

## PMComanchePeakPEm Resource

---

**From:** Conly, John [John.Conly@luminant.com]  
**Sent:** Thursday, December 16, 2010 2:36 PM  
**To:** Aitken, Diane; Bell, Russ; Biggins, James; Bird, Bobby; Borsh, Gina; Buschbaum, Denny; Bywater, Russell; Caldwell, Jan; Carver, Ronald; Certrec; Ciocco, Jeff; Clouser, Tim; Collins, Elmo; Conly, John; Cosentino, Carolyn; Degeyter, Brock; Evans, Todd; Flores, Rafael; Frantz, Steve; Hamzehee, Hossein; Hoshi, Masaya; Ishida, Mutsumi; Johnson, Michael; Kawai, Katsunori; Kawanago, Shinji; Keithline, Kimberley; Kellenberger, Nick; Koenig, Allan; Kramer, John; Lucas, Mitch; Madden, Fred; Matthews, David; Matthews, Tim; McConaghy, Bill; Monarque, Stephen; Monts, Ashley; Moore, Bill; ComanchePeakCOL Resource; Onozuka, Masanori; Paulson, Keith; Plisco, Loren; Reible, Robert; Rund, Jon; Simmons, Jeff; Singal, Balwant; Sirirat, Nan; Sprengel, Ryan; Takacs, Michael; Tapia, Joe; Tindell, Brian; Turner, Bruce; Volkening, David; Vrahoretis, Susan; Williamson, Alicia; Willingham, Michael; Woodlan, Don  
**Subject:** Negation Action Plan Submittal  
**Attachments:** TXNB-10088 Negation Action Plan (public).pdf

Luminant has submitted the response to the RAI on COLA Part 1 dated October 14, 2010. Part of the response included submitting the Negation Action Plan to prevent foreign ownership, control, or domination. The public version of the letter does not include two proprietary documents: the accepted amendment to the CPNPC Legal Liability Agreement and the Construction and Operating Services Agreement dated August 27, 2010.

If there are any questions regarding the submittal, please contact me or contact Don Woodlan (254-897-6887, [Donald.Woodlan@luminant.com](mailto:Donald.Woodlan@luminant.com)).

Thanks,

*John Conly*

**Luminant**  
**COLA Project Manager**  
**(254) 897-5256**

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

**Hearing Identifier:** ComanchePeak\_COL\_Public  
**Email Number:** 1205

**Mail Envelope Properties** (D7A32D47A61872409CE74F57B83C8B011C97983858)

**Subject:** Negation Action Plan Submittal  
**Sent Date:** 12/16/2010 2:36:26 PM  
**Received Date:** 12/16/2010 2:35:40 PM  
**From:** Conly, John

**Created By:** John.Conly@luminant.com

**Recipients:**

"Aitken, Diane" <diane.aitken@dom.com>  
Tracking Status: None  
"Bell, Russ" <rjb@nei.org>  
Tracking Status: None  
"Biggins, James" <James.Biggin@nrc.gov>  
Tracking Status: None  
"Bird, Bobby" <Robert.Bird@luminant.com>  
Tracking Status: None  
"Borsh, Gina" <regina.borsh@dom.com>  
Tracking Status: None  
"Buschbaum, Denny" <Dennis.Buschbaum@luminant.com>  
Tracking Status: None  
"Bywater, Russell" <russell\_bywater@mnes-us.com>  
Tracking Status: None  
"Caldwell, Jan" <Janice.Caldwell@luminant.com>  
Tracking Status: None  
"Carver, Ronald" <Ronald.Carver@luminant.com>  
Tracking Status: None  
"Certrec" <cp34update@certrec.com>  
Tracking Status: None  
"Ciocco, Jeff" <Jeff.Ciocco@nrc.gov>  
Tracking Status: None  
"Clouser, Tim" <Timothy.Clouser@luminant.com>  
Tracking Status: None  
"Collins, Elmo" <Elmo.Collins@nrc.gov>  
Tracking Status: None  
"Conly, John" <John.Conly@luminant.com>  
Tracking Status: None  
"Cosentino, Carolyn" <Carolyn.Cosentino@luminant.com>  
Tracking Status: None  
"Degeyter, Brock" <Brock.Degeyter@energyfutureholdings.com>  
Tracking Status: None  
"Evans, Todd" <Eric.Evans@luminant.com>  
Tracking Status: None  
"Flores, Rafael" <Rafael.Flores@luminant.com>  
Tracking Status: None  
"Frantz, Steve" <sfrantz@morganlewis.com>  
Tracking Status: None  
"Hamzehee, Hossein" <Hossein.Hamzehee@nrc.gov>  
Tracking Status: None  
"Hoshi, Masaya" <masaya\_hoshi@mnes-us.com>

Tracking Status: None  
"Ishida, Mutsumi" <mutsumi\_ishida@mnes-us.com>  
Tracking Status: None  
"Johnson, Michael" <Michael.Johnson@nrc.gov>  
Tracking Status: None  
"Kawai, Katsunori" <katsunori\_kawai@mnes-us.com>  
Tracking Status: None  
"Kawanago, Shinji" <shinji\_kawanago@mnes-us.com>  
Tracking Status: None  
"Keithline, Kimberley" <kak@nei.org>  
Tracking Status: None  
"Kellenberger, Nick" <nicholas\_kellenberger@mnes-us.com>  
Tracking Status: None  
"Koenig, Allan" <Allan.Koenig@luminant.com>  
Tracking Status: None  
"Kramer, John" <John.Kramer@nrc.gov>  
Tracking Status: None  
"Lucas, Mitch" <Mitchell.Lucas@luminant.com>  
Tracking Status: None  
"Madden, Fred" <Fred.Madden@luminant.com>  
Tracking Status: None  
"Matthews, David" <David.Matthews@nrc.gov>  
Tracking Status: None  
"Matthews, Tim" <tmatthews@morganlewis.com>  
Tracking Status: None  
"McConaghy, Bill" <william\_mcconaghy@mnes-us.com>  
Tracking Status: None  
"Monarque, Stephen" <Stephen.Monarque@nrc.gov>  
Tracking Status: None  
"Monts, Ashley" <Ashley.Monts@luminant.com>  
Tracking Status: None  
"Moore, Bill" <Bill.Moore@luminant.com>  
Tracking Status: None  
"ComanchePeakCOL Resource" <ComanchePeakCOL.Resource@nrc.gov>  
Tracking Status: None  
"Onozuka, Masanori" <masanori\_onozuka@mnes-us.com>  
Tracking Status: None  
"Paulson, Keith" <ck\_paulson@mnes-us.com>  
Tracking Status: None  
"Plisco, Loren" <Loren.Plisco@nrc.gov>  
Tracking Status: None  
"Reible, Robert" <Robert.Reible@luminant.com>  
Tracking Status: None  
"Rund, Jon" <jrund@morganlewis.com>  
Tracking Status: None  
"Simmons, Jeff" <Jeffry.Simmons@luminant.com>  
Tracking Status: None  
"Singal, Balwant" <Balwant.Singal@nrc.gov>  
Tracking Status: None  
"Sirirat, Nan" <nan\_sirirat@mnes-us.com>  
Tracking Status: None  
"Sprengel, Ryan" <ryan\_sprengel@mnes-us.com>  
Tracking Status: None  
"Takacs, Michael" <Michael.Takacs@nrc.gov>  
Tracking Status: None  
"Tapia, Joe" <joseph\_tapia@mnes-us.com>

