



Luminant

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CP-201000794
Log # TXNB-10043

Ref. # 10 CFR 52

June 10, 2010

U. S. Nuclear Regulatory Commission
Document Control Desk
Washington, DC 20555
ATTN: David B. Matthews, Director
Division of New Reactor Licensing

SUBJECT: COMANCHE PEAK NUCLEAR POWER PLANT, UNITS 3 AND 4
DOCKET NUMBERS 52-034 AND 52-035
RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION FOR COLA PART 1

Dear Sir:

Luminant Generation Company LLC (Luminant) submits herein the response to a request for additional information regarding Comanche Peak Nuclear Power Plant Units 3 and 4 Combined License Application Part 1, Administrative and Financial Information, issued by the NRC on March 9, 2010.

Attachment 2 to this letter contains proprietary information and the NRC is requested to withhold the attachment from public disclosure under 10 CFR 2.390(a)(4). The required affidavit is included with this letter, which is unrestricted for public disclosure upon separation from Attachment 2.

Should you have any questions regarding this submittal, please contact Don Woodlan (254-897-6887, Donald.Woodlan@luminant.com) or me.

The commitments in this letter are captured on page 2.

I state under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2010.

Sincerely,

Luminant Generation Company LLC

Rafael Flores

- Attachments: 1. Response to Request for Additional Information for COLA Part 1 (Public Version)
2. Response to Request for Additional Information for COLA Part 1 (Proprietary Version – 20 pages and a CD)

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LRO

Regulatory Commitments in this Letter

This communication contains the following new or revised commitment which will be completed or incorporated into the CPNPP licensing basis as noted. The Commitment Number is used by Luminant for internal tracking.

<u>Number</u>	<u>Commitment</u>	<u>Due Date/Event</u>
7501	[Question 2a:] The tables presenting this financial data will be updated in a future Update Tracking Report.	6/30/2010
7511	[Question 5a:] These changes regarding the citizenship of the Representative Group members will be incorporated in and a markup will be provided with the Update Tracking Report for the update to the tables in Part 1.	6/30/2010

cc: w/Attachment 2: Stephen Monarque
Bill Moore
Brock Degeyter
Steve Frantz

Robert Reible
John Matthews
Tim Matthews

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Luminant Records Management (.pdf files only)

U. S. Nuclear Regulatory Commission
CP-201000794
TXNB-10043
6/10/2010

Attachment 1

Response to Request for Additional Information for COLA Part 1 (Public Version)

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

Comanche Peak, Units 3 and 4

Luminant Generation Company LLC

Docket Nos. 52-034 and 52-035

QUESTIONS for COLA Part 1, Financial and Administrative Information

DATE OF RAI ISSUE: 3/9/2010

QUESTION : 1

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 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.

d. []

e. []

f. []

g. []

ANSWER:

a. Luminant will be the licensee authorized to construct and operate the new units. Luminant is an experienced nuclear plant operator; it plans to be responsible for construction and will take advantage of its quality assurance program, construction experience and construction organization. The COLA, Part 1, Revision 0 and the response to the RAIs TXNB-09038, dated August 31, 2009, which included a draft proposed Rev 1 (08/18/09) to Part 1, stated the initial position that Luminant would only operate the new units.

However, in a meeting held on October 06, 2009, senior project team members and other representatives from Comanche Peak Nuclear Power Company LLC (CPNPC) determined that Luminant would also control and oversee the construction of the new units. As a result, COLA, Revision 1 submitted to the NRC on November 23, 2009, included these additional changes to Part 1. Part 1 now states that Luminant would be the licensee for construction as well as for operation of the new units. These changes from the August submittal were noted in a change matrix and change bars to the Part 1 submitted with the COLA update on November 23, 2009.

