Parent's limited partnership interests is, or is controlled by, a foreign Person or entity. As of the Closing, no foreign Person will control TXU Generation Company LP.

(i) Brokers. No agent, broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub for which the Company could have any liability prior to the Closing.

(j) **Solvency.** As of the Effective Time, assuming (i) satisfaction of the conditions to Parent's and Merger Sub's obligation to consummate the Merger, or waiver of such conditions, (ii) the accuracy of the representations and warranties of the Company set forth in Section 5.1 hereof (for such purposes, such representations and warranties shall be true and correct in all material respects without giving effect to any "knowledge", materiality or "Material Adverse Effect" qualification or exception) including, without limitation, the representations and warranties set forth in Section 5.1(e)(iii), and (iii) estimates, projections or forecasts provided by the Company to Parent prior to the date hereof have been prepared in good faith on assumptions that were and continue to be reasonable, and after giving effect to the transactions contemplated by this Agreement, including the Financing, and the payment of the aggregate Per Share Merger Consideration, any other repayment or refinancing of existing indebtedness contemplated in this Agreement or the Financing Commitments, payment of all amounts required to be paid in connection with the consummation of the transactions contemplated hereby, and payment of all related fees and expenses, each of Parent and the Surviving Corporation will be Solvent as of the Effective Time and immediately after the consummation of the transactions contemplated hereby. For the purposes of this Agreement, the term "**Solvent**" when used with respect to Parent and the Surviving Corporation, means that, as of any date of determination (a) the amount of the "fair saleable value" of the assets of Parent and the Surviving Corporation will, as of such date, exceed (i) the value of all "liabilities of Parent and the Surviving Corporation, including contingent and other liabilities," as of such date, as such quoted terms are generally determined in accordance with applicable federal Laws governing determinations of the insolvency of debtors, and (ii) the amount that will be required to pay the probable liabilities of Parent and the Surviving Corporation on their existing debts (including contingent and other liabilities) as such debts become absolute and mature, (b) Parent and the Surviving Corporation will not have, as of such date, an unreasonably small amount of capital for the operation of the businesses in which they intend to engage or propose to be engaged following the Closing Date, and (c) Parent and the Surviving Corporation will be able to pay their liabilities, including contingent and other liabilities, as they mature. For purposes of this definition, "not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged" and "able to pay its liabilities, including contingent and other liabilities, as they mature" means that Parent and the Surviving Corporation will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due.

(k) **Guarantee.** Concurrently with the execution of this Agreement, Parent has caused the Guarantors to deliver to the Company the duly executed Guarantees.

(l) **Absence of Certain Agreements.** As of the date of this Agreement, neither Parent nor any of its Affiliates has entered into any agreement, arrangement or understanding (in each case, whether oral or written), or authorized, committed or agreed to enter into any such agreement, arrangement or understanding (in each case, whether oral or written), pursuant to which: (i) any shareholder of the Company would be entitled to receive consideration of a different amount or nature than the Per Share Merger Consideration or pursuant to which any shareholder of the Company agrees to vote to approve this Agreement or the Merger or agrees to vote against any Superior Proposal; (ii) other than investment funds or other entities under common management with any of the Guarantors, any third party has agreed to provide, directly or indirectly, equity capital (other than pursuant to the Equity Financing Commitments or as set

forth in Section 5.2(l) of the Parent Disclosure Letter) to Parent or the Company to finance in whole or in part the Merger; or (iii) any current employee of the Company has agreed to remain as an employee of the Company or any of its Subsidiaries following the Effective Time.

ARTICLE VI
Covenants

6.1 Interim Operations.

(a) The Company covenants and agrees as to itself and its Subsidiaries that, after the date hereof and prior to the Effective Time (unless Parent shall otherwise approve in writing (such approval not to be unreasonably withheld, delayed or conditioned)), and except as otherwise expressly contemplated by this Agreement or required by applicable Laws, the business of it and its Subsidiaries shall be conducted, to the extent contemplated thereby, in a manner consistent with the business plan set forth in Part I to Section 6.1(a) of the Company Disclosure Letter (the "Business Plan") and, otherwise in the ordinary course of business (taking into account the effects of the Business Plan). To the extent consistent with the foregoing, the Company and its Subsidiaries shall use their respective reasonable best efforts to preserve their business organizations intact and maintain existing relations and goodwill with Governmental Entities, customers, suppliers, employees and business associates. Without limiting the generality of the preceding provisions of this Section 6.1(a), and in furtherance thereof, from the date of this Agreement until the Effective Time, except (A) as otherwise specifically contemplated or specifically permitted by provisions of this Agreement other than this Section 6.1(a), (B) as Parent may approve in writing (such approval, not to be unreasonably withheld, delayed or conditioned), (C) as is required by applicable Law or (D) as set forth in Section 6.1(a) of the Company Disclosure Letter, the Company will not and will not permit its Subsidiaries to:

- (i) adopt any change in its certificate of formation or bylaws or other applicable governing instruments;
- (ii) merge or consolidate the Company or any of its Subsidiaries with any other Person;
- (iii) adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries;
- (iv) make any acquisition of any assets or Person for a purchase price in excess of \$10 million unless such acquisition would be permissible under clause (xi) below;
- (v) issue, sell, pledge, dispose of, grant, transfer, encumber, or authorize the issuance, sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of, any shares of capital stock of the Company or any of its Subsidiaries (other than (A) the issuance of Shares upon the settlement of performance units, restricted stock awards and other awards under the Stock Plans (and dividend equivalents thereon,

if applicable), (B) the issuance of Shares upon conversion of Convertible Senior Notes, or (C) the issuance of shares by a wholly-owned Subsidiary of the Company to the Company or another wholly-owned Subsidiary), or securities convertible or exchangeable into or exercisable for any shares of such capital stock, or any options, warrants or other rights of any kind to acquire any shares of such capital stock or such convertible or exchangeable securities;

(vi) make any loans, advances or capital contributions to or investments in any Person (other than the Company or any direct or indirect wholly owned Subsidiary of the Company) in excess of \$20 million in the aggregate;

(vii) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock (except for (A) regular quarterly dividends paid to holders of Shares in an amount not to exceed \$0.4325 per Share per quarter, with record dates of or no earlier than, March 2, 2007; June 1, 2007; September 1, 2007; December 1, 2007; March 1, 2008 and June 1, 2008, respectively, and provided that no quarterly dividend will be declared with respect to the quarter in which the Effective Time occurs unless the Effective Time is after the record date for such quarter, (B) dividends paid in the ordinary course of business consistent with past practice by any direct or indirect wholly-owned Subsidiary to the Company or to any other direct or indirect wholly-owned Subsidiary and (C) dividends to holders of shares of preferred stock of TXU US Holdings Company in accordance with the terms of such preferred stock) or enter into any agreement with respect to the voting of its capital stock;

(viii) reclassify, split, combine, subdivide or redeem, purchase or otherwise acquire, directly or indirectly, any of its capital stock or securities convertible or exchangeable into or exercisable for any shares of its capital stock (other than the acceptance of Convertible Senior Notes surrendered by their holders for conversion and the acquisition of any Shares tendered by current or former employees or directors in order to pay Taxes in connection with the settlement of performance units, restricted stock awards and other awards under the Stock Plans);

(ix) repurchase, redeem, defease, cancel, prepay, forgive, issue, sell, incur or otherwise acquire any indebtedness for borrowed money or any debt securities or rights to acquire debt securities of the Company or any of its Subsidiaries, or assume, guarantee or otherwise become responsible for such indebtedness of another Person (other than a wholly owned Subsidiary of the Company), except for indebtedness for borrowed money incurred or repaid in the ordinary course of business consistent with past practice (A) under the Company's existing revolving credit facilities or the extension or refinancing thereof, (B) under commercial paper borrowings, (C) to refinance indebtedness for borrowed money as such indebtedness matures and using commercially reasonable efforts to obtain comparable terms and conditions, (D) by drawing under outstanding letters of credit or (E) in connection with the remarketing of outstanding Pollution Control Revenue Bonds in each case of any excepted issuance, refinancing or incurrence of indebtedness, which does not include any prepayment penalties,

makewhole or similar terms and which does not interfere with, compete with or impede in any material respect the Debt Financing;

(x) amend or modify in any material respect the terms of, or refinance, any indebtedness for borrowed money, guarantee of indebtedness for borrowed money or debt securities of the Company or any of its Subsidiaries, except in connection with any refinancing of such indebtedness as it matures that does not include any new prepayment penalties, make-whole or similar term and does not unreasonably interfere with, compete with or impede in any material respect the Debt Financing;

(xi) except as set forth in the capital expenditures contained in the Business Plan and for expenditures related to operational emergencies, equipment failures or outages, make or authorize any capital expenditure in excess of \$50 million in the aggregate during any 12 month period;

(xii) except as required by applicable Law, reactivate or enter into any "reliability must run" Contract with respect to any generating plant that, as of the date of this Agreement, is shutdown or "mothballed;"

(xiii) make any material changes with respect to accounting policies or procedures, except as required by Law or by changes in GAAP;

(xiv) waive, release or settle any pending or threatened litigation or other proceedings before a Governmental Entity (A) for an amount in excess of \$10 million or (B) entailing the incurrence of (1) any obligation or liability of the Company in excess of such amount, including costs or revenue reductions, (2) obligations that would impose any material restrictions on the business or operations of the Company or its Subsidiaries, or (C) that is brought by any current, former or purported holder of any capital stock or debt securities of the Company or any Subsidiary relating to the transactions contemplated by this Agreement;

(xv) other than in the ordinary course of business consistent with past practice or except to the extent required by Law, make or change any material Tax election, settle or compromise any Tax liability of the Company or any of its Subsidiaries in excess of \$10 million, change any method of Tax accounting, enter into any closing agreement with respect to any material Tax or surrender any right to claim a material Tax refund;

(xvi) take any action outside the ordinary course of business that could result in the inclusion in taxable income of any intercompany gain of the Company or any of its Subsidiaries;

(xvii) transfer, sell, lease, license, mortgage, pledge, surrender, encumber, divest, cancel, abandon or allow to lapse or expire or otherwise dispose of any assets, product lines or businesses of the Company or its Subsidiaries (including capital stock of any of its Subsidiaries) with a fair market value in excess of \$400 million in the aggregate, other than sales of inventory, electricity or other commodities, Derivative Products, real property or obsolete goods or equipment or cancellation of, abandonment

of, or allowing to lapse or expire, Intellectual Property in the ordinary course of business consistent with past practice or pursuant to Contracts in effect prior to the date hereof that have been made available to Parent or Merger Sub;

(xviii) except as required pursuant to Contracts or Benefit Plans in effect prior to the date of this Agreement, or as otherwise required by applicable Law, (A) grant or provide any severance or termination payments or benefits to any director or employee of the Company or any of its Subsidiaries or to any Designated Officer, except, in the case of employees who are not Designated Officers, in the ordinary course of business and consistent with past practice, (B) increase the compensation or make any new equity awards to any director or employee of the Company or any of its Subsidiaries or to any Designated Officer, except, in the case of employees who are not Designated Officers of the Company, in the ordinary course of business and consistent with past practice or (C) establish, adopt, terminate or materially amend any Benefit Plan (other than routine changes to welfare plans);

(xix) (A) modify in any material respect the TXU Trading Policies or any similar policy, other than modifications that are more restrictive to the Company and its Subsidiaries or (B) enter into any Derivative Product or any similar transaction, other than as permitted by Section 6.1(a)(xix) of the Company Disclosure Letter;

(xx) enter into, terminate (other than at the end of a term), renew or materially extend or amend any Company Material Contract or Contract that, if in effect on the date hereof, would be a Company Material Contract; or waive any material default under, or release, settle or compromise any material claim against the Company or liability or obligation owing to the Company under any Company Material Contract;

(xxi) fail to maintain in full force and effect material insurance policies covering the Company and its Subsidiaries and their respective properties, assets and businesses in a form and amount consistent with past practice unless the Company determines in its reasonable commercial judgment that the form or amount of such insurance should be modified;

(xxii) (A) except for any filings or proceedings related to automatic transmission capital trackers or automated meter reading investments, voluntarily file or initiate any proceeding before any Governmental Entity regarding rates charged by any Subsidiary of the Company, (B) enter into any settlement or make any commitment or concession with any Person (including any Governmental Entity) regarding the regulated rates, regulated rate base or return on equity of any Subsidiary of the Company or (C) take those actions referenced on Section 6.1(a)(xxii) of the Company Disclosure Letter;

(xxiii) sell, transfer, swap, encumber or otherwise make unavailable to the Company and its Subsidiaries any air emissions allowances, credits or offsets presently available to, possessed or controlled by the Company or its Subsidiaries, or purchase any air emissions allowances, credits or offsets, provided that the foregoing shall not restrict the Company or any of its Subsidiaries from using any such allowances, credits or offsets consistent with past practice, to offset emissions at any of their facilities;

(xxiv) enter into any new commodity transactions which are referred to as Category I transactions in (xix) of Section 6.1(a) of the Company Disclosure Letter (“Category I Transactions”), that require the initial or ongoing posting of letters of credit and/or cash as collateral support, except for any of such Category I Transactions referred to in paragraph 2 of the description thereof that will have a scheduled duration of 36 months or less (“Exempt Category I Transactions”);

(xxv) revoke, withdraw, terminate or abandon any currently outstanding or pending Environmental Permits or applications therefor relating to (A) the construction of generation facilities; or (B) the operation of the business of the Company or its Subsidiaries, except such actions that are taken in the ordinary course of business; or

(xxvi) agree, authorize or commit to do any of the foregoing.

(b) After the date hereof and on or prior to the Closing Date, to the extent that the Company or any of its Subsidiaries enters into any transactions defined as Category I Transactions (other than Exempt Category I Transactions, such non-exempt transactions being referred to as, “Post-Signing Commodity Hedging Arrangements”) and is required to provide Liens, security interests or other collateral to support their respective obligations under such Post-Signing Commodity Hedging Arrangements, the Company shall cause the documentation relating to such Post-Signing Commodity Hedging Arrangements to provide for, on the Closing Date, automatic termination, amendment and/or other release of such Liens, security interests and other collateral and the replacement of such collateral support obligations with Liens on the Collateral (as defined in Exhibit B to the Debt Financing Commitment) that would be *pari passu* with the Liens granted to secure the Borrower Obligations, the Guarantees and other Hedging Arrangements (each as described and as defined in Exhibit B to the Debt Financing Commitment). In addition, the Company shall cause the Post-Signing Commodity Hedging Arrangements not to include any limitations on the Company or its Subsidiaries to incur indebtedness or grant Liens on its assets.

(c) Except for actions required under the terms of this Agreement, neither party hereto shall intentionally take or permit any of its Affiliates to take any action that is reasonably likely to prevent or delay in any material respect the consummation of the Merger.

(d) Nothing contained in this Agreement is intended to give Parent, directly or indirectly, the right to control or direct the Company’s or its Subsidiaries’ operations prior to the Effective Time, and nothing contained in this Agreement is intended to give the Company, directly or indirectly, the right to control or direct Parent’s or its Subsidiaries’ operations. Prior to the Effective Time, each of Parent and the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries’ respective operations.

(e) The Company covenants and agrees that it will use its reasonable best efforts to enter into the commercial transactions referenced in Section 6.1(e) of the Company Disclosure Letter on the terms and conditions described therein.

6.2 Acquisition Proposals.

(a) During the period beginning on the date of this Agreement and continuing until 12:01 a.m. (EST) on April 16, 2007 (the “No-Shop Period Start Date”), the Company and its Subsidiaries and their respective directors, officers, employees, investment bankers, attorneys, accountants and other advisors or representatives (collectively, “Representatives”), shall have the right to: (i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information to any Person pursuant to an Acceptable Confidentiality Agreement, provided that the Company shall promptly make available to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person given such access which was not previously made available to Parent or Merger Sub; and (ii) enter into and maintain or continue discussions or negotiations with respect to Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate any such inquiries, proposals, discussions or negotiations.

(b) Except as expressly permitted by this Section 6.2 and except as may relate to any Person, group of related Persons or group that includes any Person (so long as such Person and the other members of such group, if any, who were members of such group immediately prior to the No-Shop Period Start Date constitute at least 50% of the equity financing of such group at all times following the No-Shop Period Start Date and prior to the termination of this Agreement) or group of related Persons from whom the Company has received, after the date hereof and prior to the No-Shop Period Start Date, a written Acquisition Proposal that the board of directors of the Company or any committee thereof determines in good faith is bona fide and could reasonably be expected to result in a Superior Proposal (any such Person or group of related Persons, an “Excluded Party”, provided that any Excluded Party shall cease to be an Excluded Party for all purposes under this Agreement at such time as the Acquisition Proposal (as such Acquisition Proposal may be revised during the course of ongoing negotiations, in which event it may temporarily cease to be a Superior Proposal or an Acquisition Proposal that could reasonably be expected to result in a Superior Proposal, so long as such negotiations are ongoing and it subsequently constitutes a Superior Proposal or could reasonably be expected to result in a Superior Proposal) made by such Person fails to constitute either a Superior Proposal or an Acquisition Proposal that could reasonably be expected to result in a Superior Proposal), the Company and its Subsidiaries and their respective officers and directors shall, and the Company shall use its reasonable best efforts to instruct and cause its and its Subsidiaries’ other Representatives to, (i) on the No-Shop Period Start Date, immediately cease any discussions or negotiations with any Persons that may be ongoing with respect to an Acquisition Proposal; and (ii) from the No-Shop Period Start Date until the Effective Time or if earlier, the termination of this Agreement in accordance with Article VIII, not (A) initiate, solicit or knowingly encourage any inquiries or the making of any proposal or offer that constitutes, or may reasonably be expected to lead to, an Acquisition Proposal, (B) engage in, continue or otherwise participate in any discussions or negotiations regarding, or provide any non-public information or data to any Person relating to, any Acquisition Proposal, or (C) otherwise knowingly facilitate any effort or attempt by any Person to make an Acquisition Proposal. No later than the first business day following the No-Shop Period Start Date, the Company shall notify Parent in writing of the number of Excluded Parties, and promptly following the No-Shop Period Start Date shall identify in writing to Parent any Excluded Parties who are reasonably expected to make an Acquisition Proposal after the No-Shop Period Start Date.