Tracking Status: None  
"Tindell, Brian" <Brian.Tindell@nrc.gov>  
Tracking Status: None  
"Turner, Bruce" <Bruce.Turner@luminant.com>  
Tracking Status: None  
"Volkening, David" <David.Volkening@luminant.com>  
Tracking Status: None  
"Vrahoretis, Susan" <Susan.Vrahoretis@nrc.gov>  
Tracking Status: None  
"Williamson, Alicia" <Alicia.Williamson@nrc.gov>  
Tracking Status: None  
"Willingham, Michael" <Michael.Willingham@nrc.gov>  
Tracking Status: None  
"Woodlan, Don" <Donald.Woodlan@luminant.com>  
Tracking Status: None

**Post Office:** MDCEXMB01.tceh.net

<b>Files</b>	<b>Size</b>	<b>Date &amp; Time</b>
MESSAGE	1251	12/16/2010 2:35:40 PM
TXNB-10088 Negation Action Plan (public).pdf		540448

**Options**  
**Priority:** Standard  
**Return Notification:** No  
**Reply Requested:** No  
**Sensitivity:** Normal  
**Expiration Date:**  
**Recipients Received:**



**Luminant**

**Rafael Flores**  
Senior Vice President &  
Chief Nuclear Officer  
rafael.flores@luminant.com

**Luminant Power**  
P O Box 1002  
6322 North FM 56  
Glen Rose, TX 76043

**T** 254.897.5590  
**F** 254.897.6652  
**C** 817.559.0403

CP-201001634  
Log # TXNB-10088

Ref. # 10 CFR 52

December 16, 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 RELATED TO COLA  
PART 1 DATED OCTOBER 14, 2010

Dear Sir:

Luminant Generation Company LLC (Luminant) submits herein the response to Request for Additional Information related to Part 1 of the Combined License Application for Comanche Peak Nuclear Power Plant Units 3 and 4. The RAI involves a negation action plan.

The Limited Liability Agreement and the Operating Services Agreement discussed in the response are considered to be proprietary. Luminant requests that the NRC withhold the documents from public disclosure in accordance with the attached affidavit. This letter is unclassified upon separation from the proprietary documents.

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

There are no commitments in this letter.

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

Executed on December 16, 2010.

Sincerely,

Luminant Generation Company LLC

Rafael Flores

Attachment: Response to Request for Additional Information Related to COLA Part 1 dated October 14, 2010 (last 26 pages are proprietary)

cc: w/all attachments

Stephen Monarque  
Robert Reible  
Tim Matthews

Steve Frantz  
Bill Moore

Brock Degeyter  
John Matthews

Electronic distribution w/o proprietary information:

Rafael.Flores@luminant.com  
mlucas3@luminant.com  
jeff.simmons@energyfutureholdings.com  
Bill.Moore@luminant.com  
Brock.Degeyter@energyfutureholdings.com  
rbird1@luminant.com  
Allan.Koenig@luminant.com  
Timothy.Clouser@luminant.com  
Ronald.Carver@luminant.com  
David.Volkening@luminant.com  
Bruce.Turner@luminant.com  
Eric.Evans@luminant.com  
Robert.Reible@luminant.com  
donald.woodlan@luminant.com  
John.Conly@luminant.com  
JCaldwell@luminant.com  
David.Beshear@txu.com  
Ashley.Monts@luminant.com  
Fred.Madden@luminant.com  
Dennis.Buschbaum@luminant.com  
Carolyn.Cosentino@luminant.com  
NuBuild Licensing files

shinji\_kawanago@mnes-us.com  
masanori\_onozuka@mnes-us.com  
ck\_paulson@mnes-us.com  
joseph\_tapia@mnes-us.com  
russell\_bywater@mnes-us.com  
william\_mcconaghy@mnes-us.com  
mutsumi\_ishida@mnes-us.com  
nan\_sirirat@mnes-us.com  
nicholas\_kellenberger@mnes-us.com  
ryan\_sprengel@mnes-us.com  
katsunori\_kawai@mnes-us.com  
masaya\_hoshi@mnes-us.com  
rjb@nei.org  
kak@nei.org  
michael.takacs@nrc.gov  
cp34update@certrec.com  
michael.johnson@nrc.gov  
David.Matthews@nrc.gov  
Balwant.Singal@nrc.gov  
Hossein.Hamzehee@nrc.gov  
Stephen.Monarque@nrc.gov  
jeff.ciocco@nrc.gov  
michael.willingham@nrc.gov  
john.kramer@nrc.gov  
Brian.Tindell@nrc.gov  
Alicia.Williamson@nrc.gov  
Elmo.Collins@nrc.gov  
Loren.Plisco@nrc.com  
Susan.Vrahoretis@nrc.gov  
ComanchePeakCOL.Resource@nrc.gov  
sfrantz@morganlewis.com  
jrund@morganlewis.com  
tmatthews@morganlewis.com  
regina.borsh@dom.com  
diane.aitken@dom.com