b. The parent companies of (CPNPC) referenced in Section 1.3, page 16, of Part 1, Rev. 1, are CPNPC's equity owners and their parent companies. Specifically they are, Nuclear Energy Future Holdings II LLC (NEFH II), which is a wholly-owned indirect subsidiary of Texas Competitive Electric Holdings (TCEH) and ultimately, Energy Future Holdings (EFH), and MHI Nuclear North America, Inc. (MHI-NNA), a wholly-owned direct subsidiary of Mitsubishi Heavy

Industries, Ltd. (MHI). CPNPC expects to receive equity contributions from its parent companies in proportion to their ownership percentage. [

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CPNPC expects that it will obtain the funds necessary for construction as described in Table 1.3-1c. There is reasonable assurance that CPNPC will obtain the funds needed for construction, provided that CPNPC is able to obtain the loans and/or loan guarantees as set forth in Table 1.3-1c.

c. [

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d. [

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e. [

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f. [

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g. [

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Attachments

1. Current Financing Structure
2. Proposed Financing Instruments

Impact on R-COLA

None.

Impact on S-COLA

None.

Impact on DCD

None.

Current Financing Structure

Attachment 1 - RAI Response 1.e

WITHHOLD FROM PUBLIC DISCLOSURE UNDER 10 CFR 2.390

Proposed Financing Instruments

Attachment 1 - RAI Response 1.e

WITHHOLD FROM PUBLIC DISCLOSURE UNDER 10 CFR 2.390

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

Comanche Peak, Units 3 and 4
Luminant Generation Company LLC
Docket Nos. 52-034 and 52-035

QUESTIONS for COLA Part 1, Financial and Administrative Information

DATE OF RAI ISSUE: 3/9/2010

QUESTION : 2

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.

2. [

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a. [

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b. [

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c. [

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d. [

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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.

f. [

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g. [

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h. [

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ANSWER:

a. [

] The tables presenting this financial data will be updated in a future Update Tracking Report []

b. [

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c. [

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d. [

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e. [

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[

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f. [

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g. []

h. []

Attachments (on CD)

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Impact on R-COLA

None.

Impact on S-COLA

None.

Impact on DCD

None.

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

Comanche Peak, Units 3 and 4

Luminant Generation Company LLC

Docket Nos. 52-034 and 52-035

QUESTIONS for COLA Part 1, Financial and Administrative Information

DATE OF RAI ISSUE: 3/9/2010

QUESTION : 3

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.

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.

ANSWER:

Luminant is applying for a license to construct and operate CPNPP, Units 3 and 4 on behalf of CPNPC, the owner. For purposes of establishing its financial qualifications, Luminant is relying exclusively on the obligation of CPNPC to provide funds for construction and operation. As such, Luminant is relying upon NRC's review of the financial qualifications of CPNPC which will provide all of the funds that will be used for construction. Any funding from Luminant to CPNPC would not come from Luminant's existing financial resources, but would be provided by EFH through further investments by EFH's investors. References to publicly available filed financial statements for EFH, Energy Future Competitive Holdings Company (EFCH) and TCEH were provided in Attachment 2 of Part 1 of the COLA Application

Impact on R-COLA

None.

Impact on S-COLA

None.

Impact on DCD

None.

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

Comanche Peak, Units 3 and 4

Luminant Generation Company LLC

Docket Nos. 52-034 and 52-035

QUESTIONS for COLA Part 1, Financial and Administrative Information

DATE OF RAI ISSUE: 3/9/2010

QUESTION : 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.

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, "The 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 CPNPP's other legal or financial relationships with each of the other entities in the CPNPP, Units 3 and 4 ownership chain, as applicable.

ANSWER:

EFH is wholly-owned by Texas Energy LP, which is a limited partnership that is controlled by and acts by and through its general partner Texas Energy GP. Through its control of Texas Energy LP, Texas Energy GP has the ability to appoint the Board of Directors of EFH. Texas Energy GP is controlled exclusively by its managers and officers, which constitute a Representative Group that looks after the interests of all investors. The ownership and control of Texas Energy GP is dispersed among investment funds affiliated with Kohlberg Kravis Roberts & Co. L.P. ("KKR"), TPG Capital, L.P. ("TPG"), and GS Capital Partners an affiliate of Goldman Sachs & Co. ("Goldman"). Texas Energy LP and Texas Energy GP are owned but not controlled, directly and indirectly by numerous investment vehicles which include limited partnerships, limited liability companies and other legal entities. These entities have no voting or control rights and have ceded control of day-to-day operations to Texas Energy GP and the Representative Group.