(c) Notwithstanding anything to the contrary contained in Section 6.2(b) but subject to the last sentence of this paragraph, at any time following the No-Shop Period Start Date and prior to the time, but not after, the Requisite Company Vote is obtained, the Company may (A) provide information in response to a request therefor by a Person who has made an unsolicited bona fide written Acquisition Proposal after the date of this Agreement if the Company receives from the Person so requesting such information an executed Acceptable Confidentiality Agreement, provided that the Company shall promptly make available to Parent and Merger Sub any material non-public information concerning the Company or its Subsidiaries that is provided to any Person making such Acquisition Proposal that is given such access and that was not previously made available to Parent, Merger Sub or their Representatives; (B) engage or participate in any discussions or negotiations with any Person who has made such an unsolicited bona fide written Acquisition Proposal; or (C) after having complied with Section 6.2(e), adopt, approve or recommend or propose to adopt, approve or recommend (publicly or otherwise) such an Acquisition Proposal, if and only to the extent that, (x) prior to taking any action described in clause (A), (B) or (C) above, the board of directors of the Company determines in good faith after consultation with outside legal counsel that failure to take such action could be inconsistent with the directors' fiduciary duties under applicable Law, and (y) in each such case referred to in clause (A) or (B) above, the board of directors of the Company has determined in good faith based on the information then available and after consultation with its financial advisor that such Acquisition Proposal either constitutes a Superior Proposal or could reasonably be expected to result in a Superior Proposal; and (z) in the case referred to in clause (C) above, the board of directors of the Company determines in good faith (after consultation with its financial advisor and outside legal counsel) that such Acquisition Proposal is a Superior Proposal. Notwithstanding the foregoing, the parties agree that, notwithstanding the commencement of the No-Shop Period Start Date, the Company may continue to engage in the activities described in Section 6.2(a) with respect to any Excluded Parties, including with respect to any amended proposal submitted by such Excluded Parties following the No-Shop Period Start Date, and the restrictions in this Section 6.2(c) shall not apply with respect thereto, provided that to the extent applicable to an Excluded Party, the provisions of Section 6.2(e) shall apply.

(d) For purposes of this Agreement:

"Acceptable Confidentiality Agreement" means a confidentiality agreement that contains provisions that are no less favorable in the aggregate to the Company than those contained in the Confidentiality Agreement (it being understood that such confidentiality agreement need not prohibit the making or amendment of an Acquisition Proposal or the disclosure of such Acquisition Proposal, provided that such confidentiality agreement shall not prohibit compliance with the last two sentences of Section 6.2(e).

"Acquisition Proposal" means any inquiry, proposal or offer with respect to (i) a merger, joint venture, partnership, consolidation, dissolution, liquidation, tender offer, recapitalization, reorganization, share exchange, business combination or similar transaction or (ii) any other direct or indirect acquisition, in each case, under clauses (i) and (ii), involving 15% or more of the total voting power of any class of equity securities of the Company, or 15% or more of the consolidated total revenues or consolidated total assets (including equity securities of its Subsidiaries) of the Company, in each case other than the transactions contemplated by this

Agreement, provided that an "Acquisition Proposal" shall not include a recapitalization of the Company or its Subsidiaries or a split-off or spin-off of one or more of the business units or Subsidiaries of the Company that is not a component of and a material condition to a third party Acquisition Proposal in which the consideration to holders of equity securities of the Company that is not funded by borrowings of the Company or its Subsidiaries is predominantly funded from such third party.

"Superior Proposal" means a bona fide Acquisition Proposal involving (A) assets that generate more than 50% of the consolidated total revenues, or (B) assets that constitute more than 50% of the consolidated total assets of the Company and its Subsidiaries or (C) more than 50% of the total voting power of the equity securities of the Company that the board of directors of the Company has determined in its good faith judgment, would, if consummated, result in a transaction more favorable to the Company's shareholders from a financial point of view than the transaction contemplated by this Agreement (x) after taking into account the likelihood and timing of consummation (as compared to the transactions contemplated hereby) and (y) after taking into account all material legal, financial (including the financing terms of any such proposal), regulatory or other aspects of such proposal.

"Excluded Party Superior Proposal" means any Superior Proposal made by any Excluded Party on or prior to the No-Shop Period Start Date and any subsequent Superior Proposal made prior to the tenth business day following the No-Shop Period Start Date by such Excluded Party.

(e) Except as set forth in Section 6.2(e) or Section 6.2(f), the board of directors of the Company shall not:

(i) withhold, withdraw, qualify or modify (or publicly propose or resolve to withhold, withdraw, qualify or modify (except, in each case, in connection with taking any actions required by clauses (A) and (B) of this Section 6.2(e) or the proviso set forth in Section 8.3(a)), in a manner adverse to Parent, the Company Recommendation with respect to the Merger or adopt, approve or recommend or propose to adopt, approve or recommend (publicly or otherwise) an Acquisition Proposal (except, in the case only of any proposal to do so, in connection with taking any actions required by clauses (A) and (B) of this Section 6.2(e) or the proviso in Section 8.3(a)); or

(ii) except as expressly permitted by Section 8.3(a), cause or permit the Company to enter into any acquisition agreement, merger agreement or similar definitive agreement (other than a confidentiality agreement referred to in Section 6.2(a) or Section 6.2(c)) (an "Alternative Acquisition Agreement ") relating to any Acquisition Proposal.

Notwithstanding anything to the contrary set forth in this Agreement, prior to the time, but not after, the Requisite Company Vote is obtained, the board of directors of the Company may withhold, withdraw, qualify or modify the Company Recommendation in response to a material change in circumstances or approve, recommend or otherwise declare advisable any Superior Proposal made after the date hereof, if the Board of Directors of the Company determines in good faith, after consultation with outside counsel, that failure to do so

could be inconsistent with its fiduciary obligations under applicable Law (any of the foregoing, a “Change of Recommendation”), provided that in the case of any Change in Recommendation that is not the result of an Excluded Party Superior Proposal:

(A) the Company shall have provided prior written notice to Parent and Merger Sub, at least five calendar days in advance (the “Notice Period”), of its intention to effect a Change of Recommendation which notice shall specify the basis for such Change of Recommendation including, if in connection with a Superior Proposal, the identity of the party making the Superior Proposal and the material terms thereof; and

(B) prior to effecting such Change of Recommendation, the Company shall, and shall cause its financial and legal advisors to, during the Notice Period, negotiate with Parent and Merger Sub in good faith (to the extent Parent and Merger Sub desire to negotiate) to make such adjustments in the terms and conditions of this Agreement as would permit the Company not to effect a Change of Recommendation.

In the event of any material revisions to the Superior Proposal that is not an Excluded Party Superior Proposal, the Company shall be required to deliver a new written notice to Parent and Merger Sub and to comply with the requirements of this Section 6.2(e) with respect to such new written notice, except that the Notice Period shall be reduced to three calendar days. None of the board of directors of the Company, any committee thereof or the Company itself, shall enter into any binding agreement with any Person to limit or not to give prior notice to Parent and Merger Sub of its intention to effect a Change of Recommendation or to terminate this Agreement in light of a Superior Proposal, other than contemporaneously with the entering into of any Alternative Acquisition Agreement or the termination of this Agreement, in each case in compliance with Section 8.3(a).

(f) Nothing contained in this Section 6.2 shall be deemed to prohibit the Company or the board of directors of the Company from (i) complying with its disclosure obligations under U.S. federal or state Law with regard to an Acquisition Proposal, including taking and disclosing to its shareholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) under the Exchange Act (or any similar communication to stockholders), provided that any such disclosure (other than a “stop, look and listen” communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act) shall be deemed to be a Change of Recommendation unless the board of directors of the Company expressly publicly reaffirms at least two business days prior to the Shareholders Meeting its recommendation in favor of the approval of this Agreement, or (ii) making any “stop-look-and-listen” communication or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act.

(g) From and after the No-Shop Period Start Date, the Company agrees that it will promptly (and, in any event, within 48 hours) notify Parent if any proposals or offers with respect to an Acquisition Proposal are received by, any non-public information is requested from, or any discussions or negotiations are sought to be initiated or continued with, it or any of its Representatives indicating, in connection with such notice, the identity of the Person or group of Persons making such offer or proposal, the material terms and conditions of any proposals or

offers (including, if applicable, copies of any written requests, proposals or offers, including proposed agreements) and thereafter shall keep Parent reasonably informed, on a prompt basis, of the status and terms of any such proposals or offers (including any amendments thereto) and the status of any such discussions or negotiations, including any change in the Company's intentions as previously notified.

6.3 Proxy Statement.

(a) The Company shall prepare promptly following the date hereof and file with the SEC as promptly as practicable (and in any event use reasonable best efforts to file within 20 business days after the date of this Agreement), a proxy statement in preliminary form relating to the Shareholders Meeting (such proxy statement, including any amendment or supplement thereto, the "Proxy Statement"). The Company agrees, as to itself and its Subsidiaries, that, at the date of mailing to shareholders of the Company and at the time of the Shareholders Meeting, (i) the Proxy Statement will comply in all material respects with the applicable provisions of the Exchange Act and the rules and regulations thereunder and (ii) none of the information supplied by it or any of its Subsidiaries for inclusion or incorporation by reference in the Proxy Statement will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The Company shall promptly notify Parent of the receipt of all comments of the SEC with respect to the Proxy Statement and of any request by the SEC for any amendment or supplement thereto or for additional information and shall promptly provide to Parent copies of all correspondence between the Company and/or any of its Representatives and the SEC with respect to the Proxy Statement. The Company and Parent shall each use its reasonable best efforts to promptly provide responses to the SEC with respect to all comments received on the Proxy Statement by the SEC and the Company shall cause the definitive Proxy Statement to be mailed promptly after the date the SEC staff advises that it has no further comments thereon or that the Company may commence mailing the Proxy Statement, provided that the Company shall not be required to mail the Proxy Statement prior to the No-Shop Period Start Date. To the extent required by applicable Laws, the Company shall, as promptly as reasonably practicable prepare, file and distribute to the shareholders of the Company any supplement or amendment to the Proxy Statement if any event shall occur which requires such action at any time prior to the Company Shareholders Meeting.

6.4 Shareholders Meeting. The Company shall, in accordance with applicable Law and its certificate of formation and bylaws, call, give notice of and convene a meeting of holders of Shares (the "Shareholders Meeting") and take all other reasonable action necessary to convene the Shareholder Meeting as promptly as practicable after the date of mailing of the Proxy Statement to consider and vote upon the approval of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Company shall not be required to hold the Shareholders Meeting at any time at which the Company reasonably believes holding the Shareholders Meeting could result in a violation of applicable Law. Subject to Section 6.2, the board of directors of the Company shall recommend such approval (and shall include such recommendation in the Proxy Statement) and, unless there has been a Change of Recommendation, the Company shall take all reasonable lawful action to solicit such approval of

this Agreement, provided that the foregoing shall not limit the Company's obligations set forth in Section 6.3 of this Agreement. Subject to the second sentence of Section 6.4, notwithstanding anything to the contrary contained in this Agreement, the obligation of the Company to call, give notice of, convene and hold the Shareholders Meeting shall not be limited or otherwise affected by a Change of Recommendation unless this Agreement is terminated pursuant to Section 8.3(a).

6.5 Filings; Other Actions; Notification.

(a) **Cooperation.** (i) Subject to the terms and conditions set forth in this Agreement, the Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their respective reasonable best efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement and applicable Laws to consummate and make effective the Merger and the other transactions contemplated by this Agreement as soon as practicable, including preparing and filing as promptly as practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any third party and/or any Governmental Entity in connection with the execution, delivery and performance of this Agreement and the consummation of the Merger or any of the other transactions contemplated by this Agreement. The Company and Parent will each request early termination of the waiting period with respect to the Merger under the HSR Act. The Company and Parent shall use their respective commercially reasonable efforts to file with the FERC an application for the FERC Approval within 20 business days after the date hereof.

(ii) The Company and Parent have cooperated in formulating the strategy and business plan set forth in Section 6.5 of the Company Disclosure Letter, which is consistent with Parent's business plans. The Company shall cooperate with Parent in communicating such strategy and business plan to, and pursuing such strategy and business plan with, the appropriate Governmental Entities. Subject to the terms and conditions of this Agreement, Parent shall be free to give notices to, make filings with, seek consents, waiver or approvals from or otherwise appear formally or informally before such Governmental Entities in support of the matters contemplated by the strategy and business plan, and, subject to the terms and conditions of this Agreement, the Company shall provide support in connection therewith, including, to the extent requested by Parent, by making such filings, seeking such consents, waivers or approvals or otherwise appearing formally (including by providing testimony) or informally before such Governmental Entities in support of the agreed strategy and business plan. Parent agrees that it will consult with and consider in good faith the views of the Company with regard to any proposed modifications to the agreed strategy and business plan. Parent shall be free to modify the agreed strategy and business plan, but except as otherwise expressly set forth in the Business Plan or for modifications agreed by the Company, in connection therewith, the Company and its Subsidiaries shall not be required to take or agree to take any action with respect to their respective businesses or operations unless the effectiveness of such agreement or action is conditioned upon Closing. Whether or not the Company agrees with any modified strategy of Parent, the Company shall take no action or make any statement intended or reasonably expected to frustrate, interfere with or delay any modification of the strategy and business plan the effectiveness of which is

conditioned on the Closing, provided that nothing herein shall limit the ability of the Company or any of its representatives to respond truthfully to inquiries from any Governmental Entity. The Company shall not be required to endorse as the Company's own strategy or take actions to support, or in support of, any modification of the strategy and business plan that the Company determines in good faith would not be in the best interests of the Company to support if the Merger were not to be completed, provided that in any event the Company agrees, subject to the proviso in the immediately preceding sentence, (x) to make such filings and seek such consents, waivers or approvals as are requested by Parent or are requested or required by any Governmental Entity and (y) to appear formally (including by providing testimony) or informally before such Governmental Entity if requested by Parent or required by such Governmental Entity, in each case in connection with and to facilitate modifications to the strategy and business plan. Subject to applicable Laws relating to the exchange of information, Parent and the Company shall use their respective reasonable best efforts to provide the other a reasonable opportunity to review in advance and, to the extent practicable, each will consult with the other on and consider in good faith the views of the other in connection with, all of the information relating to Parent or the Company, as the case may be, and any of their respective Subsidiaries, that appears in any filing made with, or written materials submitted to, or oral presentations made to, any third party and/or any Governmental Entity in connection with the Merger and the other transactions contemplated by this Agreement (including the Proxy Statement). In exercising the foregoing rights, each of the Company and Parent shall act reasonably and as promptly as practicable. The parties agree that to the extent practicable, neither shall hold any meetings or substantive telephonic communications with the PUCT or any Governmental Entity whose approval is required in connection with the Merger without giving the other party or its representatives a reasonable opportunity to participate, and in any event the parties shall keep each other reasonably apprised of all substantive communications with Governmental Entities regarding the Merger and the strategy and business plan.

(iii) In connection with any notices, reports and other filings and all consents, registrations, approvals, permits and authorizations sought to be obtained from any third party and/or any Governmental Entity in connection with the execution, delivery and performance of this Agreement and the consummation of the Merger or in connection with any investigation, hearing, inquiry or other proceeding of any nature brought by any Governmental Entity with respect to or relating to this Agreement or the Merger, in no event shall the Company or any of its Subsidiaries consent to any action by any Governmental Entity or enter into or offer to enter into any material commitment, agreement or undertaking with any Governmental Entity or incur any material liability or obligation to any Governmental Entity with respect to the Company or any of its Subsidiaries without the prior written consent of Parent, such consent not to be unreasonably withheld or delayed so long as such action is consistent with the strategy and business plan, including as modified by Parent. In the event that the Company and Parent agree upon the use of common counsel or consultants, they shall share equally the fees and expenses of such counsel and consultants. Notwithstanding anything in this Article VI to the contrary, actions taken by either party consistent with the Business Plan shall not be deemed to breach any provisions of this Agreement.

(b) **Information.** Subject to applicable Laws, the Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subsidiaries, directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with the Proxy Statement or any other statement, filing, notice or application made by or on behalf of Parent, the Company or any of their respective Subsidiaries to any third party and/or any Governmental Entity in connection with the Merger and the transactions contemplated by this Agreement.

(c) **Status.** Subject to applicable Laws and the instructions of any Governmental Entity, the Company and Parent each shall keep the other reasonably apprised of the status of matters relating to completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Parent or the Company, as the case may be, or any of its Subsidiaries, from any third party and/or any Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement. Neither the Company nor Parent shall permit any of its officers or any other Representatives to participate in any meeting with any Governmental Entity in respect of any filings with, investigation or other inquiry by such Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement unless it consults with the other party in advance and, to the extent permitted by such Governmental Entity, gives the other party (either directly or through one of its Representatives) the opportunity to attend and participate therein.