Luminant Records Management (.pdf files only)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket Numbers
Luminant Generation Company LLC	)	
	)	52-034 and 52-035
Comanche Peak Nuclear Power Plant, Units 3 and 4	)	

AFFIDAVIT

I, Rafael Flores, being duly sworn, hereby depose and state I am the Senior Vice President and Chief Nuclear Officer for Luminant Generation Company LLC (Luminant) and Senior Vice President and Chief Nuclear Officer for Comanche Peak Nuclear Power Company LLC (CPNPC), and do hereby affirm and state:

1. I am authorized to execute this affidavit on behalf of Luminant and CPNPC.
2. Luminant and CPNPC are providing information in support of the combined license (COL) application for Comanche Peak Nuclear Power Plant, Units 3 and 4. The attached draft Form of Construction and Operating Services Agreement and the Amended and Restated Limited Liability Agreement for Comanche Peak Nuclear Power Company LLC contain contractual information and other information related to the financing and development of Units 3 and 4, all of which is considered confidential and sensitive business information. The disclosure of this information would permit competitors to gain commercial advantages through access to non-public information about Luminant and CPNPC, and the project's financial responsibilities and agreements. Additionally, competitors could analyze this data to identify strengths and weaknesses of Luminant, and CPNPC, and could capitalize on this data.
3. As such, this information is protectable under 10 CFR 2.390(a)(4) and 9.17(a)(4), because:
  - i. This information is and has been held in confidence by Luminant, CPNPC, and its members.
  - ii. This information is of a type that is customarily held in confidence by Luminant, CPNPC, and its members, and there is a rational basis for doing so because the information contains sensitive contractual information concerning responsibilities and rights between Luminant and CPNPC.
  - iii. This information is being submitted 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 Luminant and CPNPC by disclosing its internal responsibilities and agreements.
4. Accordingly, Luminant and CPNPC request that the designated document be withheld from public disclosure pursuant to the policy reflected in 10 CFR 2.390(a)(4) and 9.17(a)(4).

\_\_\_\_\_  
Rafael Flores

STATE OF TEXAS  
COUNTY OF SOMERVELL

Subscribed and sworn to me, a Notary Public, in and for the State of Texas, this \_\_\_\_ day of December 2010.

\_\_\_\_\_  
Notary Public

---

---

**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: 10/14/2010**

---

**QUESTION :**

The Request for Additional Information (RAI) 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, regarding Luminant Generation Company, LLC's (Luminant) June 10, 2010, response to the U.S. Nuclear Regulatory Commission (NRC or Commission) staff's RAI issued on March 9, 2010.

Foreign ownership, control, or domination:

Section 103 of the Atomic Energy Act prohibits the Commission from issuing a license for a nuclear power plant 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.

The Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.38 is the regulatory provision that implements this statutory prohibition.

In order for the NRC staff to make a finding with regard to foreign ownership, control, or domination, the NRC staff will evaluate the COLA in a manner that is consistent with the guidance provided in the Standard Review Plan (SRP) "Foreign Ownership, Control, or Domination of Applicants for Reactor Licenses," dated June 1999, to determine whether applicants are owned, controlled, or dominated by an alien, a foreign corporation, or foreign government. Section 3.2 of the SRP: "Guidance on Applying Basic Limitations," states that:

An applicant is considered to be foreign owned, controlled, or dominated whenever a foreign interest has the "power," direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant.

In order for the NRC staff to complete its review and make a finding regarding foreign ownership, control, or domination of CPNPP, Units 3 and 4, please provide the following additional information for the NRC staff's review.

- a) A Negation Action Plan that explains how Comanche Peak Nuclear Power Company, LLC. (CPNPC) intends to ensure that CPNPC will negate foreign control or domination over CPNPP, Units 3 and 4, with respect to all matters relating to safety, security, and the reliability of CPNPP, Units 3 and 4. Also describe how CPNPC will segregate decisions relating to safety, security, etc., from foreign directors and investors. Please also describe and explain the provisions of the Negation Action Plan that will ensure that only officers and employees of the applicant who are U.S. citizens will be (1) responsible for special nuclear material; (2) have access to restricted data; and (3) may have the deceding vote regarding decisions relating to nuclear safety and security. The NRC staff notes that while Luminant provided documentation in response to the NRC staff's RAI regarding foreign ownership and control, the information provided did not discuss decision making and voting rights specifically related to nuclear safety and security requirements, access to restricted data, and who has responsibility for special nuclear material.

The Negation Action Plan should be a separate stand-alone document from the June 10, 2010, RAI response, must contain all necessary information, and be made part of the COLA in the next revision. Refer to Section 4.4 of the SRP, "Negation Action Plan," for guidance on measures that should be included in the negation action plan.

- b) As stated within Section 4.3 of the SRP, "Supplementary Determination," the reviewer, among other things, shall determine:

The types of actions, if any, that would be necessary to negate the effects of foreign ownership, control, or domination to a level consistent with the Atomic Energy Act and NRC regulations.

Provide information on how Luminant will negate foreign control or domination throughout construction and operation of CPNPP, Units 3 and 4, that will specifically assure that Luminant will be free from any foreign control or domination regarding nuclear safety and security, (e.g., use of a nuclear advisory committee (NAC), adoption of special board resolutions, modification of contracts, etc.). Luminant should provide information including, at the minimum, the following:

1. Any matter, in view of U.S. laws or regulations, that require or makes it reasonably necessary to assure U.S. control;
2. Any matter relating to nuclear safety, security or reliability, including, but not limited to, the following matters:
  - implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order, or similar requirement issued by the NRC;
  - prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
  - placement of the plant in a safe condition following any nuclear event or incident;
  - compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC regulation;
  - the obtaining of or compliance with a specific license issued by the NRC and its technical specifications;
  - compliance with a specific Final Safety Analysis Report, or other licensing basis document;

- any decision relating to U.S. regulatory strategy or the relationship with the NRC;

As stated in the COLA, Mitsubishi Heavy Industries, Ltd. (MHI) is a 12 percent owner of CPNPC through its wholly-owned subsidiary, MHI Nuclear North America, Inc. Therefore, Luminant must submit a Negation Action Plan providing positive measures that assure that the foreign interest in CPNPC can be effectively denied control or domination of special nuclear material, restricted data, and nuclear safety and security. One example of a positive measure that assures that the foreign interest in CPNPC can be effectively denied control or domination of CPNPP, Units 3 and 4 includes setting up a NAC similar to those approved by the NRC in past license transfer applications (e.g., the merger of PacifiCorp and ScottishPower, LLC. with a 2.5 percent ownership interest in Trojan). Refer to Agencywide Documents Access and Management System (ADAMS) Number ML993260013 for an example of one such NAC that was approved by the NRC.

