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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of TEXAS UTILITIES ELECTRIC COMPANY (Comanche Peak Steam Electric Station, Unit 2)	Docket No. 50-446-CPA (Construction Permit Amendment)

RESPONSE OF TU ELECTRIC TO THE COMMISSION'S ORDER DATED MARCH 5, 1993

INTRODUCTION

Texas Utilities Electric Company (TU Electric) hereby responds to the Nuclear Regulatory Commission (the Commission) Order dated March 5, 1993 directing the parties in the above-captioned proceeding to show cause why the Commission should not: (1) dismiss the proceeding and the pending appeals as moot; (2) vacate the Atomic Safety and Licensing Board's December 15, 1992 Memorandum and Order terminating the Comanche Peak Steam Electric Station (CPSES) Unit 2 construction permit (CP) extension proceeding; 1/ and (3) treat the CPSES construction permit as expired. Additionally, TU Electric hereby responds to the Commission's request that TU Electric address the current status of construction of Comanche Peak Unit 2.

As discussed in more detail below, on February 2, 1993, the Commission issued TU Electric an operating license (OL)

1/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, 36 NRC __ (December 15, 1992).

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authorizing fuel load and low-power operation of CPSES Unit 2. In so doing, the Commission converted the existing CPSES Unit 2 CP into the CPSES Unit 2 OL, pursuant to NRC regulations 10 C.F.R. §§ 50.23 and 50.56. Accordingly, the Unit 2 CP has expired, and consequently the Commission should dismiss the pending appeals of the Licensing Board's December 15, 1992 Order as moot.

I. BACKGROUND

On February 3, 1992, TU Electric requested an extension of the CPSES Unit 2 construction permit (CP). 2/ In its request, TU Electric explained that the NRC had previously granted an extension of the Unit 2 construction permit predicated, in part, upon an estimated one year suspension in significant construction activities allowing TU Electric to concentrate its resources on completion of Unit 1. Because the completion of construction and start-up of Unit 1 took longer than originally estimated, the suspension of significant construction activities for Unit 2 also lasted longer than originally estimated. TU Electric noted that the NRC previously found good cause for the prior extension necessitated in part by the suspension of significant construction activities for Unit 2,

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2/ TXX-92041, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Feb. 3, 1992.

and urged the NRC to find that the additional suspension period constituted good cause for the current request. 3/

On June 23, 1992, the NRC Staff determined that the requested extension posed no significant environmental impact. 4/ On July 28, 1992 the NRC Staff found that TU Electric had demonstrated good cause, and granted the extension. 5/

On July 27, 1992, B. Irene Orr, D.I. Orr, Joseph Macktal, Jr. and S.M.A. Hasan petitioned to intervene and requested a hearing regarding TU Electric's construction permit extension application. 6/ On October 5, 1992, these petitioners filed a supplement 7/ setting forth the following proposed contention:

> The delay of construction of Unit 2 was caused by Applicant's intentional conduct, which had no valid purpose and was the result of corporate policies which have not been discarded or repudiated by Applicant. 8/

3/ Id. at 1.

4/ 57 Fed. Reg. 28885 (June 29, 1992).

5/ 57 Fed. Reg. 34323 (Aug. 4, 1992).

6/ "Petition To Intervene and Request for Hearing of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr., and S.M.A. Hasan" (July 27, 1992).

7/ "Supplement To Petition To Intervene And Request For Hearing Of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr., and S.M.A. Hasan" (Oct. 5, 1992).

8/ Id. at 1.

This supplement also included and referenced various documents which these petitioners claimed to be sufficient to establish a supporting basis for their contention. Both TU Electric and the NRC Staff filed answers to the Supplement opposing the admission of the proposed contention. 9/

Similarly, on July 28, 1992, Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow (the Dows) petitioned for intervention and requested a hearing in the above-captioned construction permit extension proceeding. 10/ TU Electric and the NRC Staff also opposed this petition. 11/

9/ "TU Electric's Answer to the Supplemental Petition to Intervene And Request For Hearing Of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr. And S.M.A. Hasan" (Oct. 20, 1992);

"NRC Staff Response To Supplement To Petition To Intervene And Request For Hearing Of B. Irene Orr, D.I. Orr, Joseph J. Macktal, Jr. And S.M.A. Hasan" (Oct. 26, 1992).