(d) **Regulatory Matters.** Subject to the terms and conditions set forth in this Agreement, without limiting the generality of the other undertakings pursuant to this Section 6.5, each of the Company (in the case of Subsections 6.5(d)(i) and (iii) set forth below) and Parent (in all cases set forth below) agree to take or cause to be taken the following actions:

(i) the prompt provision to each and every federal, state, local or foreign court or Governmental Entity (including FERC) with jurisdiction over any Company Approvals or Parent Approvals of non-privileged information and documents reasonably requested by any such Governmental Entity or that are necessary, proper or advisable to permit consummation of the transactions contemplated by this Agreement;

(ii) with respect to the FERC Approval, the expiration or earlier termination of the waiting period applicable to the consummation of the Merger under the HSR Act, and any other approval or consent of a Governmental Entity arising due to a change in Law after the date of this Agreement, the prompt use of its best efforts to obtain all such necessary approvals and avoid the entry or enactment of any permanent, preliminary or temporary injunction or other order, decree, decision, determination, judgment or Law that would restrain, prevent, enjoin, materially delay or otherwise prohibit consummation of the transactions contemplated by this Agreement, including the proffer and agreement by Parent of its willingness to sell or otherwise dispose of, or hold separate pending such disposition, and promptly to effect the sale, disposal and holding separate of, such assets, categories of assets or businesses or other segments of the Company or Parent or either's respective Subsidiaries or Affiliates (and the entry into agreements with, and submission to orders of, the relevant Governmental Entity giving effect thereto) if such action should be reasonably necessary or advisable to avoid,

prevent, eliminate or remove the actual, anticipated or threatened (x) commencement of any proceeding in any forum or (y) issuance, enactment or enforcement of any order, decree, decision, determination, judgment or Law that would delay, restrain, prevent, enjoin or otherwise prohibit consummation of the Merger by any Governmental Entity; and

(iii) best efforts to take, in the event that any permanent, preliminary or temporary injunction, decision, order, judgment, determination, decree or Law is entered, issued or enacted, or becomes reasonably foreseeable to be entered, issued or enacted, in any proceeding, review or inquiry of any kind that would make consummation of the Merger in accordance with the terms of this Agreement unlawful or that would restrain, prevent, enjoin, materially delay or otherwise prohibit consummation of the Merger or the other transactions contemplated by this Agreement, any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by clause (ii) of this Section 6.5(d)) necessary to resist, vacate, modify, reverse, suspend, prevent, eliminate, avoid, remove or comply with such actual, anticipated or threatened injunction, decision, order, judgment, determination, decree or enactment so as to permit such consummation on a schedule as close as possible to that contemplated by this Agreement; provided that nothing in Section 6.5(a) or this Section 6.5(d) shall obligate Parent to proffer, agree or commit to (A) modify Parent's and its Subsidiaries' (including the Company and its Subsidiaries) anticipated capital structure (including levels of indebtedness) as set forth in the Financing Commitments in effect on the date hereof (or in any Financing Commitments thereafter having a capital structure reflecting at least as much equity financing as is reflected in the Financing Commitments in effect on the date hereof) in any material respect following the Closing, (B) subject to Parent's representations in Sections 5.2(g) and 5.2(h) being true and correct in all material respects, any modification in the identity of the equityholders of Parent and its Affiliates or the amounts of their equity investment as set forth in the Equity Financing Commitments on the date hereof, or (C) any Material Baseload Divestiture Requirement, except to the extent that any such divestiture or submission set forth in this clause (C) would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(e) NRC Approval. (i) The Company and Parent shall jointly prepare and cause TXU Generation Company LP to file as promptly following the date hereof as may be practicable (and in any event use reasonable best efforts to file within 25 business days after the date hereof) one or more applications (the "NRC Application") with the NRC for approval of the indirect transfer of the NRC license for Comanche Peak and, if and to the extent necessary, any conforming amendment of the NRC license to reflect such indirect transfer. Thereafter, the Company and Parent shall cooperate with one another to facilitate review of the NRC Application by the NRC staff, including but not limited to promptly providing the NRC staff with any and all documents or information that the NRC staff may reasonably request or require any of the parties to provide or generate.

(ii) The NRC Application shall identify TXU Generation Company LP, the Company and Parent as separate parties to the NRC Application, but the Company and Parent shall jointly direct and control the prosecution of the NRC

Application. In the event the processing of the NRC Application by the NRC becomes subject to a hearing or other extraordinary procedure by the NRC (a "Contested Proceeding"), until the earlier of the time such Contested Proceeding becomes final and nonappealable and the Effective Time, the Company, on the one hand, and Parent, on the other hand, shall separately appear therein by their own counsel, and shall continue to cooperate with each other to facilitate a favorable result.

(iii) The Company and Parent will bear their own costs of the preparation, submission and processing of the NRC Application, including any Contested Proceeding that may occur in respect thereof; provided, however, that Parent, on the one hand, and the Company, on the other hand, shall equally share the costs of all NRC staff fees payable in connection with the NRC Application and costs incurred by TXU Generation Company LP in filing and prosecuting the NRC Application. In the event that the Company and Parent agree upon the use of common counsel, they shall share equally the fees and expenses of such counsel.

(iv) Parent will conform to the restrictions on foreign ownership, control or domination contained in Sections 103d and 104d of the Atomic Energy Act, 42 U.S.C. §§ 2133(d) and 2134(d), as applicable, and the NRC's regulations in 10 C.F.R. § 50.38 and will, as promptly as practicable after the date of this Agreement, use best efforts to develop and implement in a manner satisfactory to the NRC a mitigation plan to address foreign ownership and control and any other concerns that may be raised by the NRC, including accepting any licensing conditions imposed by the NRC, provided that nothing in this Section 6.5(e)(iv) shall obligate Parent to proffer, agree or commit to (A) modify Parent's and its Subsidiaries (including the Company its Subsidiaries) anticipated capital structure (including levels of indebtedness) as set forth in the Financing Commitment in effect on the date hereof (or in any Financing Commitments thereafter having a capital structure reflecting at least as much equity financing as is reflected in the Financing Commitments in effect on the date hereof) in any material respect following the Closing; or (B) subject to Parent's representations in Sections 5.2(g) and 5.2(h) being true and correct in all material respects, any modification in the identity of the equityholders of Parent and its Affiliates or the amounts of their equity investment, in each case as set forth in the Equity Financing Commitments in effect on the date hereof.

(f) If, after the date of this Agreement, the legislature of the State of Texas passes a statute which is enacted into Law or any binding regulatory or administrative action is taken pursuant to authority granted by such new statute which, in either case, imposes a requirement that the Company or its Subsidiaries divest or submit to capacity auctions for baseload solid fuel generation capacity (a "Baseload Enactment"), then, unless within 30 days after the date either party notifies the other in writing of such Baseload Enactment (each such 30th day, a "Baseload Waiver Date"), Parent and Merger Sub notify the Company in writing either (i) that such Baseload Enactment is not, and does not impose, a Material Baseload Divestiture Requirement or (ii) that no changes or effects to the extent resulting from such Baseload Enactment shall constitute or be taken into account in determining whether there has been a Company Material Adverse Effect (each written notice referred to in clause (ii) being an "MAE Exclusion Agreement"), the Company shall have the right for 15 days after the Baseload Waiver Date to terminate this Agreement pursuant to Section 8.3(d). Each party agrees to notify

the other promptly upon determining in good faith that a Baseload Enactment has been enacted or taken.

6.6 Access and Reports. Subject to applicable Law, upon reasonable notice, the Company shall (and shall cause its Subsidiaries to) afford Parent's officers and other Representatives and, subject to the prior written approval of the Company (such approval not to be unreasonably withheld, delayed or conditioned), potential financing sources (that are not in competition in any material respect with the Company or its Subsidiaries, other than activities relating to financial transactions, including commodity hedging and trading activities), reasonable access, during normal business hours throughout the period from the date hereof and through the Effective Time, to its employees, properties, books, contracts and records and, during such period, the Company shall (and shall cause its Subsidiaries to) furnish promptly to Parent all information concerning its business, properties, facilities, operations and personnel as may reasonably be requested, provided that no investigation pursuant to this Section 6.6 shall affect or be deemed to modify any representation or warranty made by the Company herein, and provided, further, that the foregoing shall not require the Company (i) to permit any inspection, or to disclose any information, that in the reasonable judgment of the Company would result in the disclosure of any trade secrets of third parties or violate any of its obligations with respect to confidentiality if the Company shall have used reasonable best efforts to furnish such information in a manner that does not result in any such disclosure, including obtaining the consent of such third party to such inspection or disclosure or (ii) to disclose any privileged information of the Company or any of its Subsidiaries if the Company shall have used commercially reasonable efforts to furnish such information in a manner that does not result in the loss of such privilege. All requests for information made pursuant to this Section 6.6 shall be directed to the executive officer or other Person designated by the Company. All such information shall be governed by the terms of the Confidentiality Agreement. Subject in all respects to the terms of this Section 6.6, promptly after receipt thereof, the Company shall deliver to Parent copies of any written reports to the Company's risk management forum, pursuant to the Company's existing risk management policies, in connection with any breaches of, or exceptions from, the Company's existing risk management policies, provided that to the extent that such exceptions include information related to commodity hedging and trading transactions or to counterparties covered by confidentiality provisions, the Company shall provide a modified form of such exception report excluding such information.

6.7 Stock Exchange De-listing. Prior to the Closing Date, the Company shall cooperate with Parent and use reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable Laws and rules and policies of the NYSE and the Chicago Stock Exchange to cause the delisting by the Surviving Corporation of the Shares from the NYSE and the Chicago Stock Exchange and the deregistration of the Shares under the Exchange Act as promptly as practicable after the Effective Time.

6.8 Publicity. The initial press release regarding the Merger shall be a joint press release and thereafter the Company and Parent each shall consult with each other prior to issuing any press releases or otherwise making public announcements with respect to the Merger and the other transactions contemplated by this Agreement and prior to making any filings with any third party and/or any Governmental Entity (including any national securities exchange or

interdealer quotation service) with respect thereto, except as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or interdealer quotation service or by the request of any Government Entity.

6.9 Employee Benefits.

(a) Parent agrees that the employees of the Company and its Subsidiaries will continue to be provided (i) during the period commencing at the Effective Time and ending on December 31, 2008 with (A) base salary and bonus opportunities (including annual and quarterly bonus opportunities and long-term incentive opportunities) which are no less favorable in the aggregate than the base salary and bonus opportunities (but excluding equity or equity-based compensation) provided by the Company and its Subsidiaries immediately prior to the Effective Time, and (B) pension and welfare benefits and perquisites that are no less favorable in the aggregate than those provided by the Company and its Subsidiaries immediately prior to the Effective Time, and (ii) during the period commencing at the Effective Time and ending 24 months thereafter, with severance benefits that are no less than those provided by the Company and its Subsidiaries immediately prior to the Effective Time. Notwithstanding the foregoing, nothing contained herein shall obligate Parent, the Surviving Corporation or any of their Affiliates to retain the employment of any particular employee.

(b) Parent will cause any employee benefit plans which the employees of the Company and its Subsidiaries are entitled to participate in to take into account for purposes of eligibility, vesting and benefit accrual thereunder, service prior to the Effective Time by employees of the Company and its Subsidiaries as if such service were with Parent, to the same extent such service was credited under a comparable plan of the Company (except to the extent it would result in (1) a duplication of benefits or (2) benefit accruals under any defined benefit pension plan (other than utilizing such years of service in order to satisfy any requirements for future benefit accrual only under any defined benefit pension plan)), and, with respect to welfare benefit plans of Parent in which employees of the Company are eligible to participate, Parent agrees to waive any preexisting conditions (to the extent waived under welfare benefit plans of the Company), waiting periods and actively at work requirements under such plans.

(c) Parent shall, and shall cause the Surviving Corporation to, honor, fulfill and discharge its obligations to current and former employees under the Company Benefit Plans, provided that this shall not prevent the amendment or termination of any such plans in accordance with their terms and the Surviving Corporation shall have any rights privileges or powers under the Company Benefit Plan which were previously held by the Company. Prior to the Effective Time, the Company shall have the right to amend the TXU Thrift Plan to change the method of allocation of shares (or the proceeds from shares after payment of any applicable loan) held under the "suspense account" provided for in Section 6.5 thereof. Prior to the Effective Time, the Company shall have the right to create an irrevocable rabbi trust to hold the cash amount payable under Section 4.3(c) and the Company may fully fund such trust immediately prior to the Effective Time.

(d) Parent hereby acknowledges that a "change in control" or "change of control" within the meaning of each Benefit Plan listed in Section 5.1(h)(v) of the Company Disclosure Letter will occur upon the Effective Time.

(e) The provisions of this Section 6.9 are solely for the benefit of the parties to this Agreement, and no employee or former employee or any other individual associated therewith shall be regarded for any purpose as a third party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any Benefit Plan for any purpose.

6.10 Expenses. The Surviving Corporation shall pay all charges and expenses, including those of the Paying Agent, in connection with the transactions contemplated in Article IV. Except as otherwise provided in Section 8.5, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense.

6.11 Indemnification; Directors' and Officers' Insurance.

(a) From and after the Effective Time, the Surviving Corporation agrees that it will indemnify and hold harmless, to the fullest extent permitted under applicable Law (and the Surviving Corporation shall also advance expenses as incurred to the fullest extent permitted under applicable Law, provided that the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such Person is not entitled to indemnification), each present and former director and officer of the Company and its Subsidiaries (collectively, the "Indemnified Parties") against any costs or expenses (including reasonable attorneys' fees), judgments, fines, losses, claims, damages or liabilities (collectively, "Costs") incurred in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or related to such Indemnified Parties' service as a director or officer of the Company or its Subsidiaries or services performed by such persons at the request of the Company or its Subsidiaries at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including the transactions contemplated by this Agreement.

(b) Prior to the Effective Time, the Company shall and, if the Company is unable to, Parent shall cause the Surviving Corporation as of the Effective Time, to obtain and fully pay the premium for the extension of (i) the directors' and officers' liability coverage of the Company's existing directors' and officers' insurance policies, and (ii) the Company's existing fiduciary liability insurance policies, in each case for a claims reporting or discovery period of at least six years from and after the Effective Time with respect to any claim related to any period or time at or prior to the Effective Time from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to directors' and officers' liability insurance and fiduciary liability insurance (collectively, "D&O Insurance") with terms, conditions, retentions and limits of liability that are no less advantageous than the coverage provided under the Company's existing policies with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of the Company or any of its Subsidiaries by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions or actions contemplated hereby). If the Company and the Surviving Corporation for any reason fail to obtain such "tail" insurance policies as of the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, continue to maintain in effect for a period of at least six years from

and after the Effective Time the D&O Insurance in place as of the date hereof with terms, conditions, retentions and limits of liability that are no less advantageous than the coverage provided under the Company's existing policies as of the date hereof, or the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, use reasonable best efforts to purchase comparable D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable as provided in the Company's existing policies as of the date hereof; provided, however, that in no event shall Parent or the Surviving Corporation be required to expend for such policies pursuant to this sentence an annual premium amount in excess of 300% of the annual premiums currently paid by the Company for such insurance; and provided, further, that if the annual premiums of such insurance coverage exceed such amount, the Surviving Corporation shall obtain a policy with the greatest coverage available for a cost not exceeding such amount.

(c) If the Surviving Corporation or any of its successors or assigns shall (i) consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation shall assume all of the obligations set forth in this Section 6.11.

(d) The provisions of this Section 6.11 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties.

(e) The rights of the Indemnified Parties under this Section 6.11 shall be in addition to any rights such Indemnified Parties may have under the certificate of formation or bylaws of the Company or any of its Subsidiaries, or under any applicable Contracts or Laws. All rights to indemnification and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party as provided in the certificate of formation or bylaws of the Company or of any Subsidiary of the Company or any indemnification agreement between such Indemnified Party and the Company or any of its Subsidiaries shall survive the Merger and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party.

6.13 Convertible Senior Notes. The Company shall take all necessary action to enter into a supplemental indenture prior to the Effective Time with The Bank of New York, as Trustee under the Indenture for Unsecured Debt Securities Series N, dated as of July 1, 2003, under which the Convertible Senior Notes were issued (the "Indenture") pursuant to the Indenture and the Officer's Certificate, dated July 15, 2003, establishing the Convertible Senior Notes, to provide, among other things, that on and after the Effective Time the Convertible Senior Notes will be convertible only into cash in an amount equal to the amount that the holders of Convertible Senior Notes would be entitled to receive in the Merger if they had validly converted their Convertible Senior Notes into Shares immediately prior to the Effective Time.

6.14 Takeover Statutes. The Company shall use its reasonable best efforts to take all action necessary so that no Takeover Statute is or becomes applicable to the Merger or any of the other transactions contemplated by this Agreement. If any Takeover Statute is or may

become applicable to the Merger or the other transactions contemplated by this Agreement, the Company and its board of directors shall promptly grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise promptly act to eliminate or minimize the effects of such statute or regulation on such transactions.

6.14 **Parent Vote.** Parent shall vote (or consent with respect to) or cause to be voted (or a consent to be given with respect to) any Shares and any shares of common stock of Merger Sub beneficially owned by it or any of its Subsidiaries or with respect to which it or any of its Subsidiaries has the power (by agreement, proxy or otherwise) to cause to be voted (or to provide a consent), in favor of the approval of this Agreement at any meeting of shareholders of the Company or Merger Sub, respectively, at which this Agreement shall be submitted for approval and at all adjournments or postponements thereof (or, if applicable, by any action of shareholders of either the Company or Merger Sub by consent in lieu of a meeting).