---

**ANSWER:**

- a) Luminant Generation Company LLC (Luminant) has developed the Comanche Peak Nuclear Power Plant Units 3 and 4 Negation Action Plan (the Plan) to ensure that information and decisions relating to safety, security and reliability are not controlled or dominated by foreign interests. Luminant, as a U.S. company licensed by the NRC to construct and operate CPNPP Units 1 and 2, has ongoing requirements to demonstrate that it is not controlled or dominated by foreign interests. Luminant owns the majority interest in Comanche Peak Nuclear Power Company LLC (CPNPC), which is the owner of CPNPP Units 3 and 4. The existing protections for both Luminant and CPNPC are included in the Plan along with additional protections to provide defense-in-depth and ensure that neither CPNPC nor Luminant are subject to control or domination by a foreign entity.

The Plan designates responsibilities and actions required of Luminant and CPNPC, and specifies decision making and voting rights specifically related to nuclear safety and security requirements, access to restricted data, and the responsibility for special nuclear material, to ensure that information and decisions relating to safety, security and reliability are segmented from and not controlled or dominated by foreign interests.

The Plan is a separate stand-alone document provided in COLA Part 11, and is referenced in COLA Part 1 and FSAR Subsection 1.4.1.1. In addition, an amendment to the Amended and Restated Limited Liability Agreement for Comanche Peak Nuclear Power Company LLC has been accepted by all parties to incorporate specific negation actions. The change to the Limited Liability Agreement is listed as an implementing document in the Plan to give Luminant and US citizens the sole authority for segmenting information from foreign entities, and for making decisions relating to safety, security, and reliability for CPNPP Units 3 and 4. Finally, the Form of the Construction and Operating Services Agreement (COSA) is also listed as an implementing document of the negation plan.

- b) The specific information requested by part b) of the question is addressed by the attached Negation Action Plan, the attached COSA, and the attached accepted amendment to the Limited Liability Agreement. In addition, Luminant is proposing a License Condition to maintain these controls.

Figure 1 shows the control structure of CPNPP Units 3 and 4, the owners, and the relationship to Luminant and its parent companies.

Impact on R-COLA

See attached marked-up COLA Part 1 Revision 1 page 21

See attached marked-up FSAR Revision 1 pages 1.4-1 and 1.4-2

See attached mark-up of COLA Part 10 Revision 1 page 5

See attached Comanche Peak Nuclear Power Plant, Units 3 and 4 Negation Action Plan to be submitted in COLA Part 11

Impact on DCD

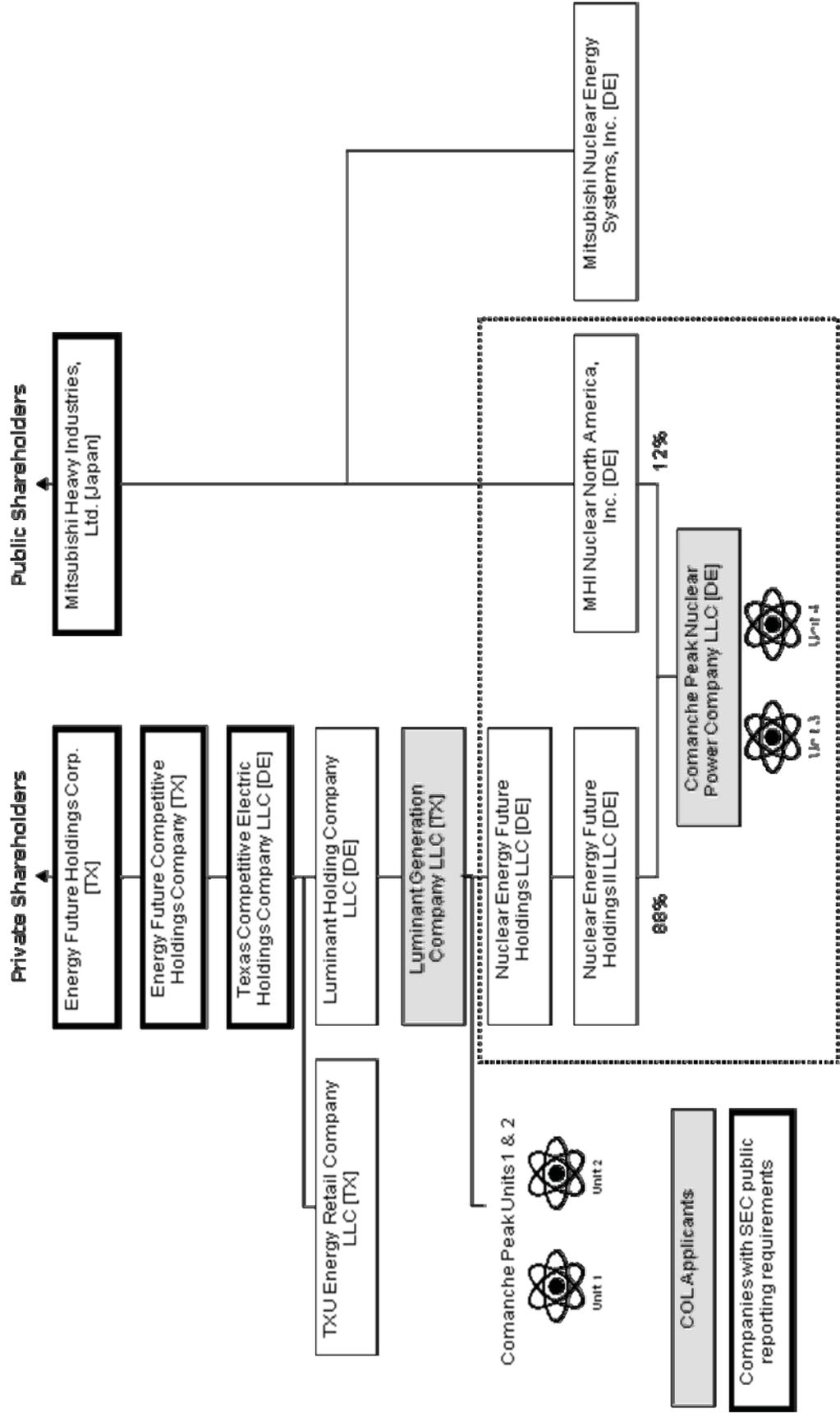
None.