This structure, materially unchanged, was reviewed and accepted by the NRC in 2007 when KKR, TPG and Goldman acquired the assets of TXU Corp and submitted a transfer of ownership for the Operating License for CPNPP Units 1 and 2 (ML072220130). A more detailed general corporate information regarding Texas Energy LP and Texas Energy GP is provided in response to RAI 5(a).

The Representative Group which controls Texas Energy GP exercises oversight of EFH, which is the ultimate corporate parent of NEFH II, an 88 percent owner of CPNPC. The Representative Group is able to appoint the Board of Directors of EFH. All of the individuals identified as managers and officers of Texas Energy GP, except Mr. Clive Bode, are also Directors of EFH. The ownership of Texas Energy LP is widely dispersed among many passive investors, none of whom is able to exercise control over EFH or its immediate parents, except through ownership of interests in Texas Energy GP. The ownership and control of Texas Energy GP is also dispersed among investment funds affiliated with KKR, TPG, and Goldman. KKR has the largest amount of ownership interests, but it cannot individually exercise "control" over the Representative Group or Texas Energy GP. Neither TPG, the next largest owner, nor Goldman can individually exercise "control" over the Representative Group or Texas Energy GP. As such, it is appropriate to conclude that Texas Energy GP is the ultimate parent holding company in "control" of Luminant, NEFH II and, through NEFH II's 88-percent interest, CPNPC, and it is managed and controlled by the Representative Group. These individuals are identified in further detail in response to Question 5(a)

Mitsubishi Heavy Industries Ltd.(MHI) holds a 12-percent interest in CPNPC, through it's wholly owned subsidiary MHI Nuclear North America Inc.(MNNA).

Attachment

Organizational Structure: EFH Control

Impact on R-COLA

None.