6.15 **Financing.** (a) Parent shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to arrange the Debt Financing on the terms and conditions described in the Debt Financing Commitment (provided that Parent and Merger Sub may replace or amend the Debt Financing Commitment to add lenders, lead arrangers, bookrunners, syndication agents or similar entities which had not executed the Debt Financing Commitment as of the date hereof, or otherwise so long as the terms would not adversely impact the ability of Parent or Merger Sub to timely consummate the transactions contemplated hereby or the likelihood of consummation of the transactions contemplated hereby), including using reasonable best efforts to (i) maintain in effect the Debt Financing Commitment, (ii) negotiate definitive agreements with respect thereto on the terms and conditions contemplated by the Financing Commitments or, to the extent the financing contemplated by the Financing Commitments is not available to Parent, on other terms no less favorable to Parent and Merger Sub and (iii) satisfy on a timely basis all conditions in such Debt Financing Commitment applicable to Parent and Merger Sub that are within their control. In the event that all conditions to the Financing Commitments (other than in connection with the Debt Financing, the availability or funding of any of the Equity Financing) have been satisfied in Parent's good faith judgment, and subject in the case of bridge financing to the sixth sentence of this Section 6.15(a), Parent shall use its reasonable best efforts to cause the lenders and the other Persons providing such Financing to fund on the Closing Date the Financing required to consummate the Merger (including by taking enforcement action to cause such lenders and the other Persons providing such Financing to fund such Financing). If any portion of the Debt Financing becomes unavailable on the terms and conditions contemplated in the Debt Financing Commitment, Parent shall use its reasonable best efforts to arrange to obtain alternative financing from alternative sources on terms no less favorable to Parent (as determined in the reasonable judgment of Parent) as promptly as practicable following the occurrence of such event but no later than the final day of the Marketing Period or, if earlier, the business day immediately prior to the Termination Date. Parent shall give the Company prompt notice of any material breach by any party to the Financing Commitments, of which Parent or Merger Sub becomes aware, or any termination of the Financing Commitments. Parent shall keep the Company informed on a reasonably current basis of the status of its efforts to arrange the Debt Financing. For the avoidance of doubt, in the event that (x) all or any portion of the Debt Financing structured as high yield financing has not been consummated, (y) all closing

conditions contained in Article VII (other than the delivery of the officers' certificates contemplated in Sections 7.2(a), 7.2(b), 7.3(a) and 7.3(b)) shall have been satisfied or waived and (z) the bridge facilities contemplated by the Debt Financing Commitment (or alternative bridge financing obtained in accordance with this Agreement) are available on the terms and conditions described in the Debt Financing Commitment (or replacements thereof on terms and conditions no less favorable to Parent and Merger Sub), then Parent shall cause the proceeds of such bridge financing to be used to replace such high yield financing no later than the final day of the Marketing Period or, if earlier, the business day immediately prior to the Termination Date. For purposes of this Agreement, "Marketing Period" shall mean the first period of 20 consecutive days after the date hereof throughout which (A) Parent shall have the Required Financial Information that the Company is required to provide to Parent pursuant to Section 6.15(b) and (B) the conditions set forth in Section 7.1 shall be satisfied and nothing has occurred and no condition exists that would cause any of the conditions set forth in Sections 7.2(a) or 7.2(b) to fail to be satisfied assuming the Closing were to be scheduled for any time during such 20 day period, provided that if the Marketing Period has not ended (i) on or prior to August 16, 2007, the Marketing Period shall commence no earlier than September 3, 2007 or (ii) on or prior to December 20, 2007, the Marketing Period shall commence no earlier than January 2, 2008; and provided, further, that the "Marketing Period" shall not be deemed to have commenced if, prior to the completion of the Marketing Period, Deloitte & Touche LLP shall have withdrawn its audit opinion with respect to any financial statements contained in the Company Reports.

(b) Prior to the Closing, the Company shall provide to Parent and Merger Sub, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause the respective officers, employees and advisors, including legal and accounting, of the Company and its Subsidiaries to, provide to Parent and Merger Sub cooperation reasonably requested by Parent in connection with the arrangement of the Financing, including (i) participating in meetings, presentations, road shows, due diligence sessions, drafting sessions and sessions with rating agencies, (ii) assisting with the preparation of materials for rating agency presentations, offering documents, private placement memoranda, bank information memoranda, prospectuses and similar documents required in connection with the Financing, provided that any private placement memoranda or prospectuses in relation to high yield debt securities need not be issued by the Company or its Subsidiaries; provided, further, that any private placement memoranda or prospectuses shall contain disclosure and financial statements reflecting the Surviving Corporation and/or its Subsidiaries as the obligor, (iii) executing and delivering any pledge and security documents, currency or interest hedging arrangements, other definitive financing documents, or other certificates, legal opinions or documents as may be reasonably requested by Parent (including a certificate of the chief financial officer of the Company or any borrowing Subsidiary with respect to solvency matters and consents of accountants for use of their reports in any materials relating to the Debt Financing) or otherwise reasonably facilitating the pledging of collateral, provided that such documents will not take effect until the Effective Time, (iv) furnishing Parent and its Financing sources as promptly as practicable (and in any event no later than 30 days prior to the Termination Date) with financial and other pertinent information regarding the Company and its Subsidiaries as may be reasonably requested by Parent, including all financial statements and financial data of the type required by Regulation S-X and Regulation S-K under the Securities Act and of the type and form customarily included in private placements under Rule 144A of the Securities Act to consummate the offerings of debt securities contemplated by the Debt Financing Commitment at the time during the Company's fiscal year

such offerings will be made (the information required to be delivered pursuant to this clause (iv) being referred to as "Required Financial Information"), provided that Parent will provide the Company with a list of the form and types of financial and other information it will request pursuant to this clause (iv) by no later than April 2, 2007 (subject to any type or form of information subsequently identified by Parent that was previously omitted in good faith or that has become customary, the failure of which to include in the offering materials would cause such offering materials to contain an untrue statement of a material fact or omit to state a material fact necessary to be stated in such offering material in order to make the statements in such offering memorandum, in the light of the circumstances under which they were made, not misleading), (v) using reasonable best efforts to obtain accountants' comfort letters, consents, legal opinions, surveys and title insurance as reasonably requested by Parent, (vi) providing monthly financial statements (excluding footnotes) to the extent, the Company customarily prepares such financial statements within the time from such statements are prepared, (vii) taking all actions reasonably necessary to (A) permit the prospective lenders involved in the Financing to evaluate the Company's and its Subsidiaries current assets, cash management and accounting systems, policies and procedures relating thereto for the purpose of establishing collateral arrangements and (B) establish bank and other accounts and blocked account agreements and lock box arrangements in connection with the foregoing, provided that such accounts, agreements and arrangements should not become active or take effect until the Effective Time, (viii) entering into one or more credit or other agreements on terms satisfactory to Parent in connection with the Debt Financing immediately prior to the Effective Time to the extent direct borrowings or debt incurrences by the Company or its Subsidiaries are contemplated by the Debt Financing Commitment, and (ix) at the Company's option taking or appointing a representative of Parent to take all corporate actions, subject to the occurrence of the Closing, reasonably requested by Parent to permit the consummation of the Debt Financing and the direct borrowing or incurrence of all of the proceeds of the Debt Financing, including any high yield debt financing, by the Surviving Corporation immediately following the Effective Time; provided, however, that nothing herein shall require such cooperation to the extent it would unreasonably interfere with the business or operations of the Company or its Subsidiaries or require the Company to agree to pay any fees, reimburse any expenses or give any indemnities prior to the Effective Time for which it is not reimbursed or indemnified under this Agreement. Parent shall, promptly upon request by the Company, reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company or its Subsidiaries in connection with such cooperation at the request of Parent and indemnify the Company for any loss incurred by the Company or any of its Subsidiaries arising therefrom (other than arising from information provided by the Company or its Subsidiaries). The Company hereby consents to the use of its and its Subsidiaries' logos in connection with the Debt Financing, provided that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage the Company or any of its Subsidiaries or the reputation or goodwill of the Company or any of its Subsidiaries.

(c) Parent acknowledges and agrees that the consummation of the transactions contemplated by this Agreement is not conditional upon the receipt by Parent of the proceeds of the Financing Commitments and that any failure by Parent to consummate the Merger on the Closing Date, provided that at such time the conditions to Closing set forth in Sections 7.1, 7.2(a) and 7.2(b) are satisfied, shall constitute a breach by Parent of this Agreement.

6.16 Treatment of Certain Notes.

(a) The Company shall, and shall cause its Subsidiaries to, use their respective commercially reasonable efforts to commence, promptly after the receipt of a written request from Parent to do so and the receipt of the Offer Documents from Parent, offers to purchase, and related consent solicitations with respect to, all of the outstanding aggregate principal amount of the notes identified on Section 6.16(a) of the Parent Disclosure Letter (collectively, the “Notes”) on the terms and conditions specified by Parent (collectively, the “Debt Offers”), and Parent shall assist the Company in connection therewith. Notwithstanding the foregoing, the closing of the Debt Offers shall be conditioned on the completion of the Merger and otherwise in compliance with applicable Laws and SEC rules and regulations and the Company shall not be required to commence any Debt Offer until the No-Shop Period Start Date. The Company shall provide, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause their respective Representatives to, provide cooperation reasonably requested by Parent in connection with the Debt Offers. With respect to any series of Notes, if requested by Parent in writing, in lieu of commencing a Debt Offer for such series (or in addition thereto), the Company shall, to the extent permitted by the indenture and officers’ certificates or supplemental indenture governing such series of Notes (i) issue a notice of optional redemption for all of the outstanding principal amount of Notes of such series pursuant to the requisite provisions of the indenture and officer’s certificate governing such series of Notes or (ii) take actions reasonably requested by Parent that are reasonably necessary for the satisfaction and/or discharge and/or defeasance of such series pursuant to the applicable provisions of the indenture and officer’s certificate or supplemental indenture governing such series of Notes, and shall redeem or satisfy and/or discharge and/or defeasance, as applicable, such series in accordance with the terms of the indenture and officer’s certificate or supplemental indenture governing such series of Notes at the Effective Time, provided that to the extent that any action described in clause (i) or (ii) can be conditioned on the occurrence of the Effective Time, it will be so conditioned, and provided, further, that prior to the Company being required to take any of the actions described in clause (i) or (ii) above that cannot be conditioned on the occurrence of the Effective Time, prior to the Closing, Parent shall irrevocably deposit, or shall cause to be irrevocably deposited with the trustee under the relevant indenture governing such series of Notes sufficient funds to effect such redemption or satisfaction or discharge. The Company shall, and shall cause its Subsidiaries to, waive any of the conditions to the Debt Offers (other than that the Merger shall have been consummated and that there shall be no Law prohibiting consummation of the Debt Offers) as may be reasonably requested by Parent and shall not, without the written consent of Parent, waive any condition to the Debt Offers or make any changes to the Debt Offers other than as agreed between Parent and the Company. Notwithstanding the immediately preceding sentence, neither the Company nor any of the Company’s Subsidiaries need make any change to the terms and conditions of the Debt Offers requested by Parent that decreases the price per Note payable in the Debt Offers or related consent solicitation as set forth in Section 6.16(a) of the Parent Disclosure Letter or imposes conditions to the Debt Offers or related consent solicitation in addition to those set forth in Section 6.16(a) of the Parent Disclosure Letter that are adverse to the holders of the Notes, unless such change is previously approved by the Company in writing.

(b) The Company covenants and agrees that, promptly following the consent solicitation expiration date, assuming the requisite consents are received, each of the Company and its applicable Subsidiaries as is necessary shall (and shall use their commercially reasonable

efforts to cause the applicable trustee to) execute supplemental indentures to the indentures governing each series of Notes for which the requisite consent has been received, which supplemental indentures shall implement the amendments described in the offer to purchase, related letter of transmittal, and other related documents (collectively, the "Offer Documents") and shall become operative only concurrently with the Effective Time, subject to the terms and conditions of this Agreement (including the conditions to the Debt Offers). Concurrent with the Effective Time, Parent shall cause the Surviving Corporation to accept for payment and thereafter promptly pay for the Notes that have been properly tendered and not properly withdrawn pursuant to the Debt Offers and in accordance with the Debt Offers using funds provided by or at the direction of Parent.

(c) Parent shall prepare all necessary and appropriate documentation in connection with the Debt Offers, including the Offer Documents. Parent and the Company shall, and shall cause their respective Subsidiaries to, reasonably cooperate with each other in the preparation of the Offer Documents (provided that the Company's and its Subsidiaries' cooperation shall be limited to matters that Parent cannot accomplish without additional cost or delay without the assistance of the Company or its Subsidiaries). The Offer Documents (including all amendments or supplements) and all mailings to the holders of the Notes in connection with the Debt Offers shall be subject to the prior review of, and comment by, the Company and Parent and shall be reasonably acceptable to each of them. If at any time prior to the completion of the Debt Offers any information in the Offer Documents should be discovered by the Company and its Subsidiaries, on the one hand, or Parent, on the other, which should be set forth in an amendment or supplement to the Offer Documents, so that the Offer Documents shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of circumstances under which they are made, not misleading, the party that discovers such information shall use commercially reasonable efforts to promptly notify the other party, and an appropriate amendment or supplement prepared by Parent describing such information shall be disseminated by or on behalf of the Company or its Subsidiaries to the holders of the applicable Notes (which supplement or amendment and dissemination may, at the reasonable direction of Parent, take the form of a filing of a Current Report on Form 8-K). Notwithstanding anything to the contrary in this Section 6.16(c), the Company shall and shall cause its Subsidiaries to comply with the requirements of Rule 14e-1 under the Exchange Act and any other applicable Law to the extent such laws are applicable in connection with the Debt Offers and such compliance will not be deemed a breach hereof.

(d) In connection with the Debt Offers, Parent may select one or more dealer managers, information agents, depositories and other agents, in each case as shall be reasonably acceptable to the Company, to provide assistance in connection therewith and the Company shall, and shall cause its Subsidiaries to, enter into customary agreements (including indemnities) with such parties so selected. Parent shall pay the fees and out-of-pocket expenses of any dealer manager, information agent, depository or other agent retained in connection with the Debt Offers upon the incurrence of such fees and out-of-pocket expenses, and Parent further agrees to reimburse the Company and their Subsidiaries for all of their reasonable and documented out-of-pocket costs incurred in connection with the Debt Offers promptly following the incurrence thereof. Parent shall indemnify and hold harmless the Company and its Subsidiaries, for and against any loss or incurred by them in connection with the Debt Offers (other than arising from

information provided by the Company and its Subsidiaries that was materially incomplete or inaccurate).

6.17 Termination of Certain Other Indebtedness.

(a) The Company shall use commercially reasonable efforts to deliver to Parent at least two business days prior to the Closing Date payoff letters from third-party lenders, trustees, or equity issuer (in connection with a lease transaction), as applicable, in form and substance reasonably satisfactory to Parent, with respect to the indebtedness or rental obligations of the Company and its Subsidiaries identified on Section 6.17(a) of the Parent Disclosure Letter and any other indebtedness specified by Parent to the Company no later than 20 days prior to the Closing or entered into after the date hereof.

(b) On the Closing Date, subject to Parent making available necessary funds to do so, the Company shall and shall cause its Subsidiaries to permanently (i) terminate the credit facilities requested by Parent to be so terminated, if and to the extent such facilities are either identified on Section 6.17(a) of the Parent Disclosure Letter or specified by Parent to the Company no later than ten business days prior to Closing, and all related agreements, to which the Company and its Subsidiaries is a party and (ii) to the extent the related facility or lease is terminated pursuant to this Section 6.17(b), release any liens on its assets relating to those facilities or the lease transaction identified on Section 6.17(a) of the Parent Disclosure Letter.

6.18 Existing Hedging Arrangements. Except to the extent that disclosure of a counterparty would violate any Existing Commodity Hedging Arrangements, the Company shall, and shall cause its Subsidiaries to, cooperate with Parent and use commercially reasonable efforts to obtain the consent from each counterparty who is a party to any commodity hedging and trading arrangements with the Company or any of its Subsidiaries in effect on the date of this Agreement (the "Existing Commodity Hedging Arrangements") to amend, change, novate or otherwise modify the collateral delivery requirements, liens and security interests granted or given to such counterparties in connection with such Existing Commodity Hedging Arrangements (including all liens granted on the Big Brown facilities) so that any such existing security interests, liens and other collateral delivery requirements are terminated, amended and/or otherwise released and replaced with liens on the Collateral (as defined in Exhibit B to the Debt Financing Commitment) that would be *pari passu* with the liens granted to secure the Borrower Obligations, the Guarantees and other Hedging Arrangements as described and as defined in Exhibit B to the Debt Financing Commitment no later than the Effective Time ("Hedging Arrangement Modifications"). With respect to those Existing Commodity Hedging Arrangements that would be violated by the disclosure of the counterparty, the Company shall, and cause its applicable Subsidiary to, use commercially reasonable efforts to obtain the consent of the applicable counterparties to make the Hedging Arrangement Modifications to such existing Commodity Hedging Arrangements. Parent shall provide all cooperation necessary in connection with the foregoing.

6.19 Section 16(b). The Company shall take all steps reasonably necessary to cause the transactions contemplated by this Agreement and any other dispositions of equity securities of the Company (including derivative securities) in connection with the transactions

contemplated by this Agreement by each individual who is a director or executive officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

6.20 Resignation of Directors. The Company shall deliver to Parent at the Closing, except as otherwise may be agreed by Parent, the resignation of all directors of the Company, effective at the Effective Time, or, with respect to Subsidiaries of the Company, immediately prior to the Effective Time to the extent necessary to effect any corporate action required by clause (ix) of Section 6.15(b). Upon the written request of Parent, as specified by Parent reasonably in advance of the Closing, the Company will seek to obtain the resignation of any or all directors of Subsidiaries of the Company, in each case, effective at the Effective Time.