Attachments (Proprietary)

Amendment to the Amended and Restated Limited Liability Agreement for the Comanche Peak Nuclear Power Company LLC accepted by all parties to include a new section regarding negation actions

Form of Comanche Peak Nuclear Power Plant Units 3 & 4 Construction and Operating Services Agreement (ML102450478)

**FIGURE 1**  
**Comanche Peak Nuclear Power Plants Unit 3 and 4 – Control Structure**



**Comanche Peak Nuclear Power Plant, Units 3 & 4  
COL Application  
Part 1, Administrative and Financial Information**

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 Commission's Final Standard Review Plan on Foreign Ownership, Control, or Domination, 64 Fed. Reg. 52,355 (Sept. 28, 1999) ("SRP"). ~~Fifteen~~ All of the sixteen individuals who are currently on the EFH Board of Directors are U.S. citizens; ~~the sixteenth is a citizen of South Africa. The participation of one citizen of South Africa as a director of EFH has no material impact on EFH's current compliance with foreign ownership, control, or influence ("FOCI") regulations.~~ Texas Energy LP is a Delaware limited partnership domiciled in the United States.

RCOL1  
\_03-09-  
10

As discussed above, the business activities of EFH are controlled by Texas Energy Future Capital Holdings LLC (Texas Energy GP), a Delaware limited liability company domiciled in the United States and the sole general partner of EFH's principal shareholder. Four of the five officers of Texas Energy GP are U.S. citizens. Texas Energy GP is not and will not be controlled by any foreign entities or other foreign persons. The members of Texas Energy GP are business entities domiciled in the United States with the exception of minority membership interests held by two Goldman Funds limited partnerships formed in the Cayman Islands, one Goldman Fund entity formed in Germany, and one KKR Fund entity formed in Guernsey. The Goldman Fund limited partnerships that are formed and 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. 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 owns 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 Luminant.<sup>1</sup>

In addition to such minority, non-controlling direct foreign investments in Texas Energy GP, various foreign entities and other foreign persons have invested in Texas Energy GP indirectly by participating as passive co-investors in the KKR Funds, TPG Funds, Goldman Funds, ~~and Lehman Entities~~. Such indirect foreign investors hold passive, non-controlling interests in those investment funds.

Finally, the participation in the ownership of CPNPC by MHI-NNA, is a minority non-controlling interest and does not constitute impermissible foreign ownership, control, or domination of Luminant's<sup>1</sup> controlling ownership (88%) of CPNPC. ~~No negation action plan is necessary, because~~ MHI and/or MHI-NNA are not able to exercise control or domination over CPNPC or its corporate parents based on the Comanche Peak Nuclear Power Plant Units 3 and 4 Negation Action Plan, dated 12/15/2010 (See COLA Part 11). MHI has appointed two of the four Managers of CPNPC, both of whom are citizens of Japan. However, these two members only have authority to vote in accordance with MHI's 12% interest in CPNPC. The controlling 88% is voted by the two Managers, including the Chairman, appointed by entities controlled by Luminant, and both of these Managers are citizens of the United States. These Managers are identified in Table 1.2-15. In addition, some of the officers of CPNPC identified in Table 1.2-16 are citizens of Japan affiliated with MHI. However, these officers report to and act under the control of the Chairman and Development Manager of CPNPC, who are both citizens of the United States and affiliated with Luminant. The corporate governance of CPNPC is established pursuant to the Amended and Restated Limited Liability Company Agreement of Comanche Peak Nuclear Power Company LLC, which has been revised to incorporate provisions consistent with the CPNPP Units 3 and 4 Negation Action Plan.

RCOL1  
\_10-14-  
10

RCOL1  
\_10-14-  
10

**Comanche Peak Nuclear Power Plant, Units 3 & 4  
COL Application  
Part 2, FSAR**

**1.4 IDENTIFICATION OF AGENTS AND CONTRACTORS**

This section of the referenced DCD is incorporated by reference with the following departures and/or supplements.

**1.4.1 Applicant/Program Manager**

CP COL 1.4(1) Insert the following paragraphs before first paragraph in **DCD Subsection 1.4.1**.

Luminant Generation Company LLC (Luminant) is a subsidiary of Energy Future Holdings Corp., and is the ~~owner, applicant, and operator for CPNPP Units 3 and 4~~for the design, engineering, construction, licensing, operation, quality assurance (QA), and fuel management for CPNPP Units 3 and 4. Luminant ~~is~~ also the owner and operator of CPNPP Units 1 and 2, and its corporate predecessor was responsible for construction of Units 1 and 2.

RCOL1\_10-1  
4-10

EFH (formerly TXU Corp.) conducts the operations principally through Texas Competitive Electric Holdings (TCEH) and Oncor Electric Delivery Company LLC (Oncor) subsidiaries. TCEH is a holding company for subsidiaries engaged in competitive electricity market activities largely in Texas, including Luminant, which is engaged in electricity generation, development and construction of new generation facilities, wholesale energy sales and purchases, and commodity risk management and trading activities, and TXU Energy, which is engaged in retail electricity sales. Oncor is engaged in regulated electricity transmission and distribution operations in Texas.

Mitsubishi Heavy Industries, Ltd. (MHI) is responsible for developing the overall standard plant design for the US-APWR, supporting COL application development and relevant design, and licensing support for the FSAR and related parts of the COL application.

