

REQUEST FOR ADDITIONAL INFORMATION

RELATED TO PART 1, "GENERAL AND FINANCIAL INFORMATION", REVISION 1

OF THE COMBINED LICENSE APPLICATION FOR THE

COMANCHE PEAK NUCLEAR POWER PLANT, UNITS 3 AND 4

The Request for Additional Information pertains to Part 1, "General and Financial Information," Revision 1 of the Combined License Application (COLA) for the Comanche Peak Nuclear Power Plant (CPNPP), Units 3 and 4

1. Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50.33(f)(1), "the applicant shall submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs and related fuel cycle costs...and shall indicate the source(s) of funds to cover these costs." [

] submittal identifies sources of construction funds for CPNPP Units 3 and 4, as required by 10 CFR 50.33(f)(1) and referenced in Appendix C to Part 50. Based on statements within the COLA, provide the U.S. Nuclear Regulatory Commission (NRC) staff the following information.

- a. In COLA, Revision 1, Luminant, which stated it is seeking licenses to construct and operate CPNPP, Units 3 and 4, will obtain funds for construction from Comanche Peak Nuclear Project Company LLC (CPNPC). However, in its letter dated August 31, 2009, Luminant stated it would only operate CPNPP, Units 3 and 4. Clarify this discrepancy.
- b. In Section 1.3, page 16, of Part 1, Rev. 1, CPNPC states that it "has existing resources to fund ongoing activity, and it will obtain funds for construction by obtaining capital from its parent companies and from existing and planned financing activities." Clarify the specific parent companies as referenced in this section of Part 1, Rev. 1. In responding to this RAI, please also address the following:
 - i. The NRC staff notes that on page 17 of the COLA, Revision 1, Part 1, submittal, the applicant stated the "[t]he projected income statements for the first five years of operation show that anticipated revenues from sales of energy from the planned capacity of CPNPP 3 & 4 on an ongoing basis." However the NRC staff also notes that in Section 1.3 of this same submittal, Luminant does not claim it possesses the funds needed for construction and does not state it has reasonable assurance of obtaining the funds needed for construction. Please explain

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whether Luminant has the funds needed for construction and/or whether Luminant has reasonable assurance of obtaining the funds needed for construction, and the sources of those funds.

c. State whether Luminant or CPNPC intends to contract for construction services of CPNPP, Units 3 and 4.

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e. Provide any additional internal sources of construction funds (e.g., undistributed earnings, and depreciation accruals) if applicable, as referenced in Appendix C to Part 50.

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g. []

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3. As referenced in Appendix C to Part 50, please provide a copy of Luminant's latest published annual financial report, together with any current interim financial statements that are pertinent. If an annual financial report is not published, the balance sheet and operating statement covering the latest complete accounting year together with all pertinent notes thereto and certification by a public accountant should be furnished.

4. The NRC's regulation, 10 CFR 50.33(f)(4)(i), requires that if the applicant is a newly-formed entity, the application must include information showing "[t]he legal and financial relationships it has or proposes to have with its stockholders or owners." The Simplified Ownership Diagram and Simplified Corporate Structure Diagram shown on Figures 1.2-1 and 1.2-2, Part 1, COLA, Revision 1, show legal ownership and stockholding relationships, while Page 16 of the August 31, 2009 RAI response submittal refers to unspecified parent companies as sources of construction capital, as mentioned in question 4 above, and also relies upon an Equity Commitment Letter from Luminant and Nuclear Energy Future Holdings II as a source of construction capital. In order for the NRC staff to complete its review, please describe CPNPC's other legal or financial relationships with each of the other entities in the CPNPP, Units 3 and 4 ownership chain, as applicable.
5. Section 103d. of the Atomic Energy Act prohibits the NRC from issuing a license to:

"an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation or a foreign government."

Section 50.38 of 10 CFR is the regulatory provision that implements this statutory prohibition. In order for the NRC staff to complete its review of the COLA, please provide the following additional information:

- a. The general information as described in 10 CFR 50.33(a)-(d) for Texas Energy Future Capital Holdings LLC (Texas Energy GP) and Texas Energy Future Holdings Limited Partnership (Texas Energy LP). The NRC staff notes that the August 31, 2009 RAI response, states that four of the five officers of Texas Energy GP are United States (U.S.) Citizens, but did not provide any additional 10 CFR 50.33(a)-(d) information for Texas Energy GP and Texas Energy LP.
- b. Define the "passive co-investors" referenced in COLA, Revision 1, Part 1, Section 1.5. Please identify the various foreign entities and other foreign persons who have invested in Texas Energy GP indirectly by participating as passive co-investors in the KKR Funds, TPG Funds, Goldman Funds, and Lehman Entities as mentioned in the COLA. Also, please provide the percentage of passive foreign investment by the passive co-investors and various foreign entities and other foreign persons in Texas Energy GP indirectly by participating as passive co-investors in the KKR Funds, TPG Funds, Goldman Funds, and Lehman Entities.
- c. Information in the form of a negation action plan that explains how CPNPC intends to ensure that CPNPC will retain control over CPNPP, Units 3 and 4, with respect to all matters relating to safety, security, and reliability of CPNPP, Units 3 and 4. Please also describe how will CPNPC, segregate decisions relating to safety, security, etc. from foreign directors, investors, etc.

- d. A copy of the Amended and Restated Limited Liability Company Agreement (“LLC Agreement”) of CPNPC to further explain the corporate governance of CPNPC and how CPNPC will be operated and the rights and obligations of the members of the Company.
 - e. Does CPNPC intend to establish a Nuclear Advisory Group (similar to the Constellation License Transfer)? If so, please provide details concerning this group.
 - f. Please state whether the foreign owners will have any special veto or approval rights, quorums, with respect to CPNPP, Units 3 and 4.
6. When can the NRC expect to receive a draft Operating Service Agreement and Power Purchase Agreement for review? The Operating Service Agreement should describe, among other things, how the Board of Directors are appointed and all governance and control issues. The Operating Service Agreement must address quorum provisions to ensure that matters relating to safety, security, and reliability of CPNPP, Units 3 and 4, will not be decided by foreign directors. Also, identify which operational issues must be determined by a U.S. Director casting vote and subject to ultimate control by a U.S. Citizen appointed by CPNPC and/or the parent companies.