6.21 Notice of Current Events. From and after the date of this Agreement until the Effective Time, the Company and Parent shall promptly notify each other orally and in writing of (i) the occurrence, or non-occurrence, of any event that, individually or in the aggregate, would reasonably be expected to cause any condition to the obligations of any party to effect the Merger and the other transactions contemplated by this Agreement not to be satisfied or (ii) the failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement which, individually or in the aggregate, would reasonably be expected to result in any condition to the obligations of any party to effect the Merger not to be satisfied; provided, however, that the delivery of any notice pursuant to this Section 6.21 shall not cure any breach of any representation or warranty requiring disclosure of such matter prior to the date of this Agreement or otherwise limit or affect the remedies available hereunder to either party, the failure to deliver any such notice shall not affect any of the conditions set forth in Article VII.

ARTICLE VII

Conditions

7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

(a) Shareholder Approval. This Agreement shall have been duly approved by holders of Shares constituting the Requisite Company Vote in accordance with applicable Law and the certificate of formation and bylaws of the Company.

(b) Regulatory Consents. The waiting period applicable to the consummation of the Merger under the HSR Act shall have expired or been earlier terminated; each of the NRC Approval and the FERC Approval shall have been obtained and be in effect.

(c) Orders. No court or other Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law (whether temporary, preliminary or permanent) that is in effect and restrains, enjoins, renders illegal or otherwise prohibits consummation of the Merger (collectively, an "Order").

7.2 Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to effect the Merger are also subject to the satisfaction or waiver by Parent at or prior to the Effective Time of the following conditions:

(a) **Representations and Warranties.** (i) The representations and warranties of the Company set forth in this Agreement (without giving effect to any materiality or Company Material Adverse Effect qualifications set forth therein) shall be true and correct as of the Closing Date as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall, subject to the qualifications below, be true and correct as of such earlier date) except where any failures of any such representations and warranties to be so true and correct, individually or in the aggregate would not reasonably be expected to have a Company Material Adverse Effect; (ii) the representations and warranties set forth in (x) Sections 5.1(b)(i) and 5.1(c)(i) shall be true and correct in all material respects and (y) Section 5.1(f)(i) shall be true and correct without disregarding the Company Material Adverse Effect qualification contained therein; and (iii) Parent shall have received at the Closing a certificate signed on behalf of the Company by a senior executive officer of the Company to the effect that such officer has read this Section 7.2(a) and the conditions set forth in this Section 7.2(a) have been satisfied.

(b) **Performance of Obligations of the Company.** The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and Parent shall have received a certificate signed on behalf of the Company by a senior executive officer of the Company to such effect.

7.3 Conditions to Obligation of the Company. The obligation of the Company to effect the Merger is also subject to the satisfaction or waiver by the Company at or prior to the Effective Time of the following conditions:

(a) **Representations and Warranties.** (i) The representations and warranties of Parent set forth in this Agreement shall be true and correct in all material respects as of the Closing Date as though made on and as of such date and time (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty shall be true and correct in all material respects as of such earlier date) except (other than with respect to Section 5.2(j)) where any failures to be so true and correct would not prevent consummation of the Merger, and (ii) the Company shall have received at the Closing a certificate signed on behalf of Parent by a senior executive officer of Parent to the effect that such officer has read this Section 7.3(a) and the conditions set forth in this Section 7.3(a) have been satisfied.

(b) **Performance of Obligations of Parent and Merger Sub.** Each of Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing Date, and the Company shall have received a certificate signed on behalf of Parent and Merger Sub by a senior executive officer of Parent to such effect.

(c) Solvency Certificate. Parent shall have delivered to the Company a solvency certificate substantially similar in form and substance to the solvency certificate to be delivered to the senior lenders pursuant to the Debt Financing Commitment or any agreements entered into in connection with the Debt Financing.

ARTICLE VIII

Termination

8.1 Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the approval of this Agreement by the shareholders of the Company referred to in Section 7.1(a), by mutual written consent of the Company and Parent by action of their respective boards of directors.

8.2 Termination by Either Parent or the Company. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of either Parent or the board of directors of the Company if (a) the Merger shall not have been consummated by March 15, 2008, whether such date is before or after the date of approval of this Agreement by the shareholders of the Company referred to in Section 7.1(a) (the "Termination Date"), provided that, if on March 15, 2008 the conditions to Closing shall not have been fulfilled but remain capable of fulfillment then either of Parent (in the event such failure of the conditions to be satisfied relates to a change in Law after the date hereof) or the Company may, by written notice to the other, extend the termination date from March 15, 2008 to June 15, 2008 (which shall then be the "Termination Date"); provided, further, that (x) if the Marketing Period has commenced on or before any such Termination Date, but not ended on or before any such Termination Date, such Termination Date shall automatically be extended by one month and (y) the Termination Date shall not occur sooner than three business days after the final day of the Marketing Period; provided, further, that in no event shall the Termination Date be later than July 10, 2008 (which extended date (as ultimately extended in the case of more than one extension) shall then be the "Termination Date"), provided that the right to terminate this Agreement pursuant to this Section 8.2(a) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Merger to occur on or before the Termination Date, (b) the adoption of this Agreement by the shareholders of the Company referred to in Section 7.1(a) shall not have been obtained at the Shareholders Meeting or at any adjournment or postponement thereof or (c) any Order permanently restraining, enjoining, rendering illegal or otherwise prohibiting consummation of the Merger shall become final and non-appealable (whether before or after the approval of this Agreement by the shareholders of the Company referred to in Section 7.1(a)).

8.3 Termination by the Company. This Agreement may be terminated and the Merger may be abandoned by the Company:

(a) at any time prior to the time the Requisite Company Vote is obtained, if (i) the board of directors of the Company authorizes the Company, subject to complying with the terms of this Agreement, to enter into an Alternative Acquisition Agreement with respect to a Superior Proposal, (ii) immediately prior to or concurrently with the termination of this

Agreement, the Company enters into an Alternative Acquisition Agreement with respect to a Superior Proposal, and (iii) the Company immediately prior to or concurrently with such termination pays as directed by Parent in immediately available funds the Termination Fee; provided, however, that the Company shall not be entitled to terminate this Agreement pursuant to the foregoing clause with respect to any Superior Proposal that is not an Excluded Party Superior Proposal unless the Company shall also have complied with the proviso to the second sentence of Section 6.2(e) and third sentence of Section 6.2(e), reading for purposes of this Section 8.3(a), the proviso to the second sentence of Section 6.2(e) as if the words "effect a Change of Recommendation" were replaced with the words "terminate this Agreement pursuant to Section 8.3(a)" and as if the words "effecting such Change of Recommendation" were replaced with the words "terminating this Agreement pursuant to Section 8.3(a)";

(b) if there has been a breach in any material respect of any representation, warranty, covenant or agreement made by Parent or Merger Sub in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, such that Sections 7.1, 7.3(a) or 7.3(b) would not be satisfied and such breach or condition is not curable prior to the Termination Date; provided, however, that the Company is not then in material breach of this Agreement so as to cause any of the conditions set forth in Section 7.1, 7.2(a) or 7.2(b) not to be satisfied;

(c) if Parent has failed to consummate the Merger no later than two business days after the final day of the Marketing Period and all of the conditions set forth in Sections 7.1, 7.2(a) and 7.2(b) would have been satisfied if the Closing were to have occurred on such date (other than the delivery of an officer's certificate pursuant to Sections 7.2(a) and 7.2(b)); or

(d) at any time within 15 days after any Baseload Waiver Date relating to any Baseload Enactment as to which an MAE Exclusion Agreement has not been delivered in accordance with this Agreement.

8.4 Termination by Parent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by action of Parent:

(a) if the Board of Directors of the Company (i) shall have made a Change of Recommendation, (ii) shall have approved or recommended to the stockholders of the Company an Acquisition Proposal or (iii) the Company fails to include the recommendation of the approval of this Agreement in the Proxy Statement; or

(b) if there has been a breach in any material respect of any representation, warranty, covenant or agreement made by the Company in this Agreement, or any such representation and warranty shall have become untrue after the date of this Agreement, such that Sections 7.1, 7.2(a) or 7.2(b) would not be satisfied and such breach or condition is not curable prior to the Termination Date; provided, however, that Parent is not then in material breach of this Agreement so as to cause any of the conditions set forth in Section 7.1, 7.3(a) or 7.3(b) not to be satisfied.

8.5 Effect of Termination and Abandonment.

(a) In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article VIII, this Agreement shall become void and of no effect with no liability to any Person on the part of any party hereto (or of any of its Representatives or Affiliates); provided, however, and notwithstanding anything in the foregoing to the contrary, that (i) except as otherwise provided herein and subject to this Section 8.5 or Section 9.10(a), no such termination shall relieve any party hereto of any liability or damages to the other party hereto resulting from any willful breach of this Agreement and (ii) the provisions set forth in the second sentence of Section 9.1 shall survive the termination of this Agreement.

(b) In the event that:

(i) a bona fide Acquisition Proposal shall have been made to the Company or any of its Subsidiaries or any Person shall have publicly announced or publicly made known an intention (whether or not conditional) to make an Acquisition Proposal with respect to the Company or any of its Subsidiaries (and such Acquisition Proposal or publicly announced intention shall not have been publicly withdrawn without qualification at least (A) 30 days prior to, with respect to any termination pursuant to Section 8.2(a), the date of termination (provided that at such time the Requisite Company Vote has been obtained), and (B) 10 business days prior to, with respect to termination pursuant to Section 8.2(b), the date of the Shareholders Meeting at which the vote on the Merger is held) and thereafter this Agreement is terminated by either Parent or the Company pursuant to Section 8.2(a), 8.2(b) or 8.4(b) (if in the case of a termination pursuant to Section 8.4(b), at the time of such termination there is no state of facts or circumstances (other than a state of facts or circumstances caused by a breach of the Company's representations and warranties or covenants or other agreements hereunder) that would cause the conditions set forth in Section 7.1, 7.3(a) and 7.3(b) not to be satisfied on or prior to the Termination Date);

(ii) this Agreement is terminated by Parent pursuant to Section 8.4(a); or

(iii) this Agreement is terminated by the Company pursuant to Section 8.3(a);

then the Company shall concurrently with such termination pursuant to Section 8.3(a), and otherwise promptly, but in no event later than three business days after the date of such termination, pay as directed by Parent the Termination Fee (as defined below) less the amount of any Parent Expenses previously paid to Parent (if any), by wire transfer of same day funds; provided, however, that no Termination Fee shall be payable as directed by Parent pursuant to clause (i) of this paragraph (b) unless and until within 12 months of such termination the Company or any of its Subsidiaries shall have entered into an Alternate Acquisition Agreement with respect to, or shall have consummated or shall have approved or recommended to the Company's shareholders, an Acquisition Proposal (substituting "50%" for "15%" in the definition thereof). The Company's payment pursuant to clauses (ii) or (iii) of this Section 8.5(b) shall be the sole and exclusive monetary remedy of Parent, Merger Sub and their

Affiliates for damages against the Company and any of its Subsidiaries and the Company's and its Subsidiaries' respective Representatives with respect to any breach of any covenant or agreement giving rise to or associated with such termination. "Termination Fee" shall mean an amount equal to \$375 million if the Termination Fee becomes payable in connection with a transaction or Alternate Acquisition Agreement with an Excluded Party and shall mean an amount equal to \$1,000,000,000 (one billion dollars) in all other circumstances.

(c) In the event of termination of this Agreement pursuant to Section 8.3(b) (if at the time of such termination there is no state of facts or circumstances (other than a state of facts or circumstances caused by a breach of Parent's or Merger Sub's representations and warranties or covenants or other agreements hereunder) that would cause the conditions set forth in Section 7.1, 7.2(a) and 7.2(b) not to be satisfied on or prior to the Termination Date) or Section 8.3(c), Parent shall pay or cause to be paid, to the Company as promptly as reasonably practicable (and, in any event, within three business days following such termination) an amount equal to \$1,000,000,000 (one billion dollars) (the "Parent Fee").

(d) In the event of termination of this Agreement by either party pursuant to Section 8.2(b) (or a termination by the Company pursuant to a different section of Section 8.2 at a time when this Agreement was terminable pursuant to Section 8.2(b)), the Company shall promptly, but in no event later than three business days after being notified of such by Parent, pay Parent all of the documented out-of-pocket expenses incurred by Parent or Merger Sub in connection with this Agreement and the transactions contemplated by this Agreement (including the Financing) up to a maximum amount of \$50 million (the "Parent Expenses"), by wire transfer of same day funds.

(e) The parties acknowledge that the agreements contained in this Section 8.5 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement; accordingly, if the Company fails to promptly pay the amount due pursuant to Section 8.5(b) or 8.5(d) or Parent fails to promptly pay the amount due pursuant to Section 8.5(c), and, in order to obtain such payment, Parent or Merger Sub, on the one hand, or the Company, on the other hand, commences a suit that results in a judgment against the Company for the amount set forth in Section 8.5(b) or 8.5(d) or any portion thereof or a judgment against Parent for the amount set forth in Section 8.5(c) or any portion thereof, the Company shall pay to Parent or Merger Sub, on the one hand, or Parent shall pay to the Company, on the other hand, its costs and expenses (including attorneys' fees) in connection with such suit, together with interest on the amount of such amount or portion thereof at the prime rate of Citibank N.A. in effect on the date such payment was required to be made through the date of payment. Notwithstanding anything to the contrary in this Agreement, the Company's right to receive payment of the Parent Fee from Parent pursuant to this Section 8.5 and the reimbursement and indemnification obligations of Parent under Sections 6.15(b) and 6.16(d) hereof or the guarantee thereof pursuant to the Guarantees shall, subject to Section 9.10, be the sole and exclusive remedy of the Company and its Subsidiaries against Parent, Merger Sub, the Guarantors and any of their respective former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents for the loss suffered as a result of the failure of the Merger to be consummated, and upon payment of such amounts, none of Parent, Merger Sub, the Guarantors or any of their respective former, current, or future general or limited partners, stockholders, managers, members, directors, officers,

Affiliates or agents shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated by this Agreement (except that Parent shall also be obligated with respect to the first sentence of this Section 8.5(e) and the indemnification and reimbursement obligations of Parent contained in the penultimate sentence of Section 6.15(b) and Section 6.16(d)).

ARTICLE IX

Miscellaneous and General

9.1 Survival. This Article IX and the agreements of the Company, Parent and Merger Sub contained in Article IV and Sections 6.9 (Employee Benefits), 6.10 (Expenses) and 6.11 (Indemnification; Directors' and Officers' Insurance) shall survive the consummation of the Merger. This Article IX and the agreements of the Company, Parent and Merger Sub contained in Section 6.10 (Expenses) and Section 8.5 (Effect of Termination and Abandonment) and the indemnification expense reimbursement provisions contained in Section 6.15(b) and Section 6.16(d) and the Confidentiality Agreement shall survive the termination of this Agreement. All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement.

9.2 Modification or Amendment. Subject to the provisions of the applicable Laws, at any time prior to the Effective Time, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by duly authorized officers of the respective parties.

9.3 Waiver of Conditions. The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable Laws.

9.4 Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

9.5 GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL.

(a) THIS AGREEMENT SHALL BE CONSTRUED, PERFORMED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (EXCEPT TO THE EXTENT THAT MANDATORY PROVISIONS OF TEXAS LAW ARE APPLICABLE), WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. The parties consent to exclusive jurisdiction in the United States District Court for the Southern District of New York (and any courts from which appeals from judgments of that court are heard) as to any dispute or claim as to which there is subject matter jurisdiction in that court and, for all other disputes or claims, the parties consent to exclusive jurisdiction in the Supreme Court of the State of New York, New York County (and any courts from which appeals from judgments of that court are heard). Each of the parties hereto agrees that a final

judgment (subject to any appeals therefrom) in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any New York State or Federal court in accordance with the provisions of this Section 9.5(a). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court. Each of the parties hereto hereby irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 9.6 (Notices). Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.5(b).

9.6 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, by facsimile or overnight courier:

If to Parent or Merger Sub:

KKR 2006 Fund, L.P.
9 West 57th Street, Suite 4200
New York, NY 10019
Attention: Marc Lipschultz
fax: (212) 750-0003
Texas Pacific Group
301 Commerce Street, Suite 3300
Fort Worth, TX 76102
Attention: Clive D. Bode
fax: (813) 871-4010

with a copy to:
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
Attention: David J. Sorkin
Andrew W. Smith
fax: (212) 455-2502

with a copy to:
Vinson & Elkins L.L.P.
2500 First City Tower
1001 Fannin
Houston, TX 77002-6760
Attention: Bruce R. Bilger
Keith Fullenweider
fax: (713) 758-2346

If to the Company:
TXU Corp.
1601 Bryan Street
Dallas, TX 75201
Attention: David P. Poole
fax: (214) 812-4600

with a copy to:
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Attention: Joseph B. Frumkin
Eric M. Krautheimer
fax: (212) 558-3588

and
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019
Attention: Richard Hall
James C. Woolery
fax: (212) 474-3700

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above. Any notice, request, instruction or other document given as provided above shall be deemed given to the receiving party upon actual receipt, if delivered personally;

three business days after deposit in the mail, if sent by registered or certified mail; upon confirmation of successful transmission if sent by facsimile and received by 5:00 pm New York time, on a business day (otherwise the next business day) (provided that if given by facsimile such notice, request, instruction or other document shall be followed up within one business day by dispatch pursuant to one of the other methods described herein); or on the next business day after deposit with an overnight courier, if sent by an overnight courier.