Impact on S-COLA

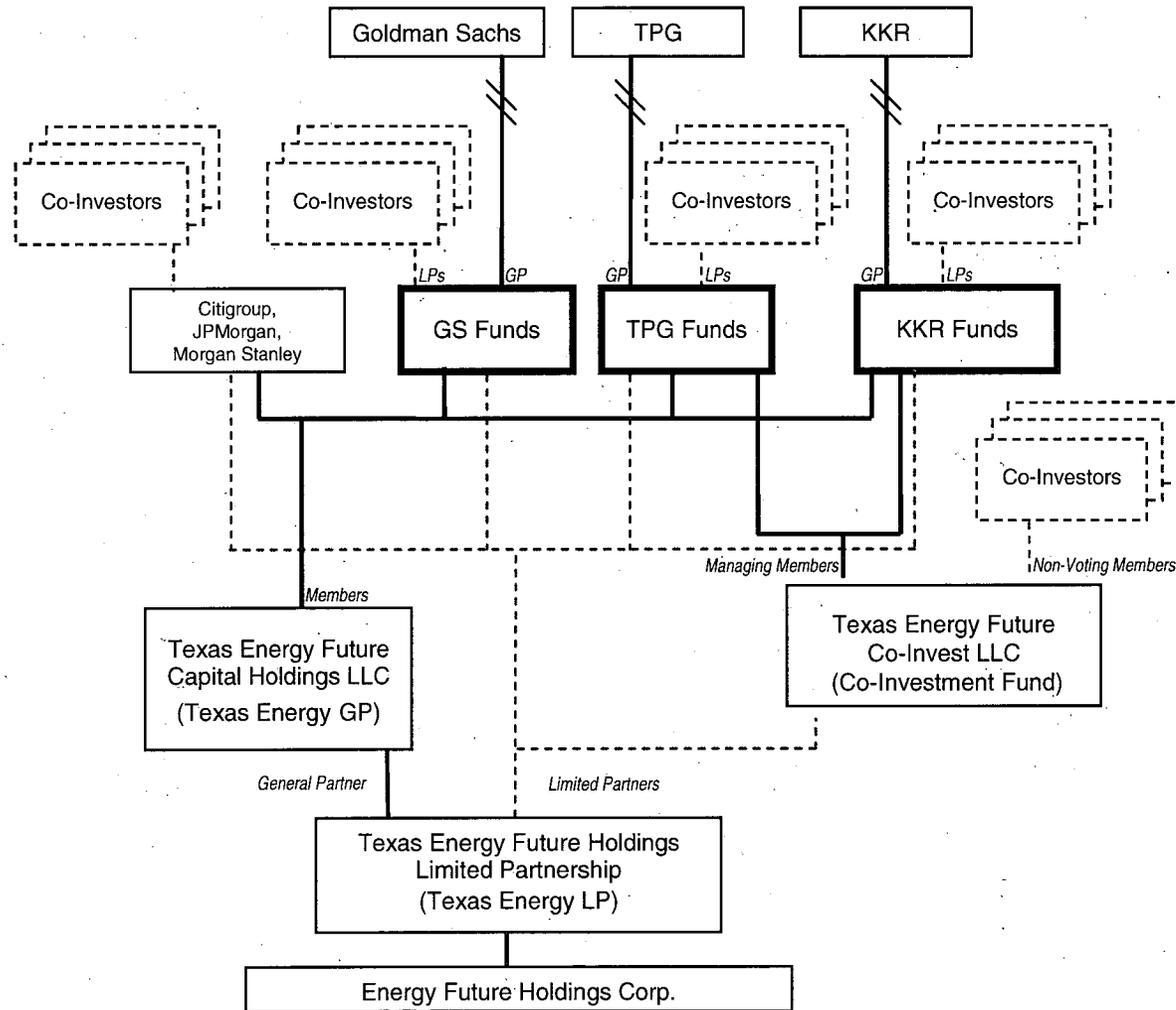
None.

Impact on DCD

None.

Organizational Structure: EFH Control

RAI Response 4



RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

Comanche Peak, Units 3 and 4

Luminant Generation Company LLC

Docket Nos. 52-034 and 52-035

QUESTIONS for COLA Part 1, Financial and Administrative Information

DATE OF RAI ISSUE: 3/9/2010

QUESTION : 5

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.

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.
-

ANSWER:

- a. Texas Energy LP is a partnership organized under the laws of the State of Delaware. It does not have officers or directors, but rather acts through its general partner, Texas Energy GP, which is a limited liability company organized under the laws of the State of Delaware. The addresses for both companies are as follows:

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

As discussed in response to Question 4 above, Texas Energy GP controls Texas Energy LP, including its rights to select directors of EFH, through the Representative Group management team (updated list below), all of whom are U.S. Citizens, as follows:

Michael MacDougall, President
Marc S. Lipshultz, President
Kenneth Pontarelli, President
Jonathan D. Smidt, Vice President & Treasurer
Clive Bode, Vice President & Secretary
Jeffrey Liaw, Vice President & Ass't Treasurer
Frederick M. Goltz, Vice President
Scott Lebovitz, Vice President
David Bonderman

Notably, all of the individuals who are members of the Representative Group also serve on the Board of Directors of EFH, except for Mr. Clive Bode. Mr. Jonathan D. Smidt, Vice President and Treasurer and a member of EFH's Board or Directors, who was listed in Part 1 Revision 1 as citizen of South Africa, is now a U.S. citizen. These changes regarding the citizenship of the Representative Group members will be incorporated in and a markup will be provided with the Update Tracking Report for the update to the tables in Part 1.