**1.4.1.1 Owner of Units 3 and 4**

RCOL1\_10-1  
4-10

Luminant has established a project company, Comanche Peak Nuclear Power Company LLC (CPNPC), which is the applicant as the owner of CPNPP Units 3 and 4. Luminant is the majority and controlling owner of CPNPC with a minority interest held by Mitsubishi Heavy Industries – Nuclear North America (MHI-NNA), which is a wholly owned subsidiary of Mitsubishi Heavy Industries (MHI).

Luminant has established the CPNPP Unit 3 and 4 Negation Action Plan (see COLA Part 11) to ensure that any foreign ownership of CPNPC does not control or

**Comanche Peak Nuclear Power Plant, Units 3 & 4  
COL Application  
Part 2, FSAR**

have dominion over decisions regarding safety or security relating to Units 3 and 4.

RCOL1\_10-1  
4-10

---

**1.4.2.3 Washington Division of URS Corporation**

---

CP COL 1.4(1) Add the following sentence to the end of first sentence in **DCD Subsection 1.4.2.3.**

The Washington Division of URS Corporation provides consultation and engineering services in support of the design of the CPNPP Units 3 and 4 site and systems. The Washington Division of URS Corporation has entered into a contract with MHI to provide these services.

---

CP COL 1.4(1) Add the following subsections after **DCD Subsection 1.4.2.3.**

**1.4.2.4 Mitsubishi Nuclear Energy Systems, Inc.**

Mitsubishi Nuclear Energy Systems, Inc. (MNES) is the primary contractor to Luminant for developing the CPNPP Units 3 and 4 COL Application, and provides overall project management and project control functions, as well as regulatory oversight. Various subcontractors support MNES.

MNES, established in July 2006, is a subsidiary of MHI that serves as a comprehensive business base for MHI's nuclear power business in the U.S., taking orders for new plants and handling business to supply large-size replacement components for existing nuclear power plants.

**1.4.2.5 Enercon Services Inc.**

Enercon Services, Inc. is an engineering, environmental, technical, and management services firm providing a broad range of professional services to private and government sector clients throughout the U.S. The primary roles of Enercon Services, Inc are developing the Environmental Report and related FSAR Chapter 2 for CPNPP Units 3 and 4, and providing services in document development and coordination.

**1.4.2.6 Other Participants in the Construction**

No construction contractors have been identified in this section because an architect engineer, balance of plant supplier and constructor have not been selected at this time. Each contractor will be selected based on the experience in the nuclear industry or equivalent, the relevant experience with engineering, procurement and construction, and the available resources. The identification and

**Comanche Peak Nuclear Power Plant, Units 3 & 4  
COL Application  
Part 10 - ITAAC and Proposed License Conditions**

Proposed License Condition	Source
<p><u>Prior to commencing construction and throughout the term of the license, the Licensees shall implement the Comanche Peak provisions of the Nuclear Power Plant Units 3 and 4, Negotiation Action Plan dated December 15, 2010 relating to the terms of Amended and Restated Limited liability Company Agreement (LLC Agreement) for CPNPC and Luminant's authority pursuant to the Construction and Operating Services Agreement (COSA). The provisions of Section 5.1(g) of the LLC Agreement and Section Section 2.1.2 of the COSA relating to authority regarding safety and security issues may not be modified in any material respect without first giving 30 days prior written notice to the Director, Office of Nuclear Reactor Regulation.</u></p>	<p><u>COLA Part 1, Administrative and Financial Information, RAI response issued: 10/14/2010</u></p>

RCOL1\_10-1  
4-10

Operational Programs to be implemented per License Condition above:

Program Title	Milestone
Environmental Qualification Program	Prior to Initial Fuel Load
Reactor Vessel Material Surveillance Program	Prior to Initial Criticality
Preservice Testing Program	Prior to Initial Fuel Load
<u>Primary-to-Secondary Leakage Monitoring Program</u>	<u>After steam generator on-line on nuclear heat</u>
<u>Highly Radioactive Fluid Systems Outside Containment Monitoring Program</u>	<u>After generator on-line on nuclear heat</u>
<u>Ground Water Monitoring Program</u>	<u>Prior to fuel load</u>
Fire Protection Program	<p>Prior to fuel receipt for elements of the Fire Protection Program necessary to support receipt and storage of fuel on-site.</p> <p>Prior to initial fuel load for elements or the Fire Protection Program necessary to support fuel load and plant operation.</p>
Process and Effluent Monitoring and Sampling Program – Radiological Effluent Technical Specifications/Standard Radiological Effluent Controls	Prior to receipt of radioactive material on-site
Process and Effluent Monitoring and Sampling Program – Offsite Dose Calculation Manual	Prior to receipt of radioactive material on-site
Process and Effluent Monitoring and Sampling Program – Radiological Environmental Monitoring Program	Prior to receipt of radioactive material on-site
Process and Effluent Monitoring and Sampling Program – Process Control Program	Prior to receipt of radioactive material on-site

RCOL2\_13.0  
4-2  
RCOL2\_13.0  
4-3  
RCOL2\_13.0  
4-1

**Comanche Peak Nuclear Power Plant**  
**Units 3 and 4**  
**Negation Action Plan**  
**Dated December 15, 2010**

in Accordance with:

**Atomic Energy Act §103**  
**10 CFR 50.38**  
**and**  
**NRC Standard Review Plan on**  
**Foreign Ownership, Control or Domination**

**Rev. 0**

Approved:

\_\_\_\_\_  
Date: \_\_\_\_\_

Mark (Mac) McFarland  
Chief Commercial Officer, Luminant and  
Chairman Board of Directors for Comanche Peak Nuclear Power Company LLC

\_\_\_\_\_  
Date: \_\_\_\_\_

Rafael Flores  
Chief Nuclear Officer, Luminant and Comanche Peak Nuclear Power Company LLC

**Table of Contents**

1.0 Introduction .....3

2.0 Luminant Generation Company LLC..... 3

3.0 Owner Licensee Role versus Construction/Operator Licensee ..... 4

    3.1 Comanche Peak Nuclear Power Company (LLC) ..... 4

    3.2 Luminant Generation Company (LLC) ..... 4

    3.3 Changes Implemented - CPNPC LLC Agreement .....5

4.0 Construction and Operating Services Agreement ..... 6

5.0 Summary ..... 6

6.0 Implementing Documents ..... 7

## **Negation Action Plan**

### **1.0 Introduction**

The Comanche Peak Nuclear Power Plant Units 3 and 4 (CPNPP Units 3 and 4) Negation Action Plan (the Plan) provides requirements and guidance to ensure negation of foreign control or domination over CPNPP Units 3 and 4 with respect to matters relating to safety, security, and the reliability of CPNPP Units 3 and 4. The Plan controls the actions of Luminant, as the constructor and operator of CPNPP Units 3 and 4 and for Comanche Peak Nuclear Power Company LLC (CPNPC), as the 100% owner of the CPNPP Units 3 and 4.