9.7 Entire Agreement. This Agreement (including any exhibits hereto), the Company Disclosure Letter, the Parent Disclosure Letter and the Confidentiality Agreement, dated November 30, 2006, between Kohlberg Kravis Roberts & Co. L.P., Tarrant Partners, L.P., Newbridge Capital, LLC and the Company (the "Confidentiality Agreement") constitute the entire agreement, and supersede all other prior agreements, understandings, representations and warranties both written and oral, among the parties, with respect to the subject matter hereof. EACH PARTY HERETO AGREES THAT, EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, NEITHER PARENT AND MERGER SUB NOR THE COMPANY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, AND EACH HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OR AS TO THE ACCURACY OR COMPLETENESS OF ANY OTHER INFORMATION, MADE BY, OR MADE AVAILABLE BY, ITSELF OR ANY OF ITS REPRESENTATIVES, WITH RESPECT TO, OR IN CONNECTION WITH, THE NEGOTIATION, EXECUTION OR DELIVERY OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO THE OTHER OR THE OTHER'S REPRESENTATIVES OF ANY DOCUMENTATION OR OTHER INFORMATION WITH RESPECT TO ANY ONE OR MORE OF THE FOREGOING.

9.8 No Third Party Beneficiaries. Except as provided in Section 6.11 (Indemnification; Directors' and Officers' Insurance) only, Parent and the Company hereby agree that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other party hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein. The parties hereto further agree that the rights of third party beneficiaries under Section 6.11 shall not arise unless and until the Effective Time occurs. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 9.3 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

9.9 Obligations of Parent and of the Company. Whenever this Agreement requires a Subsidiary of Parent to take any action, such requirement shall be deemed to include an undertaking on the part of Parent to cause such Subsidiary to take such action. Whenever this

Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of the Company to cause such Subsidiary to take such action and, after the Effective Time, on the part of the Surviving Corporation to cause such Subsidiary to take such action.

9.10 Remedies.

(a) The Company agrees that to the extent it has incurred losses or damages in connection with this Agreement, (i) the maximum aggregate liability of Parent and Merger Sub for such losses or damages shall be limited to \$1,000,000,000 (one billion dollars) and any amounts owed pursuant to the penultimate sentence of Section 6.15(b), Section 6.16(d) and the first sentence of Section 8.5(e), (ii) the maximum liability of each Guarantor, directly or indirectly, shall be limited to the express obligations of such Guarantor under its Guarantee, and (iii) in no event shall the Company seek to recover any money damages in excess of such amounts from Parent, Merger Sub, the Guarantors, or their respective Representatives and Affiliates in connection herewith or therewith.

(b) The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement were not performed by the Company in accordance with the terms hereof and that, prior to the termination of this Agreement pursuant to Article VIII, Parent and Merger Sub shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity. The parties acknowledge that the Company shall not be entitled to an injunction or injunctions to prevent breaches of this Agreement by Parent or Merger Sub or to enforce specifically the terms and provisions of this Agreement and that the Company's sole and exclusive remedy with respect to any such breach shall be the remedy set forth in Sections 8.5(c) and 9.10(a), provided that the Company shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by Parent or Merger Sub that would cause irreparable harm, and to enforce specifically the terms and provisions of this Agreement solely with respect to Section 6.1(a), Section 6.5, Section 6.8, Section 6.14, and Section 6.15; provided, further, that in no event shall the Company be entitled to any injunction or specific enforcement of the terms of this Agreement requiring Parent or Merger Sub to consummate the Merger or prohibiting Parent or Merger Sub from failing to consummate the Merger.

9.11 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration and other similar such Taxes and fees (including penalties and interest) incurred in connection with the Merger shall be paid by the Surviving Corporation when due.

9.12 Definitions. Each of the terms set forth in Annex A is defined in the Section of this Agreement set forth opposite such term.

9.13 Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or

circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

9.14 Interpretation: Construction.

(a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in this Agreement is made to a Section or Exhibit, such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." For purposes of Section 7.1(c) of this Agreement, any federal or Texas state Law adopted after the date hereof that prohibits consummation of the Merger without obtaining any approval or consent as a condition thereto, shall be deemed to render illegal the consummation of the Merger unless such approval or consent is obtained.

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(c) Each party here has or may have set forth information in its respective Disclosure Letter in a section thereof that corresponds to the section of this Agreement to which it relates. The fact that any item of information is disclosed in a Disclosure Letter to this Agreement shall not be construed to mean that such information is required to be disclosed by this Agreement.

9.15 Assignment. This Agreement shall not be assignable by operation of law or otherwise without the written consent of the other parties hereto; provided, however, that, prior to the mailing of the Proxy Statement to the Company's shareholders, Parent may designate, by written notice to the Company, another wholly-owned direct or indirect Subsidiary to be a Constituent Corporation in lieu of Merger Sub, in which event all references herein to Merger Sub shall be deemed references to such other Subsidiary, except that all representations and warranties made herein with respect to Merger Sub as of the date of this Agreement shall be deemed representations and warranties made with respect to such other Subsidiary as of the date of such designation, provided that any such designation shall not impede or delay the consummation of the transactions contemplated by this Agreement or otherwise materially impede the rights of the shareholders of the Company under this Agreement. Any purported assignment in violation of this Agreement is void.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

TXU CORP.

By: /s/ C. John Wilder
Name: C. John Wilder
Title: Chairman, President, Chief Executive Officer

TEXAS ENERGY FUTURE HOLDINGS LIMITED PARTNERSHIP

By: TEXAS ENERGY FUTURE CAPITAL HOLDINGS LLC, its general partner

By: /s/ Marc S. Lipschultz
Name: Marc S. Lipschultz
Title: President

TEXAS ENERGY FUTURE MERGER SUB CORP

By: /s/ Michael MacDougall
Name: Michael MacDougall
Title: President

ANNEX A
DEFINED TERMS

<u>Terms</u>	<u>Section</u>
Acceptable Confidentiality Agreement	6.2(d)
Acquisition Proposal	6.2(d)
Affiliate	5.1(a)
Agreement	Preamble
Alternative Acquisition Agreement	6.2(e)(ii)
Applicable Date	5.1(e)(i)
Bankruptcy and Equity Exception	5.1(c)(i)
Baseload Enactment	6.5(f)
Baseload Waiver Date	6.5(f)
Benefit Plans	5.1(h)(i)
Book-Entry Shares	4.2(b)
business day	1.2
Business Plan	6.1(a)
Bylaws	2.2
Category I Transactions	6.1(a)(xxiv)
CBA	5.1(m)
Certificate	4.1(a)
Certificate of Merger	1.3
Change of Recommendation	6.2(e)
Charter	2.1
Closing	1.2
Closing Date	1.2
Code	5.1(h)(ii)
Comanche Peak	5.1(p)(ii)
Company	Preamble
Company Approvals	5.1(d)(i)
Company Disclosure Letter	5.1
Company Joint Venture	5.1(b)(ii)
Company Material Adverse Effect	5.1(a)
Company Material Contract	5.1(t)
Company Recommendation	5.1(c)(ii)
Company Reports	5.1(e)(i)
Confidentiality Agreement	9.7
Constituent Corporations	Preamble
Contested Proceeding	6.5(e)(ii)
Contract	5.1(d)(ii)
Convertible Senior Notes	4.5
Costs	6.11(a)
D&O Insurance	6.11(b)
Debt Financing	5.2(e)
Debt Financing Commitment	5.2(e)

<u>Terms</u>	<u>Section</u>
Debt Offers	6.16(a)
Derivative Product	5.1(q)
Designated Officer	5.1(h)
Dissenting Shareholders	4.1(a)
Effective Time	1.3
Employees	5.1(h)(i)
Environmental Claim	5.1(k)
Environmental Law	5.1(k)
Environmental Permits	5.1(k)(b)
EPA Act 2005	5.1(p)(iii)
Equity Financing	5.2(e)
Equity Financing Commitments	5.2(e)
ERCOT	5.1(p)(i)
ERCOT Protocols	5.1(p)(i)
ERCOT Region	5.1(p)(i)
ERISA	5.1(h)(i)
ERISA Affiliate	5.1(h)(iii)
ERISA Plan	5.1(h)(ii)
EWG	5.1(p)(iii)
Exchange Act	5.1(a)
Exchange Fund	4.2(a)
Excluded Party	6.2(b)
Excluded Party Superior Proposal	6.2(d)
Excluded Share	4.1(a)
Excluded Shares	4.1(a)
Exempt Category I Transactions	6.1(b)
Existing Commodity Hedging Arrangements	6.18
FERC	5.1(d)(i)
FERC Approval	5.1(d)(i)
FCC	5.1(d)(i)
FCC Approval	5.1(d)(i)
Financing	5.2(e)
Financing Commitments	5.2(e)
GAAP	5.1(e)(iii)
Governmental Entity	5.1(d)(i)
Guarantee	Recitals
Guarantors	Recitals
Hazardous Substance	5.1(k)
Hedging Arrangement Modifications	6.18
HSR Act	5.1(d)(i)
Indemnified Parties	6.11(a)
Indenture	6.12
Insurance Policies	5.1(o)
Intellectual Property	5.1(n)(ii)
IRS	5.1(h)(ii)
Knowledge	5.1(g)

Terms	Section
Laws	5.1(i)
Licenses	5.1(i)
Lien	5.1(b)(ii)
MAE Exclusion Agreement	6.5(f)
Marketing Period	6.15(a)
Material Baseload Divestiture Requirement	5.1(a)
Merger	Recitals
Merger Sub	Preamble
Multiemployer Plan	5.1(h)(ii)
New Debt Financing Commitments	5.2(e)
No-Shop Period Start Date	6.2(a)
Notes	6.16(a)
Notice Period	6.2(e)(ii)(A)
NRC	5.1(a)(i)
NRC Application	6.5(e)(i)
NRC Approval	5.1(d)(i)
NYSE	5.1(a)(L)
Offer Documents	6.16(b)
Order	7.1(c)
Parent	Preamble
Parent Approvals	5.2(c)(i)
Parent Disclosure Letter	5.2
Parent Expenses	8.5(d)
Parent Fee	8.5(c)
Paying Agent	4.2(a)
Pension Plan	5.1(h)(ii)
Performance Awards	4.3(b)
Performance Awards Merger Consideration	4.3(b)
Per Share Merger Consideration	4.1(a)
Person	4.2(d)
Post-Signing Commodity Hedging Arrangements	6.1(b)
Proxy Statement	6.3(a)
PUCT	5.1
PURA	5.1(p)(i)
Qualified Decommissioning Fund	5.1(p)(iv)(A)
Release	5.1(k)
Remedial Action	5.1(k)
Representatives	6.2(a)
Required Financial Information	6.15(b)
Requisite Company Vote	5.1(c)(i)
Requisite Parent Vote	5.2(b)
Restricted Shares	4.3(a)
SEC	5.1(e)(i)
Securities Act	5.1(e)(i)
Share	4.1(a)
Shareholders Meeting	6.4

<u>Terms</u>	<u>Section</u>
Shares	4.1(a)
Significant Subsidiary	5.1(a)
Solvent	5.2(j)
Stock Plans	5.1(b)(i)
Subsidiary	5.1(a)
Superior Proposal	6.2(d)
Surviving Corporation	1.1
Takeover Statute	5.1(j)
Tax, Taxes	5.1(l)
Tax Return	5.1(l)
TBOC	1.1
Termination Date	8.2
Termination Fee	8.5(b)
Transactions Committee	Recitals
Trustee	5.1(p)(iv)(C)
TXU Electric Delivery	5.1(p)(i)
TXU Energy Holdings	5.1(p)(i)
TXU Trading Policies	5.1(q)(i)(A)

ATTACHMENT 6

Biographies of Proposed Officers and Directors of TXU Corp. and Officers of Texas Energy GP

Unless otherwise noted, the following individuals are U.S. citizens:

Michael R. Blevins is the Senior Vice President and Chief Nuclear Officer of TXU Generation Management Company LLC. Mr. Blevins joined the TXU System in 1969. Since that time he has worked in Dallas Power and Light, Transmission, and Fossil Generation before coming to Comanche Peak Steam Electric Station (CPSES) in 1977. Prior to his current position, Mr. Blevins served at CPSES as Vice President of Nuclear Operations, Plant Manager, Director of Nuclear Overview, Manager of Nuclear Operations Support, Manager of Technical Support, Engineering Superintendent, Maintenance Superintendent, Administrative Superintendent, and Maintenance Engineering Supervisor. Mr. Blevins received his BSEE from the University of Texas at Arlington in 1973 and received his Senior Reactor Operator Certification from Westinghouse in 1982. Mr. Blevins graduated from the Harvard Business School Advanced Management Program in 1999. He is a registered professional engineer in the state of Texas.

Clive Bode is a Partner and General Counsel to Texas Pacific Group. Before joining Texas Pacific Group in 2006, he was a Senior Advisor to certain members of the Bass family of Fort Worth, Texas. He was previously a director with the law firm of Kelly, Hart & Hallman in Fort Worth and a partner in the Dallas and Houston offices of the law firm Vinson & Elkins. He is a graduate of Oakland University and the University of Michigan Law School.

David Bonderman is a founder of Texas Pacific Group. Before forming Texas Pacific Group in 1992, Mr. Bonderman was Chief Operating Officer of the Robert M. Bass Group in Fort Worth, Texas. He serves as a director of Burger King, CoStar Group, Gemalto N.V., and Ryanair Holdings, of which he is Chairman. He also serves on the boards of the Wilderness Society, the Grand Canyon Trust, the World Wildlife Fund, the University of Washington Foundation, and the American Himalayan Foundation.

Donald L. Evans has been the CEO of the Financial Services Forum since 2005, after serving as the 34th secretary of the U.S. Department of Commerce. As Secretary of Commerce, he oversaw a diverse cabinet agency with some 40,000 workers and a \$5.8 billion budget focused on promoting American business. Before serving in the cabinet, Secretary Evans was the former CEO of Tom Brown, Inc., a large independent energy company. He formerly served as a member and chairman of the Board of Regents of the University of Texas. Secretary Evans also has served as an officer or board member for a number of civic and philanthropic organizations. He attended the University of Texas at Austin, receiving a B.S. degree in mechanical engineering in 1969 and an M.B.A. in 1973.

Steven Feldman is Global Co-Head of the Goldman Sachs Infrastructure Investment Group. Prior to co-heading the Group, he founded the Real Estate Alternative Investment Group in the Investment Management Division, was Head of the Corporate Real Estate Department and was a senior investor within the Real Estate Principal Investment Area. Mr. Feldman joined the firm's Real Estate Department as an Associate in 1989 and was promoted to a Vice President in 1992. He transferred to the Real Estate Principal Investment Area in 1996, became a Managing

Director in 1998 and a Partner in 2004. Prior to joining Goldman Sachs, Mr. Feldman was an associate at the law firm of Skadden, Arps, Slate, Meagher & Flom. He received a B.S. from the Wharton School of the University of Pennsylvania and a J.D. from New York University.

Frederick M. Goltz has been with KKR for 10 years. Mr. Goltz is one of the heads of KKR's Energy and Natural Resources industry team and leads KKR's efforts in the natural resources sector. He is a director of Accuride. He received a B.A., B.S., Magna Cum Laude, from the University of Pennsylvania, and an M.B.A. from INSEAD, Fontainebleau, France.

Michael Greene is Chairman of the Board, President, and Chief Executive of TXU Energy Company LLC and TXU Generation Management Company LLC. He joined TXU as an engineer in 1969 and has served in a variety of senior positions. Mr. Greene is a director of the Electric Power Research Institute and past chairman of the Electric Reliability Council of Texas (ERCOT) and the North American Electric Reliability Council Stakeholder's Committee. He is an appointed member of the Texas Railroad Commission's Natural Gas Reliability Council and is a registered professional engineer in the State of Texas. Mr. Greene graduated from the University of Texas at Arlington with a bachelor's degree in mechanical engineering.

James R. Huffines is chairman of the University of Texas System Board of Regents, on which he has served since 2003. He also is Chairman, Central and South Texas, of PlainsCapital Bank in Austin, Executive Vice President of PlainsCapital Corporation, and a director of Hester Capital Mgmt., PlainsCapital Bank, and PlainsCapital Corp. He previously held senior management positions at Hester Capital Management, L.L.C., and Morgan Keegan & Co. Chairman Huffines also is a former Commissioner of the State of Texas Alcoholic Beverage Commission. He also has served as an officer or board member for a number of civic and philanthropic organizations. He earned a BBA degree in finance from the University of Texas at Austin in 1973 and attended Southwestern Graduate School of Banking at Southern Methodist University.

Scott Lebovitz is a Vice President of Goldman, Sachs & Co. in its Principal Investment Area. He joined Goldman, Sachs & Co. as Financial Analyst in 1997. He was promoted to Vice President in 2003. Mr. Lebovitz serves on the boards of Coffeyville Acquisition LLC and Village Voice Media, LLC. He received a B.S. degree from the University of Virginia.

Jeffrey Liaw is active in Texas Pacific Group's Energy and Industrial investing practice areas. Before joining Texas Pacific Group, he worked for Bain Capital in their Industrials practice. Mr. Liaw is a graduate of the University of Texas at Austin and received his M.B.A. from Harvard Business School.

Marc S. Lipschultz has been with KKR for 12 years. He is one of the heads of KKR's Energy and Natural Resources industry team and leads KKR's efforts in the power sector. Currently, he is a director of Accel-KKR Company. He received an A.B., Honors and Distinction, Phi Beta Kappa, from Stanford University and an M.B.A. with High Distinction, Baker Scholar, from Harvard Business School.

Michael MacDougall is a leader of Texas Pacific Group's Energy and Industrial investing practice areas. He is a director of Altivity Packaging, Kraton Polymers, Aleris International, and the New York Opportunity Network. Mr. MacDougall is a graduate of the University of Texas at Austin and received his M.B.A. from Harvard Business School.

Lyndon L. Olson has been a Senior Advisor with Citigroup Inc. since 2002, after serving as United States Ambassador to Sweden from 1998 to 2001. He previously was affiliated with Citigroup from 1990 to 1998, as President and CEO of Travelers Insurance Holdings and the Associated Madison Companies, predecessor companies. Before joining Citigroup, he had been President of the National Group Corporation and CEO of its National Group Insurance Company. Ambassador Olson also is a former Chairman and a Member of the Texas State Board of Insurance, former President of the National Association of Insurance Commissioners, and a former member of the Texas House of Representatives. He also has served as an officer or board member for a number of civic and philanthropic organizations. Ambassador Olson is a graduate of Baylor University and attended Baylor Law School.

