

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: _____

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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's¹ 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 Operation Services Agreement

Luminant and CPNPC plan to execute a Construction and Operation 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

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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, Section 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