10/ "Petition of Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow For Intervention And Request For Hearings" (July 28, 1992). On October 5, 1992 the Dows filed a motion for an extension of time to file an admissible contention. "Motion For Extention (sic) of Time to File Brief By Sandra Long Dow dba Disposable Workers of Comanche Peak Steam Electric Station and R. Micky Dow." On October 19, 1992, the Licensing Board denied this request. "Memorandum and Order (Ruling On Dow Motion For Extension Of Time and Setting A Further Schedule)." On November 10, 1992, R. Micky Dow, filed a motion for rehearing. "Motion For Rehearing By R. Micky Dow, Petitioner."

11/ "TU Electric's Answer To The Petition For Intervention And Request For Hearings By The Dows" (Aug. 14, 1992); "NRC Staff Response To Petition Of Sandra Long Dow DBA Disposable Workers Of Comanche Peak Steam Electric Station, And

(continued...)

On December 15, 1992, the Licensing Board issued a Memorandum and Order which terminated the CPSES Unit 2 CP extension proceeding and denied: (1) the Orr, Macktal, Hasan, July 27, 1992 petition to intervene; (2) the Dow July 28, 1992, petition to intervene; and (3) the Dow November 10, 1992 motion for rehearing. 12/

On December 28, 1992, Petitioners B. Irene Orr and D.I. Orr, petitioned for Commission review of the December 15, 1992 Licensing Board Order. 13/ On January 7, 1993, the Dows filed an untimely appeal of the December 15, 1992 Licensing Board Order. 14/

On January 30, 1993, TU Electric informed the Commission that it had "substantially completed the design, construction, and preoperational testing of CPSES Unit 2," and

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11/(...continued)
R. Mickey Dow For Intervention And Request For Hearings" (Aug. 18, 1992).

12/ Texas Utilities Electric Co. (Comanche Peak Steam Electric Station, Unit 2), LBP-92-37, slip op. at 51.

13/ In its December 15, 1992 Order, the Licensing Board found that Mr. Macktal and Mr. Hasan had not demonstrated standing. They have not appealed that finding.

14/ Concurrent with their January 7, 1993, Notice of Appeal, the Dows filed a "Motion For Leave To File Out Of Time And Request For Extension Of Time To File Brief." The Commission granted the motion, and ordered that the Dows file their appeal brief on or before January 22, 1993. "Order" (Jan. 19. 1993). As of the date of this Response, no appeal brief has been received by the Licensee.

requested that an OL for CPSES Unit 2 be issued authorizing fuel load and operation. 15/

On February 2, 1993, the Director of Nuclear Reactor Regulation found that construction of CPSES Unit 2 was substantially completed, and issued the CPSES Unit 2 OL authorizing fuel loading and operation up to five percent of full power. 16/

II. ARGUMENT

A. Petitioners' Appeal Of The Board's Order Terminating The Unit 2 Construction Permit Extension Proceeding Is Moot And Should Be Dismissed

When events occur during the pendency of a litigation that render a court unable to grant the requested relief, the case is moot. See, e.g., Carras v. Williams, 807 F.2d 1286 (6th Cir. 1986). Thus, a case is moot, and hence not justiciable, if it has lost "its character as a present live controversy of the kind that must exist if [the Court is] to avoid advisory opinions on abstract propositions of law." Hall v. Beals, 396 U.S. 45, 48 (1969) (per curiam); see also Powell v. McCormack, 395 U.S. 486, 496 (1969) ("Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally

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15/ TXX-93001, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Jan. 30, 1993 (Attached as Exhibit A).

16/ 58 Fed. Reg. 7822 (Feb. 9, 1993). Texas Utilities Electric Company, (Comanche Peak Steam Electric Station, Unit 2), Facility Operating License No. NPF-88, Docket No. 50-446, Feb. 2, 1993. (Attached as Exhibit B.)

cognizable interest in the outcome"). Consequently, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974); see also United States Parole Comm'n v. Geraghty, 445 U.S. 388, 397 (1980) ("The requisite personal interest that must exist at the commencement of the litigation must continue throughout its existence.")