Kenneth Pontarelli is a Managing Director of Goldman, Sachs & Co. in its Principal Investment Area. He joined Goldman, Sachs & Co. as a Financial Analyst in 1992. Subsequently, he worked for Bain & Company, Inc. before rejoining Goldman, Sachs & Co.'s Energy & Power Group as an Associate in 1997. He transferred to the Principal Investment Area in 1999 and was promoted to Managing Director in 2004 and to Partner in 2006. Mr. Pontarelli serves on the boards of Coffeyville Acquisition LLC, Cobalt International Energy, L.P., Horizon Wind Energy, and NextMedia Investors, LLC. He received a B.S. degree from Syracuse University and an M.B.A. from Harvard University.

William K. Reilly is a Senior Advisor to TPG and a founding partner of Aqua International Partners, an investment group that invests in companies that serve the water and renewable energy sectors, having previously served as the seventh Administrator of the U.S. Environmental Protection Agency. Mr. Reilly is a director of DuPont, Eden Springs, Ltd. of Israel, ConocoPhillips and Royal Caribbean International. Before serving as EPA Administrator, he was President of World Wildlife Fund and President of The Conservation Foundation. He previously served as Executive Director of the Rockefeller Task Force on Land Use and Urban Growth, a senior staff member of the President's Council on Environmental Quality, and Associate Director of the Urban Policy Center and the National Urban Coalition. Reilly has written and lectured extensively on environmental issues and is Co-Chairman of the National Commission on Energy Policy. He served in the U.S. Army to the rank of Captain. He also has served as an officer or board member for a number of civic and philanthropic organizations. An alumnus of Yale University, Mr. Reilly holds a law degree from Harvard University and a master's degree in urban planning from Columbia University.

Jonathan D. Smidt has been with KKR since 2000. He is a member of both the Energy and Natural Resources and the Consumer Products industry teams. He holds a B.B.S. and a Postgraduate Diploma in Accounting from the University of Cape Town (South Africa). Mr. Smidt is a citizen of South Africa.

C. John Wilder is Chairman, President, and CEO of TXU Corp. He previously was the Chief Financial Officer of Entergy Corporation, was CEO of Shell Capital, and held a variety of other positions in the Royal Dutch/Shell Group of companies. While at Entergy, he helped found the Entergy-Tulane Energy Institute, a center dedicated to studying the energy industry and related environmental issues. He also has served as an officer or board member for a number of civic and philanthropic organizations. Mr. Wilder graduated magna cum laude from Southeast Missouri State University with a bachelor's degree in business administration and earned a master's degree in business administration from the University of Texas.

ATTACHMENT 7

10 CFR 2.390 Affidavit of Fred W. Madden

&

10 CFR 2.390 Affidavit of Michael MacDougall

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)

TXU Generation Company LP)

Comanche Peak Steam Electric Station, Units 1 and 2)

Docket Nos. 50-445
50-446

AFFIDAVIT

I, Fred W. Madden, being duly sworn, hereby depose and state that I am Director, Oversight & Regulatory Affairs for the Comanche Peak Steam Electric Station, TXU Generation Company LP, and do hereby affirm and state:

1. I am authorized to execute this affidavit on behalf of TXU Power.
2. TXU Power is providing information in support of an Application for Order Approving Indirect Transfer of Control of Licenses. The documents being provided in Attachments 1A, 2A, and 4A contain proprietary financial information and financial projections related to the ownership and operation of TXU Generation Company LP, including the Comanche Peak Steam Electric Station. 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 2.390(a)(4) and 9.17(a)(4), because:
 - i. This information is and has been held in confidence by TXU Power.
 - ii. This information is of a type that is customarily held in confidence by TXU Power, and there is a rational basis for doing so because the information contains sensitive financial information concerning projected revenues and operating expenses of TXU Power.
 - iii. This information is being transmitted to the NRC voluntarily and 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 Power by disclosing its internal financial projections.

3. Accordingly, TXU Power requests that the designated documents be withheld from public disclosure pursuant to the policy reflected in 10 CFR 2.390(a)(4) and 9.17(a)(4).

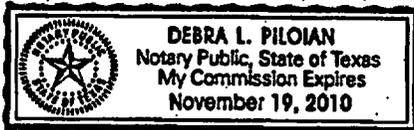


Fred W. Madden
Director, Oversight & Regulatory Affairs

STATE OF TEXAS)

COUNTY OF SOMERVELL)

Subscribed and sworn to me, a Notary Public, in and for the State of Texas, this 18th day of April, 2007.




Notary Public in and for the State of Texas

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
TXU Generation Company LP)	Docket Nos. 50-445
)	50-446
Comanche Peak Steam Electric Station, Units 1 and 2)	

AFFIDAVIT

I, Michael MacDougall, being duly sworn, hereby depose and state that I am President of Texas Energy Future Capital Holdings LLC, general partner of Texas Energy Future Holdings Limited Partnership (Parent), and do hereby affirm and state:

1. I am authorized to execute this affidavit on behalf of Parent.
2. Parent is providing information in support of its Application for Order Approving Indirect Transfer of Control of Licenses. The documents being provided in Attachment 3A contain financial projections related to its proposed ownership and operation of generation assets, including the Comanche Peak Steam Electric Station. 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 2.390(a)(4) and 9.17(a)(4), because:
 - i. This information is and has been held in confidence by Parent.
 - ii. This information is of a type that is customarily held in confidence by Parent, and there is a rational basis for doing so because the information contains sensitive financial information concerning projected revenues and operating expenses of Parent.
 - iii. This information is being transmitted to the NRC voluntarily and 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 Parent by disclosing its internal financial projections.

3. Accordingly, Parent requests that the designated documents be withheld from public disclosure pursuant to the policy reflected in 10 CFR 2.390(a)(4) and 9.17(a)(4).

M. MacDugall

Michael MacDeugall
President
Texas Energy Future Capital Holdings LLC

STATE OF NEW YORK)

COUNTY OF NEW YORK)

Subscribed and sworn to me, a Notary Public, in and for the State of New York, this 17th day of April, 2007.

LORI A. MCNEILL
Notary Public, State of New York
No. 01MC6124751
Qualified in New York County
Commission Expires March 28, 2009

[Signature]

Notary Public in and for the State of New York

ATTACHMENT 8

Conforming License Amendments Request

DESCRIPTION AND ASSESSMENT

1. DESCRIPTION

The proposed changes to the Comanche Peak Steam Electric Station (CPSES) Unit 1 Operating License (NPF-87) and CPSES Unit 2 Operating License (NPF-89) to replace TXU Generation Company LP on the licenses as owner and operator of CPSES, and authorize Luminant Generation Company LLC to possess, use and operate CPSES, under essentially the same conditions and authorization as included in the existing licenses, and conforms these administrative changes to reflect the proposed transfer. No changes to the CPSES Technical Specifications are being requested.

- Annotated Changed Pages to the Existing Operating Licenses
 - Unit 1 See Attachment 9
 - Unit 2 See Attachment 10

- Operating License Pages with Proposed Changes Incorporated
 - Unit 1 See Attachment 11
 - Unit 2 See Attachment 12

2. PROPOSED CHANGES

The proposed changes will delete "TXU Generation Company LP" and replace it with "Luminant Generation Company LLC" to reflect change in ownership of CPSES, and to conform these administrative changes to licenses to reflect the proposed indirect transfer application.

3. BACKGROUND

The requested amendments would conform the licenses to reflect the transfer action for which NRC consent has been requested pursuant to 10 CFR 50.80, 10 CFR 50.92 and 10 CFR 2.1315.

TXU Power respectfully requests that the NRC approve the conforming administrative amendments pursuant to 10 CFR 50.92 and 10 CFR 2.1315 by September 1, 2007. Such consent should be made immediately effective upon issuance and, in order to be coordinated with the indirect transfer of control, should permit implementation at any time until July 10, 2008.

4. TECHNICAL ANALYSIS

The proposed changes to the Operating Licenses are administrative in nature. These changes identify the new owner and operator of CPSES. 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. Other considerations and potential impacts of the indirect transfer of control of the CPSES licenses are presented below.

A. Final Safety Analysis Report (FSAR)

In support of this License Amendment Request, no significant changes have been identified 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 NEI 98-03, "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.

B. Emergency Planning

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.

As a result of this license transfer, 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 Power will also be assigned to Luminant Generation Company LLC, as necessary. TXU Power plans to notify the parties to such agreements in advance of the transfer and to advise those parties of Luminant Generation Company LLC's responsibility for management and operation of CPSES.

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

C. Security

TXU Power does not anticipate any substantive changes to the existing NRC-approved physical security, guard training and qualifications, or safeguards contingency plans. Any changes that do occur, or necessary conforming changes, will be made in accordance with 10 CFR 50.54(p).

TXU Power anticipates that certain security-related 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 Power will be assigned to Luminant Generation Company LLC, as necessary. TXU Power plans to notify the parties to such agreements in advance of the transfer of the licenses to Luminant Generation Company LLC and to advise those parties of Luminant Generation Company LLC's responsibility for management and operation of CPSES.

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

D. Quality Assurance

TXU Power anticipates that it will be able to transfer all of the current functions and personnel of the existing Quality Assurance organization to Luminant Generation Company LLC. TXU Power 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).

Thus, the proposed license transfer will not impact compliance with Quality Assurance program requirements.

E. Training

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, Luminant Generation Company LLC 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).

F. Standard Contract for Disposal of Spent Nuclear Fuel

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

G. Continuation of Current Design and Licensing Basis

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. Luminant Generation Company LLC will control or have access to the design and licensing basis documents to the same extent as TXU Power now does. While there will be certain administrative amendments to the Operating Licenses, as indicated by this LAR, Luminant Generation Company LLC does not seek any other changes to the current licensing basis for CPSES.

Likewise, the proposed transfer will not change or invalidate design or facility 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).

H. Exclusion Area Control

Upon approval of the transfer, Luminant Generation Company LLC will have authority to determine all activities within the exclusion area to the extent required by 10 CFR Part 100.

In conclusion, the proposed changes will have no impact on the design, function, or operation of any plant structure, system, or component, either technically or administratively, therefore, these changes do not adversely affect nuclear safety or safe plant operations.

5. 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, nor will

they relax the bases for any limiting conditions of operation. Therefore, the proposed changes will not impact the margin of safety.

5.2 Applicable Regulatory Requirements/Criteria

10 CFR 2.1315, "Generic Determination Regarding License Amendments to Reflect Transfers"

10 CFR 50.80, "Transfer of Licenses"

10 CFR 50.92, "Issuance of Amendment"

The proposed license changes are administrative in nature. These changes only identify the renamed owner and operator of CPSES. These changes are considered administrative since the proposed changes ensure an equivalent level of authority and independence as and where appropriate. No physical changes will be made to the plant 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, 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.

Based upon the analysis provided above, 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 CONSIDERATION

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 as 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" as set forth by the regulation and 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 PRECEDENTS

There is ample precedent for approving conforming amendments in connection with the transfer of a nuclear generation Facility Operating License. NRC has previously approved amendments to the Peach Bottom, Hope Creek, and Salem licenses in connection with the transfer of PSEG Nuclear LLC's interests to Exelon Generation Company, LLC (ADAMS Accession No. ML060310533), and it has approved an amendment to the Waterford Steam Electric Station, Unit 3 license in connection with the transfer of Entergy Louisiana, Inc.'s interests to Entergy Louisiana, LLC (ADAMS Accession No. ML053400304).

8.0 REFERENCES

10 CFR 2.1315, "Generic Determination Regarding License Amendments to Reflect Transfers"

10 CFR 50.80, "Transfer of Licenses"

10 CFR 50.92, "Issuance of Amendment"

10 CFR 51.22, "Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise not Requiring Environmental Review"

ATTACHMENT 9

Annotated Changed Pages to CPSES Unit 1 License

NPF-87

TXU GENERATION COMPANY LP

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 Generation Company LP~~ (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 1, 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 1, except as exempted from compliance in Section 2.D below;

Amendment No. ~~68, 89, 90~~

- E. ~~TXU Generation Company LP~~ 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 1;
 - 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
 - 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 Generation Company LP~~ 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 Generation Company LP~~, 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 Generation Company LP~~, 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 Generation Company LP~~, 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 Generation Company LP~~, 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 Generation Company LP~~ 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 as revised through Amendment No. 429, and the Environmental Protection Plan contained in Appendix B, are incorporated into this license. ~~TXU Generation Company LP~~ shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) Antitrust Conditions

DELETED

(4) License Transfer

The ~~TXU Generation Company LP~~ Decommissioning Master Trust Agreement for the facility at the time the license transfers are effected and thereafter, is subject to the following:

(a) DELETED

(b) DELETED

(c) The appropriate section of the decommissioning trust agreement must state that investments made in trust by the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to investment guidelines established by the PUCT (e.g., 16 Texas Administration Code 25.301);

(d) DELETED

(e) DELETED

(5) License Transfer

~~TXU Generation Company LP~~ shall provide decommissioning funding assurance, to be held in a decommissioning trust for the facility upon the direct transfer of the facility license to ~~TXU Generation Company LP~~, in an amount equal to or greater than the balance in the facility decommissioning trusts immediately prior to the transfer. In addition, ~~TXU Generation Company LP~~ shall ensure that all contractual arrangements referred to in the application for approval of the transfer of the facility license to ~~TXU Generation Company LP~~, to obtain necessary decommissioning funds for the facility through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(6) License Transfer

DELETED

(7) License Transfer

~~TXU Generation Company LP~~ and its subsidiaries agree to provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ~~TXU Generation Company LP~~ or its subsidiaries to its proposed parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on ~~TXU Generation Company LP's~~ book of accounts.

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. DELETED

F. In order to ensure that ~~TXU Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ must institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
- (3) ~~TXU Generation Company LP~~ 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 Generation Company LP~~.
- G. ~~TXU Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ shall fully implement and maintain in effect all provisions of the physical security, 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 combined set of plans, which contains safeguards information protected under 10 CFR 73.21, is entitled: "Comanche Peak Steam Electric Station Physical Security Plan, Security Training and Qualification Plan, Safeguards Contingency Plan" and was submitted on October 11, 2004, and supplemented on October 13, 2004.
- I. The licensees 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

original signed by:

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 NOS. NPF-87 & NPF-89**

**~~TXU GENERATION COMPANY LP~~
COMANCHE PEAK STEAM ELECTRIC STATION UNITS 1 & 2
DOCKET NOS. 50-445 & 50-446**

**ENVIRONMENTAL PROTECTION PLAN
(NON RADIOLOGICAL)**

Amendment No. ~~68-00-104~~

ATTACHMENT 10

Annotated Changed Pages to CPSES Unit 2 License

NPF-89

TXU GENERATION COMPANY LP

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 Generation Company LP~~ (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 Generation Company LP~~ 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. ~~68, 89, 90~~

- 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 Generation Company-LP~~ 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 Generation Company LP~~, 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 Generation Company LP~~, 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 Generation Company LP~~, 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 Generation Company LP~~, 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 Generation Company LP~~ 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 as revised through Amendment No. 429, and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. ~~TXU Generation Company LP~~ shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) Antitrust Conditions

DELETED

(4) License Transfer

The ~~TXU Generation Company LP~~ Decommissioning Master Trust Agreement for the facility at the time the license transfers are effected and thereafter, is subject to the following:

- (a) DELETED
- (b) DELETED
- (c) The appropriate section of the decommissioning trust agreement must state that investments made in trust by the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to investment guidelines established by the PUCT (e.g., 16 Texas Administration Code 25.301);
- (d) DELETED
- (e) DELETED

(5) License Transfer

~~TXU Generation Company LP~~ shall provide decommissioning funding assurance, to be held in a decommissioning trust for the facility upon the direct transfer of the facility license to ~~TXU Generation Company LP~~, in an amount equal to or greater than the balance in the facility decommissioning trusts immediately prior to the transfer. In addition, ~~TXU Generation Company LP~~ shall ensure that all contractual arrangements referred to in the application for approval of the transfer of the facility license to ~~TXU Generation Company LP~~, to obtain necessary

decommissioning funds for the facility through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(6) License Transfer

DELETED

(7) License Transfer

~~TXU Generation Company LP~~ and its subsidiaries agree to provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from ~~TXU Generation Company LP~~ or its subsidiaries to its proposed parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on ~~TXU Generation Company LP's~~ book of accounts.

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 Part 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.

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. DELETED

F. In order to ensure that ~~TXU Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
- (3) ~~TXU Generation Company LP~~ 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 Generation Company LP~~.