Luminant is responsible for the design, construction, and operation of CPNPP Units 3 and 4. In addition, Luminant is the majority owner of CPNPC, the company that owns 100% of Units 3 and 4. Luminant's<sup>1</sup> controlling ownership of Comanche Peak Nuclear Power Company LL (CPNPC) precludes foreign control or domination of Comanche Peak Units 3 and 4.

Additional measures to provide defense-in-depth to ensure that there is no foreign control or domination are addressed by the Plan, which provides information regarding the mitigation efforts that will be in place prior to, during, and after the construction period through the end of plant life and decommissioning to assure that any foreign owners or investors are denied control or domination over all matters relating to nuclear safety and security prior to, during and after the construction period, and to assure that any unauthorized persons are denied access to restricted data or other security related information.

This Plan has been developed to comply with the Atomic Energy Act Section 103 and 10 CFR 50.38 using the guidance provided by the NRC's "Final Standard Review Plan on Foreign Ownership, Control, or Domination," 64 FR 52355 (September 28, 1999) (FOCD SRP). The FOCD SRP lists several examples of measures that could negate foreign control or domination, and this Plan describes the measures undertaken for Comanche Peak Units 3 and 4.

### **2.0 Luminant Generation Company LLC**

Luminant Generation Company LLC (Luminant) is responsible for construction and operation of Comanche Peak Nuclear Power Plant, Units 3 and 4 (CPNPP Units 3 and 4). As previously demonstrated in Part 1 – General and Administrative Information of the COL application, and per requirements for Luminant's owning and operating of CPNPP Units 1 and 2, Luminant is under U.S. control, and it will exercise authority over nuclear safety and security matters free from foreign, ownership, control or domination (FOCD) over its decision-making within the meaning of the FOCD restrictions in Section 103 of the Atomic Energy Act of 1954, as amended. In particular, Luminant is and will remain free from FOCD with regard to safety and security matters, and Luminant is subject to ongoing U.S. government oversight regarding foreign ownership, control or influence. NRC's FOCD SRP provides that "whether the applicant is seeking authority to operate the reactor" is one of five matters to be given further consideration. FOCD SRP

§ 3.2. This consideration acknowledges that emphasis regarding FOCD matters is properly focused on the licensed “operator,” as distinguished from an “owner” licensee.

Luminant currently operates Comanche Peak Nuclear Power Plant, Units 1 and 2 (Comanche Peak 1 & 2), and it both maintains a Facility Security Clearance, and has individual employees who maintain U.S. government security clearances. In connection with ongoing oversight of these security clearances, Luminant periodically updates a “Certificate Regarding Foreign Interests” using Standard Form 328 (SF-328), which provides for disclosures regarding potential foreign ownership, control or influence.

The SF-328 includes various questions regarding a range of potential areas of foreign influence, including debt, foreign source income, foreign directors and executive personnel, contracts and agreements with foreigners, *etc.* Material changes to answers to any questions in the SF-328 are reported in accordance with 10 CFR 95.17(a)(1). Submittals to U.S. government security officials include the Department of Energy’s OODEP forms identifying owners, officers, directors and executive personnel, and their citizenship. These OODEPs are submitted and periodically updated for Luminant and its parent companies.

### **3.0 Owner Licensee Role Versus Construction/Operator Licensee**

#### **3.1 Comanche Peak Nuclear Power Company (LLC)**

The owner of CPNPP Units 3 and 4 is Comanche Peak Nuclear Power Company LLC (CPNPC). As the owner, CPNPC has certain rights and decision-making authority regarding financial and other matters. Luminant is responsible for the design, construction and operation of CPNPP Units 3 and 4, pursuant to the COL application and licenses. As such, throughout the design, construction and operation of CPNPP Units 3 and 4, Luminant – not CPNPC – has responsibility with respect to matters involving nuclear safety and security, including compliance with all NRC nuclear safety and security requirements. This includes denying unauthorized persons access to security information and assuring compliance with U.S. government requirements governing access to restricted data.

#### **3.2 Luminant Generation Company (LLC)**

Luminant and its contractors (subject to Luminant’s oversight) have physical control of the CPNPP Units 3 and 4 site, including physical security, all nuclear material, and all security related documents and information. As such, neither CPNPC, nor its foreign investors or representatives, will have the ability to control decisions relating to NRC’s nuclear safety and security requirements. In the event that owner personnel or a foreign person had a need to access security information, any such access would only occur in full compliance with Luminant’s policies and procedures implementing NRC requirements governing the control of such security information. In addition, any transfer of controlled nuclear information would occur only in full compliance with the export control restrictions imposed by 10 CFR Part 810. Luminant personnel, under U.S. control, make all decisions as to whether any person is granted access to security information in conformance with applicable procedures.