- b. (See also response to Question 4 for additional information). No foreign entity owns 5 percent or more of the ownership interests in Texas Energy LP. As would be the case with a publicly traded company, it may be possible, but it is not practical to identify each and every foreign investor that may own an interest in Texas Energy LP or Texas Energy GP

either directly or indirectly. Rather, NRC can rely upon the fact that ownership is widespread and diffused, Texas Energy GP is controlled by the U.S. citizens who are members of the Representative Group, and the fact that the owners of Texas Energy LP are limited partners that are passive investors who are not able to exercise control, except to the extent they do so through separate ownership of Texas Energy GP. No foreign investor has a sufficient ownership interest to raise questions as to having an ability to indirectly exercise influence that could present a "control" issue (*i.e.*, more than 5 percent). The Applicants are cognizant of RIS 2000-01, which effectively sets 5 percent ownership as an expectation for reporting by licensees who identify foreign ownership through the filing of Forms 13D or 13G with the Securities and Exchange Commission (SEC). Section 13(d) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78m(d), and 17 CFR 240.13d-1, require that a person or entity that owns or controls more than 5 percent of the securities of a company must file notice with the SEC using Forms 13D or 13G.

In addition, in Luminant's ownership structure during the operating license transfer for CPNPP Units 1 and 2, where the NRC staff acknowledged the potential (a) that foreign participation in some of the funds investing in EFH might exceed 40 percent; (b) that aggregate foreign ownership would not be more than 55 percent, and (c) that no foreign investor would own more than 9 percent. *See, e.g.*, Safety Evaluation at 11-12 (Sept. 10, 2007). The NRC staff noted that this foreign ownership would be "dispersed among a variety of foreign investors" and that such foreign ownership, in any event, would be mitigated by negation measures (U.S. citizen requirements for certain management personnel) that were confirmed in a license condition. Safety Evaluation at 12 (ML072220130). Currently, no foreign investor owns 5 percent or more, even though it was previously thought that a foreign investor might own as much as 9 percent.

- c. CPNPC has applied to be the licensed owner of CPNPP, Units 3 and 4, whereas Luminant is the applicant for a license to construct and operate the units. As noted above in response to Question 5(b), issues regarding indirect foreign ownership of Luminant have already been addressed and negation measures have been implemented.

CPNPC acknowledges that it is owned 12 percent by MHI, which is a foreign entity. This level of foreign ownership does not involve either control or domination of CPNPC.

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- d. See the responses to RAIs 5(b) & 5(c) above. A copy of the LLC Agreement is provided.
- e. No. Control negation measures are described in response to 5(c) above.
- f. Control of CPNPC is maintained by affiliates of Luminant. [

] Moreover, the FOCD negation measures described in response to RAI 5(c) above assure that U.S. control of licensed activity will be maintained in all cases.

Impact on R-COLA

None.

Impact on S-COLA

None.

Impact on DCD

None.

RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION

Comanche Peak, Units 3 and 4

Luminant Generation Company LLC

Docket Nos. 52-034 and 52-035

QUESTIONS for COLA Part 1, Financial and Administrative Information

DATE OF RAI ISSUE: 3/9/2010

QUESTION : 6

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.

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.
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ANSWER:

The current arrangements providing for Luminant's construction and operation of CPNPP are included in the Development Services Agreement dated January 30, 2009, a copy of which is being provided for review. Essential terms of the Construction Services Agreement will include:

- Governance of construction under Luminant's quality assurance plan
- Control by Luminant of all construction activities, including the ability to stop work
- Recovery by Luminant from CPNPC for all construction related expenses

A "form of" Construction Services Agreement is anticipated to be developed and available sometime after January 2011.

The essential terms of the Operating Agreement will include:

- Governance of operation under Luminant's quality assurance plan
- Control by Luminant of all aspects of plant operations, including the ability to stop work or shut down the facility.
- Recovery by Luminant from CPNPC for all operating and maintenance related expenses (including fixed O&M expenses associated with a prolonged outage of both units).

A "form of" Operating Services Agreement is anticipated to be developed and available sometime after January 2011.

Impact on R-COLA

None.

Impact on S-COLA

None.

Impact on DCD

None.