G. ~~TXU Generation Company LP~~ 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 Generation Company LP~~ 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 Generation Company LP~~ shall fully implement and maintain in effect all provisions of the physical security, 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 combined set of plans, which contains safeguards information protected under 10 CFR 73.21, is entitled: "Comanche Peak Steam Electric Station Physical Security Plan, Security Training and Qualification Plan, Safeguards Contingency Plan" and was submitted on October 11, 2004, and supplemented on October 13, 2004.
- 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

Amendment No. ~~68-82-89-00~~
~~Revised by letter dated October 28, 2004~~

ATTACHMENT 11

CPSES Unit 1 License with Proposed Changed Pages Incorporated

NPF-87

LUMINANT GENERATION COMPANY LLC

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 Luminant Generation Company LLC (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 1, 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 1, except as exempted from compliance in Section 2.D below;**

Amendment No. ~~68, 89, 90,~~

- E. **Luminant Generation Company LLC 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 1;**
 - 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**
 - 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," Luminant Generation Company LLC 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) Luminant Generation Company LLC, 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) Luminant Generation Company LLC, 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) Luminant Generation Company LLC, 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) Luminant Generation Company LLC, 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

Luminant Generation Company LLC 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 as revised through Amendment No. , and the Environmental Protection Plan contained in Appendix B, are incorporated into this license. Luminant Generation Company LLC shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) **Antitrust Conditions**

DELETED

(4) **License Transfer**

The Luminant Generation Company LLC Decommissioning Master Trust Agreement for the facility at the time the license transfers are effected and thereafter, is subject to the following:

(a) DELETED

(b) DELETED

(c) The appropriate section of the decommissioning trust agreement must state that investments made in trust by the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to investment guidelines established by the PUCT (e.g., 16 Texas Administration Code 25.301);

(d) DELETED

(e) DELETED

(5) License Transfer

Luminant Generation Company LLC shall provide decommissioning funding assurance, to be held in a decommissioning trust for the facility upon the direct transfer of the facility license to Luminant Generation Company LLC, in an amount equal to or greater than the balance in the facility decommissioning trusts immediately prior to the transfer. In addition, Luminant Generation Company LLC shall ensure that all contractual arrangements referred to in the application for approval of the transfer of the facility license to Luminant Generation Company LLC, to obtain necessary decommissioning funds for the facility through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(6) License Transfer

DELETED

(7) License Transfer

Luminant Generation Company LLC and its subsidiaries agree to provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Luminant Generation Company LLC or its subsidiaries to its proposed parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on Luminant Generation Company LLC's book of accounts.

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. DELETED

F. In order to ensure that Luminant Generation Company LLC 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, Luminant Generation Company LLC 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, Luminant Generation Company LLC 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), Luminant Generation Company LLC 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 Luminant Generation Company LLC 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, Luminant Generation Company LLC must institute immediately effective condemnation proceedings to obtain the mineral rights in this area.
 - (3) Luminant Generation Company LLC 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 Luminant Generation Company LLC.
- G. Luminant Generation Company LLC 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:
 - Luminant Generation Company LLC 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. Luminant Generation Company LLC shall fully implement and maintain in effect all provisions of the physical security, 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 combined set of plans, which contains safeguards information protected under 10 CFR 73.21, is entitled: "Comanche Peak Steam Electric Station Physical Security Plan, Security Training and Qualification Plan, Safeguards Contingency Plan" and was submitted on October 11, 2004, and supplemented on October 13, 2004.
- I. The licensees 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

original signed by:

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 NOS. NPF-87 & NPF-89**

**LUMINANT GENERATION COMPANY LLC
COMANCHE PEAK STEAM ELECTRIC STATION UNITS 1 & 2
DOCKET NOS. 50-445 & 50-446**

**ENVIRONMENTAL PROTECTION PLAN
(NON RADIOLOGICAL)**

Amendment No. ~~68, 90, 104,~~

COMANCHE PEAK STEAM ELECTRIC STATION
UNITS 1 & 2

ENVIRONMENTAL PROTECTION PLAN
(NON RADIOLOGICAL.)

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1.0 Objectives of the Environmental Protection Plan.....	1-1
2.0 Environmental Protection Issues.....	2-1
2.1 Aquatic Issues.....	2-1
2.2 Terrestrial Issues.....	2-1
3.0 Consistency Requirements.....	3-1
3.1 Plant Design and Operation.....	3-1
3.2 Reporting Related to the TPDES Permit	3-1
3.3 Changes Required for Compliance with Other Environmental Regulations.....	3-2
4.0 Environmental Conditions.....	4-1
4.1 Unusual or Important Environmental Events.....	4-1
4.2 Environmental Monitoring.....	4-1
5.0 Administrative Procedures.....	5-1
5.1 Review and Audit.....	5-1
5.2 Records Retention.....	5-1
5.3 Changes in Environmental Protection Plan.....	5-1
5.4 Plant Reporting Requirements.....	5-1

1.0 Objectives of the Environmental Protection Plan

The purpose of the Environmental Protection Plan (EPP) is to provide for protection of nonradiological environmental values during operation of the nuclear facility. The principal objectives of the EPP are as follows:

- (1) Verify that the facility is operated in an environmentally acceptable manner, as established by the Final Environmental Statement - Operating License Stage (FES-OL) and other NRC environmental impact assessments.**
- (2) Coordinate NRC requirements and maintain consistency with other Federal, State, and local requirements for environmental protection.**
- (3) Keep NRC informed of the environmental effects of facility construction and operation and of actions taken to control those effects.**

Environmental concerns identified in the FES-OL which relate to water quality matters are regulated by way of the licensee's TPDES permit.

2.0 Environmental Protection Issues

In the FES-OL, dated September 1981, the staff considered the environmental impacts associated with the operation of the two-unit Comanche Peak Steam Electric Station (CPSES). Certain environmental issues were identified which required study or license conditions to resolve environmental concerns and to assure adequate protection of the environment.

2.1 Aquatic Issues

The aquatic issues identified by the State in the FES-OL were as follows:

- (1) Effects of the intake structure on aquatic biota during operation (FES-OL Section 5.5.2.3).**
- (2) Effects of the circulating water chlorination system on aquatic biota during operation (FES-OL Sections 4.2.4.1, 5.3.4.1, and 5.11.3.1).**

The second issue above, "Effects of the circulating water chlorination system on aquatic biota during operation (FES-OL Sections 4.2.4.1, 5.3.4.1, and 5.11.3.1)," no longer applies because the TPDES permit no longer requires that such a study be performed.

Aquatic matters are addressed by the effluent limitations and monitoring requirements contained in the effective TPDES permit issued by the Texas Commission on Environmental Quality. The NRC will rely on this agency for regulation of matters involving water quality and aquatic biota.

2.2 Terrestrial Issues

The terrestrial issue identified by the staff in the FES-OL was as follows:

- (1) Potential impacts resulting from the use of groundwater by the station during operation (FES-OL Section 5.3.1.2).**

NRC requirements with regard to the terrestrial issue are specified in Subsection 4.2 of this EPP.

3.0 Consistency Requirements

3.1 Plant Design and Operation

The licensee may make changes in station design or operation or perform tests or experiments affecting the environment provided such activities do not involve an unreviewed environmental question and do not involve a change in the EPP*. Changes in station design or operation or performance of tests or experiments which do not affect the environment are not subject to the requirements of this EPP. Activities governed by Subsection 3.3 are not subject to the requirements of this Section.

Before engaging in additional construction or operational activities which may significantly affect the environment, the licensee shall prepare and record an environmental evaluation of such activity. Activities are excluded from this requirement if all measurable nonradiological environmental effects are confined to the onsite areas previously disturbed during site preparation and plant construction. When the evaluation indicates that such activity involves an unreviewed environmental question, the licensee shall provide a written evaluation of such activity and obtain prior NRC approval. When such activity involves a change in the EPP, such activity and change to the EPP may be implemented only in accordance with an appropriate license amendment as set forth in Subsection 5.3 of this EPP.

A proposed change, test, or experiment shall be deemed to involve an unreviewed environmental question if it concerns: (1) a matter which may result in a significant increase in any adverse environmental impact previously evaluated in the FES-OL, in environmental impact appraisals, or in any decisions of the Atomic Safety and Licensing Board; or (2) a significant change in effluents or power level; or (3) a matter, not previously reviewed and evaluated in the documents specified in (1) of this Subsection, which may have a significant adverse environmental impact.

The licensee shall maintain records of changes in facility design or operation and of tests and experiments carried out pursuant to this Subsection. These records shall include written evaluations which provide bases for the determination that the change, test, or experiment does not involve an unreviewed environmental question or constitute a decrease in the effectiveness of this EPP to meet the objectives specified in Section 1.0. The licensee shall include as part of the Annual Environmental Operating Report (per Subsection 5.4.1) brief descriptions, analyses, interpretations, and evaluations of such changes, tests, and experiments.

3.2 Reporting Related to the TPDES Permit

Changes to, or renewals of, the TPDES permit shall be reported to the NRC within 30 days following the date the change or renewal is approved. If a permit, in part or in its entirety, is appealed and stayed, the NRC shall be notified within 30 days following the date the stay is granted.

* This provision does not relieve the licensee of the requirements of 10 CFR 50.59.

The licensee shall notify the NRC of changes to the effective TPDES permit that are proposed by the licensee by providing NRC with a copy of the proposed change at the same time it is submitted to the permitting agency. The licensee shall provide the NRC with a copy of the application for renewal of the TPDES permit at the same time the application is submitted to the permitting agency.

3.3 Changes Required for Compliance with Other Environmental Regulations

Changes in plant design or operation and performance of tests or experiments which are required to achieve compliance with other Federal, State, and local environmental regulations are not subject to the requirements of Subsection 3.1.

4.0 Environmental Conditions

4.1 Unusual or Important Environmental Events

Any occurrence of an unusual or important event that indicates or could result in significant environmental impact causally related to plant operation shall be recorded and reported to the NRC within 24 hours, followed by a written report per Subsection 5.4.2. The following are examples of such events: excessive bird impaction events, onsite plant or animal disease outbreaks, mortality or unusual occurrence of any species protected by the Endangered Species Act of 1973, fish kills, increase in nuisance organisms or conditions, and unanticipated or emergency discharge of waste water or chemical substances.

No routine monitoring programs are required to implement this condition.

4.2 Environmental Monitoring

4.2.1 Groundwater Levels and Station Water Use Monitoring

Groundwater levels in the onsite observation wells identified as OB-3 and OB-4 in the FES-OL (Figure 4-3) shall be monitored and recorded monthly when the groundwater pumpage rate by CPSES is less than or equal to 30 gallons per minute (gpm) and weekly when the CPSES average monthly rate exceeds 30 gpm for the previous month. Water levels shall be read and recorded on approximately the same day of the month when monitoring monthly and on the same day of the week when monitoring weekly (an aid in interpreting the results by minimizing the influence of cyclic water use patterns of the aquifer by others on the observed water levels).

A monthly record of the total number of gallons pumped from each of the onsite production wells shall be maintained, including an average monthly pumpage rate in gpm.

A monthly record showing the rate and total amount of surface water processed by the onsite water treatment facility shall be maintained by the licensee on a monthly basis. This record shall include the process rate in gallons per minute and the total amount in gallons.

The licensee shall include the results of this monitoring program as part of the Annual Operating Report (see Subsection 5.4.1).

4.2.2 Water Treatment Facility Outages Impact Assessment and Reporting

The following outage of the onsite water treatment facility shall be reported to the NRC if groundwater is used to supplement the supply of treated surface water during the outage:

- (1) Routine or unplanned outages that exceed 30 consecutive days.
- (2) Any outage of at least 24 hours duration, beginning with the third such outage in a calendar year, if these outages are accompanied by an increase in the monthly average groundwater pumpage to a rate exceeding 30 gpm. When it is determined that either

routine or unplanned outages will exceed 30 consecutive days and when the groundwater pumpage rate will be greater than 30 gpm when averaged over the outage period, the licensee will prepare and submit a report to the NRC within 15 days after a determination of the extended outage is made. This report shall include (1) a discussion of the reason for the extended outage, (2) the expected duration of the outage, (3) an estimate of the date or the time required to return the onsite water treatment facility to operation, (4) a determination of the potential for lowering the groundwater levels in offsite wells, (5) an assessment of the impact of the projected groundwater level decline, and (6) a proposed course of action to mitigate any adverse effects.

5.0 Administrative Procedures

5.1 Review and Audit

The licensee shall provide for review and audit of compliance with the EPP. The audits shall be conducted independently of the individual or groups responsible for performing the specific activity. A description of the organization structure utilized to achieve the independent review and audit function and the results of audit activities shall be maintained and made available for inspection.

5.2 Records Retention

Records and logs relative to the environmental aspects of station operation shall be made and retained in a manner convenient for review and inspection. These records and logs shall be made available to NRC on request.

Records of modifications to station structures, systems, and components determined to potentially affect the continued protection of the environment shall be retained for the life of the station. All other records, data and logs relating to this EPP shall be retained for 5 years or, where applicable, in accordance with the requirements of other agencies.

5.3 Changes in Environmental Protection Plan

Requests for changes in the EPP shall include an assessment of the environmental impact of the proposed change and a supporting justification. Implementation of such changes in the EPP shall not commence prior to NRC approval of the proposed changes in the form of a license amendment incorporating the appropriate revision to the EPP.

5.4 Plant Reporting Requirements

5.4.1 Routine Reports

An Annual Environmental Operating Report describing implementation of this EPP for the previous year shall be submitted to the NRC prior to May 1 of each year. The initial report shall be submitted prior to May 1 of the year following issuance of the operating license. The period of the first report shall begin with the date of issuance of the operating license.

The report shall include summaries and analyses of the results of the environmental protection activities required by Subsection 4.2 of this EPP for the report period, including a comparison with related preoperational studies, operational controls (as appropriate), and previous nonradiological environmental monitoring reports, and an assessment of the observed impacts of plant operation on the environment. If harmful effects or evidence of trends toward irreversible damage to the environment are observed, the licensee shall provide a detailed analysis of the data and a proposed course of mitigating action.

The Annual Environmental Operating Report shall also include:

- (1) A list of EPP noncompliances and the corrective actions taken to remedy them.
- (2) A list of all changes in station design or operation, tests, and experiments made in accordance with Subsection 3.1 which involved a potentially significant unreviewed environmental question.
- (3) A list of nonroutine reports submitted in accordance with Subsection 5.4.2.
- (4) A summary list of TPDES permit-related reports relative to matters identified in Subsection 2.1 which were sent to the Texas Commission on Environmental Quality during the report period.

In the event that some results are not available by the report due date, the report shall be submitted noting and explaining the missing results. The missing results shall be submitted as soon as possible in a supplementary report.

5.4.2 Nonroutine Reports

A written report shall be submitted to the NRC within 30 days of occurrence of a nonroutine event. The report shall (a) describe, analyze, and evaluate the event, including extent and magnitude of the impact and plant operating characteristics; (b) describe the probable cause of the event; (c) indicate the action taken to correct the reported event; (d) indicate the corrective action taken to preclude repetition of the event and to prevent similar occurrences involving similar components or systems; and (e) indicate the agencies notified and their preliminary responses.

Events reportable under this subsection which also require reports to other Federal, State or local agencies shall be reported in accordance with those reporting requirements in lieu of the requirements of this subsection. The NRC shall be provided with a copy of such a report at the same time it is submitted to the other agency.

ATTACHMENT 12

CPSES Unit 2 License with Proposed Changed Pages Incorporated

NPF-89

LUMINANT GENERATION COMPANY LLC

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 Luminant Generation Company LLC (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. Luminant Generation Company LLC 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. ~~68, 89, 90,~~

- 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," Luminant Generation Company LLC 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) Luminant Generation Company LLC, 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) Luminant Generation Company LLC, 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) Luminant Generation Company LLC, 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) Luminant Generation Company LLC, 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

Luminant Generation Company LLC 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 as revised through Amendment No. , and the Environmental Protection Plan contained in Appendix B, are hereby incorporated into this license. Luminant Generation Company LLC shall operate the facility in accordance with the Technical Specifications and the Environmental Protection Plan.

(3) Antitrust Conditions

DELETED

(4) License Transfer

The Luminant Generation Company LLC Decommissioning Master Trust Agreement for the facility at the time the license transfers are effected and thereafter, is subject to the following:

- (a) DELETED
- (b) DELETED
- (c) The appropriate section of the decommissioning trust agreement must state that investments made in trust by the trustee, investment advisor, or anyone else directing the investments made in the trusts shall adhere to investment guidelines established by the PUCT (e.g., 16 Texas Administration Code 25.301);
- (d) DELETED
- (e) DELETED

(5) License Transfer

Luminant Generation Company LLC shall provide decommissioning funding assurance, to be held in a decommissioning trust for the facility upon the direct transfer of the facility license to Luminant Generation Company LLC, in an amount equal to or greater than the balance in the facility decommissioning trusts immediately prior to the transfer. In addition, Luminant Generation Company LLC shall ensure that all contractual arrangements referred to in the application for approval of the transfer of the facility license to Luminant Generation Company LLC, to obtain necessary

decommissioning funds for the facility through a non-bypassable charge are executed and will be maintained until the decommissioning trusts are fully funded, or shall ensure that other mechanisms that provide equivalent assurance of decommissioning funding in accordance with the Commission's regulations are maintained.

(6) License Transfer

DELETED

(7) License Transfer

Luminant Generation Company LLC and its subsidiaries agree to provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Luminant Generation Company LLC or its subsidiaries to its proposed parent, or to any other affiliated company, facilities for the production of electric energy having a depreciated book value exceeding ten percent (10%) of such licensee's consolidated net utility plant, as recorded on Luminant Generation Company LLC's book of accounts.

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 Part 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.

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. DELETED

F. In order to ensure that Luminant Generation Company LLC 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, Luminant Generation Company LLC 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, Luminant Generation Company LLC 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), Luminant Generation Company LLC 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 Luminant Generation Company LLC 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, Luminant Generation Company LLC must immediately institute immediately effective condemnation proceedings to obtain the mineral rights in this area.

(3) Luminant Generation Company LLC 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 Luminant Generation Company LLC.

G. Luminant Generation Company LLC 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:

Luminant Generation Company LLC 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. Luminant Generation Company LLC shall fully implement and maintain in effect all provisions of the physical security, 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 combined set of plans, which contains safeguards information protected under 10 CFR 73.21, is entitled: "Comanche Peak Steam Electric Station Physical Security Plan, Security Training and Qualification Plan, Safeguards Contingency Plan" and was submitted on October 11, 2004, and supplemented on October 13, 2004.
- 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 NOS. NFP 87 & NPF-89**

(See Appendix B in the Unit 1 OL)