### 3.3 Changes Implemented

Nevertheless, to the extent that CPNPC, as the plant owner, could be in a position to influence or exercise control over decision-making regarding nuclear safety or security requirements, CPNPC will implement and maintain a provision in its limited liability company operating agreement (“LLC Agreement”) to assure U.S. control by segregating decisions relating to safety, security, etc., and by delegating such segregation and decision-making responsibilities to the CPNPC Chairman of the Board, who must be a U.S. citizen. The terms of the LLC Agreement will provide that the U.S. citizen Chairman has the authority to the extent CPNPC may influence decisions, to make all decisions and to take all actions necessary or useful, *inter alia*:

- (a) to protect public health and safety and to determine appropriate action to be taken with respect to any matter relating to nuclear safety, quality, security or reliability, including, but not limited to, the following matters:
  - (i) Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar requirement issued by the NRC;
  - (ii) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
  - (iii) Placement of the plant in a safe condition following any nuclear event or incident;
  - (iv) Compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC rule;
  - (v) The obtaining of or compliance with a specific license issued by the NRC and its technical specifications;
  - (vi) Conformance with a specific Final Safety Analysis Report, or other licensing basis document; and
  - (vii) Implementation of security plans and procedures, control of security information, control of special nuclear material, administration of access to controlled security information, and compliance with government clearance requirements regarding access to restricted data.

These provisions of the CPNPC LLC Agreement are not intended to imply that CPNPC would, in fact, have the ability to control decision-making regarding nuclear safety and security matters, because such decision-making authority resides within Luminant. Rather, the provisions to be incorporated in the LLC Agreement provide a “defense-in-depth” against any potential indirect foreign control over decision making within the scope of the FOCD restrictions imposed under Section 103 of the Atomic Energy Act of 1954, as amended.

#### **4.0 Luminant Authority Pursuant to a Construction and Operating Services Agreement**

Luminant and CPNPC plan to execute a Construction and Operating Services Agreement (COSA). The COSA will clearly delineate Luminant's dominant authority with respect to construction and operation, the authority of CPNPC with respect to certain financial decisions, and the obligation of the CPNPC to pay for the costs of construction and operation. Significantly, these terms will make clear that Luminant, as the licensee responsible for construction and operation, will have the authority to make all decisions and to take all actions necessary or useful, *inter alia*:

- (a) to protect public health and safety and to determine appropriate action to be taken with respect to any matter relating to nuclear safety, quality, security or reliability, including, but not limited to, the following matters:
  - (i) Implementation or compliance with any NRC generic letter, bulletin, order, confirmatory order or similar requirement issued by the NRC;
  - (ii) Prevention or mitigation of a nuclear event or incident or the unauthorized release of radioactive material;
  - (iii) Placement of the plant in a safe condition following any nuclear event or incident;
  - (iv) Compliance with the Atomic Energy Act, the Energy Reorganization Act, or any NRC rule;
  - (v) The obtaining of or compliance with a specific license issued by the NRC and its technical specifications;
  - (vi) Conformance with a specific Final Safety Analysis Report, or other licensing basis document; and
  - (vii) Implementation of security plans and procedures, control of security information, control of special nuclear material, administration of access to controlled security information, and compliance with government clearance requirements regarding access to restricted data.

#### **5.0 Summary**

Luminant's contractual authority under the planned COSA with respect to nuclear safety and security matters will provide effective mitigation or negation of any potential for foreign control or domination that might be inconsistent with NRC regulations or the Atomic Energy Act. This assures that any role played by CPNPC, as the owner of CPNPP Units 3 and 4, either will be outside of the scope of the issues of concern to the NRC with respect to foreign persons, or if regarding a matter of concern, will be subject to and subordinate to the U.S. controlled decision-making authority exercised by Luminant as the responsible licensee. In particular, this authority assures that all

## CPNPP Units 3 and 4 Negation Action Plan

matters relating to the common defense and security of the United States will be free from foreign control or domination. Moreover, the U.S. citizen Chairman of CPNPC is assigned authority under the LLC Agreement to effectively negate any potential foreign control or domination of decisions regarding nuclear safety or security matters.

The FOCD SRP emphasizes the Commission's guidance that the "foreign control limitation" in the Atomic Energy Act "should be given an orientation toward safeguarding the national defense and security." FOCD SRP § 3.2. Luminant's physical control of CPNPP Units 3 and 4, contractual control over licensed decision-making regarding nuclear safety and security matters, and its responsibility for administering security policies and procedures for CPNPP Units 3 and 4, all assure that foreign involvement in the project will not threaten the national defense or security of the United States. Moreover, Luminant holds a security clearance and is subject to ongoing government oversight regarding any potential for foreign control or influence.

Finally, as to CPNPC, there is no basis for concluding that foreign interests could exercise control over the company. Further details regarding the voting rights and control of CPNPC under the terms of its "Amended and Restated Limited Liability Company Agreement of Comanche Peak Nuclear Power Company LLC," dated January 30, 2009, are provided in the Answer to RAI 5.c submitted on June 10, 2010. Moreover, the CPNPC LLC Agreement will be modified to provide that the U.S. citizen Chairman of CPNPC will exercise authority regarding nuclear safety and security matters, which will negate any potential for indirect foreign control or domination of decision-making regarding such matters. The FOCD SRP explains that an applicant would be considered foreign controlled or dominated "whenever a foreign interest has the 'power,' direct or indirect, whether or not exercised, to direct or decide matters affecting the management or operations of the applicant." FOCD SRP § 3.2. Here, the foreign interests include only minority voting rights, circumscribed by Luminant's control over the project itself and the CPNPC Chairman's ability to negate any foreign control over nuclear safety or security matters. There is no basis for concluding that foreign interests could directly or indirectly exercise control, *i.e.*, "where the will of one party is subjugated to the will of another." FOCD SRP § 3.2.

### **6.0 Implementing Documents**

- 6.1 Comanche Peak Nuclear Power Plant Units 3 and 4 COLA Part 1 – Administrative and Financial Information.
- 6.2 Comanche Peak Nuclear Power Plant Units 3 and 4 COLA Part 2, FSAR, Subsection 1.4.1.1.
- 6.3 Amended and Restated Limited Liability Agreement for Comanche Peak Nuclear Power Company LLC
- 6.4 Form of Construction and Operating Agreement between Luminant Generation Company LLC and Comanche Peak Nuclear Power Company LLC

## **Proprietary Attachments**

Amendment to the Amended and Restated Limited Liability Agreement for the Comanche Peak Nuclear Power Company LLC accepted by all parties to include a new section regarding negation actions

Form of Comanche Peak Nuclear Power Plant Units 3 & 4 Construction and Operating Services Agreement (ML102450478)