

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
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Luminant Generation Company LLC)	Docket Nos. 50-445 and 50-446
)	
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2)	License Nos. NPF-87 and NPF-89
)	
)	

ORDER APPROVING TRANSFER OF LICENSES AND APPROVING
CONFORMING AMENDMENTS

I.

Luminant Generation Company LLC (Luminant Power, the licensee) is the holder of the Facility Operating License (FOL) Nos. NPF-87 and NPF-89 of the Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2 (CPNPP), and the holder of the general license for the independent spent fuel storage installation (ISFSI) facility. CPNPP is located in Somervell County, Texas.

II.

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended (the Act), and Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80, "Transfer of licenses," Luminant Generation Company LLC (Luminant Power) requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of the FOL Nos. NPF-87 and NPF-89 for CPNPP, and the general license for the ISFSI facility (Docket No. 72-74) from the current holder, Luminant Power, to as-yet unnamed companies, herein identified as Comanche Peak LLC (CP LLC), as owner, and Operating Company LLC (OpCo LLC), as operator (together these entities are referred to as "the licensees"). Luminant Power submitted the

request by application dated November 12, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15320A093), as supplemented by letters dated December 9, 2015, and March 14, March 29, April 7, and April 20, 2016 (ADAMS Accession Nos. ML15345A048, ML16076A162, ML16091A121, ML16099A291, and ML16112A396, respectively).

Luminant Power is acting on behalf of itself and the future to-be-formed companies. These future to-be-formed companies include the ultimate parent of CP LLC and OpCo LLC, Reorganized Texas Competitive Electric Holdings Corporation (Reorganized TCEH), and the intermediate parents, Intermediate Holding Company LLC, Asset Company LLC, and Preferred Stock Company Corporation (together with Luminant Power these entities are referred to as the "Applicants"). Entity names in the licensee's application and supplements are placeholders.

On April 29, 2014, Luminant Power notified the NRC of its filing of a bankruptcy (ADAMS Accession No. ML14120A212). Luminant Power is owned by Energy Future Competitive Holdings Company LLC (EFCH), through its wholly owned subsidiaries. The EFCH is a direct wholly owned subsidiary of Energy Future Holdings Corporation (EFH). The current and intended ownership structure of the facility is depicted in the simplified organizational charts provided in Exhibits A and B of Enclosure 1 in the submittal dated November 12, 2015. As a result of the proposed transactions and consistent with Exhibit B, EFH and EFCH will no longer ultimately own CPNPP. The licenses will be transferred from Luminant Power to CP LLC, responsible for ownership of the facility, and OpCo LLC, responsible for the operation and maintenance of CPNPP. At the emergence from bankruptcy, Reorganized TCEH, the ultimate parent company of CP LLC, will be owned by a numerous and diverse set of independent and unaffiliated stockholders. No single entity is expected to own a majority of, or exercise control over Reorganized TCEH or its Board of Directors. Current Luminant Power nuclear management and technical personnel will be employed by OpCo LLC. Accordingly, there will

be no change in management or technical qualification, and OpCo LLC will continue to be technically qualified to operate the facility. No physical changes to the CPNPP and ISFSI facility or operational changes are proposed in the application.

The transfer of the licenses includes elements of both a direct and indirect transfer. The transfer of ownership is a direct transfer because ownership is changing from one entity to another new and different entity. Ownership is being transferred from Luminant Power to a new company, CP LLC. The transfer of operations is an indirect transfer because the operator is not changing; it is being absorbed into another entity (OpCo LLC), and the operator's parent companies are changing. Luminant Power's parent companies are currently Luminant Holding Company LLC and its parent, Texas Competitive Electric Holdings Company LLC. These companies will cease to exist and in their place, new companies – Intermediate Holding Company LLC and its parent, Reorganized TCEH – will be created. The operator will change to the extent that its name will change from Luminant Power to OpCo LLC; however, the management and technical personnel of the facility will not change. The change of the parent company of a licensed entity is considered an indirect transfer of control of the operating licenses.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by the Applicants pursuant to 10 CFR 50.80 and 10 CFR 50.90, "Application for amendment of license, construction permit, or early site permit." A notice entitled, "Comanche Peak Nuclear Power Plant, Units 1 and 2, and Independent Spent Fuel Storage Installation; Consideration of Approval of Transfer of Licenses and Conforming Amendments," was published in the *Federal Register* on February 8, 2016 (81 FR 6545). The NRC received no comments or hearing requests.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC shall give its consent in

writing. Upon review of the information in the licensee's application, and other information before the Commission, the NRC staff has determined that the Applicants are qualified to hold the licenses to the extent proposed to permit the transfer of Luminant Power as possessor, owner, and operator. It also concludes that the transfer of the licenses are otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facilities will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated May 6, 2016 (ADAMS Accession No. ML16096A266).

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC § 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, IT IS

HEREBY ORDERED that the application regarding the direct transfer of ownership and the indirect transfer of control of the licenses is approved, subject to the following conditions:

1. The licensees must notify the NRC of the names of the directors and principal officers of Reorganized TCEH and any other changes to these positions that occur before emergence from bankruptcy as soon as they have been identified, but no later than 7 days before implementation of the transfer. Additional changes to these positions may occur post-emergence. The Applicants will notify the NRC no later than 120 days after the transfer of any changes in these personnel made during the first 90 days following emergence from bankruptcy.
2. Following the subject transfer of control of the licenses, all of the directors of CP LLC and OpCo LLC who can vote on activities governed by the CPNPP licenses and all of the officers of CP LLC and OpCo LLC with direct responsibility for activities governed by the CPNPP licenses shall (1) be U.S. citizens and not appointed by a foreign entity and (2) have exclusive authority to ensure and shall ensure that the business and activities of OpCo LLC and CP LLC with respect to the CPNPP licenses is at all times conducted in a manner consistent with the public health and safety and common defense and security of the United States.
3. The Reorganized TCEH Board of Directors shall adopt resolutions that any non-U.S. citizens or foreign-appointed U.S. citizens serving as either directors or executive officers of Reorganized TCEH, the ultimate parent,

and intermediate parents of CP LLC and OpCo LLC shall not seek access to any classified information or to special nuclear material in the custody of the CPNPP licensees and shall not participate in or seek to influence operational decisions by the licensees regarding nuclear safety or security matters.

4. CP LLC and OpCo LLC shall provide satisfactory documentary evidence to the Director of the Office of Nuclear Reactor Regulation that, as of the date of the license transfer, the licensees reflected in the amended licenses have obtained the appropriate amount of insurance required of a licensee under 10 CFR Part 140 and 10 CFR 50.54(w).

IT IS FURTHER ORDERED that after receipt of all required regulatory approvals of the proposed transfer action, Luminant Power shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the direct transfer no later than 7 business days before the date of the closing. Should the proposed transfer not be completed within 1 year from the date of this order, this order shall become null and void, provided, however, upon written application and good cause shown, such date may be extended by order. The conditions of this order may be amended upon application by the licensee and approval by the Director of the Office of Nuclear Reactor Regulation.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this order, to conform the licenses to reflect the subject transfer are approved. The amendments will

be revised only to reflect the final company names (yet to be decided), and shall be issued and made effective at the time the proposed license transfer is completed.

This order is effective upon issuance.

For further details with respect to this order, see the initial application dated November 12, 2015, as supplemented by letters dated December 9, 2015, and March 14, March 29, April 7, and April 20, 2016, and the safety evaluation dated the same date as this order, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland this 6TH day of May 2016.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michele G. Evans, Acting Director,
Office of Nuclear Reactor Regulation.