It is well established that the Commission observes the mootness standards developed in the federal court system. Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility), ALAB-944, 33 NRC 81, 102 (1991), citing Powell v. McCormack, 395 U.S. 486, 496 and County of Los Angeles v. Davis, 440 U.S. 625, 632-33. As TU Electric will show, under the standards of mootness established by the federal courts and the Commission, the CP proceeding and the pending appeals have become moot as a result of the issuance of the CPSES Unit 2 low power operating license to TU Electric.

Sections 101 and 185 of the Atomic Energy Act of 1954, as amended (AEA), establish a two-step licensing process for nuclear power reactors. Pursuant to AEA Section 101, a license issued by the Commission is required for any person intending to, inter alia, acquire, possess or use nuclear utilization facilities. In particular, the owner of a nuclear power reactor must first obtain a construction permit to construct the facility and then an operating license to operate the facility:

> All applicants for licenses to construct ... utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit .... Upon the completion of construction ... the Commission shall thereupon issue a license to the applicant.

AEA § 185, 42 U.S.C. 2235 (1982).

NRC regulations mirror the AEA's licensing provisions. Thus, construction of a nuclear facility requires the issuance of a CP pursuant to 10 C.F.R. §§ 50.10(b) and 50.23 and, pursuant to 10 C.F.R. § 50.22, a facility may only operate after receiving an OL.

The Commission will issue a facility OL only after it finds that the applicant has satisfied the conditions set forth in 10 C.F.R. §§ 50.56 and 50.57, including the substantial completion of the nuclear facility's construction. Upon satisfaction of these conditions, the Commission will, pursuant to 10 C.F.R. §§ 50.23 and 50.56, convert the facility's CP into an OL and issue the license:

> **§ 50.23 Construction permits.**
>
> A construction permit for the construction of a production or utilization facility ... will be converted upon due completion of the facility and Commission action into a license as provided in § 50.56 of this part.

§ 50.56 Conversion of construction permit to license; or amendment of license.

> Upon completion of the construction or alteration of a facility, in compliance with the terms and conditions of the construction permit ... the Commission will, in the absence of good cause shown to the contrary issue a license of the class for which the construction permit was issued ....

On February 2, 1993, the NRC issued an OL for CPSES Unit 2 after converting the CPSES Unit 2 CP into the CPSES Unit 2 OL pursuant to 10 C.F.R. §§ 50.23 and 50.56. In doing so, the NRC concluded that TU Electric had satisfied all of the prerequisites for a facility OL. In particular, the NRC stated:

> Construction of the Comanche Peak Steam Electric Station, Unit No. 2 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-127 and the application, as amended, the provisions of the Act, and the regulations of the Commission. 17/

The substantial completion of Unit 2 construction obviated any continued need for the Unit 2 CP, and formed one of the bases for conversion of the Unit 2 CP into the Unit 2 OL. Based upon the applicable NRC regulations governing issuance of facility OLs, the CPSES Unit 2 CP was constructively terminated on February 2, 1993, with its conversion into the CPSES Unit 2

17/ Texas Utilities Electric Company, (Comanche Peak Steam Electric Station, Unit 2), Facility Operating License No. NPF-88, Docket No. 50-446, Feb. 2, 1993 (emphasis added).

§ 50.56 Conversion of construction permit to license; or amendment of license.

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17/ Texas Utilities Electric Company, (Comanche Peak Steam Electric Station, Unit 2), Facility Operating License No. NPF-88, Docket No. 50-446, Feb. 2, 1993 (emphasis added).

OL. Consequently, the most recent Unit 2 CP extension is no longer required, nor relevant. 18/ As a result, the two appeals presently before the Commission lose their "character as ... present, live controvers[ies] ..." rendering them moot. Hall v. Beals, 396 U.S. at 48. 19/

B. The Licensing Board's December 15, 1992 Order Should Be Vacated

It is well established that where circumstances render an appeal moot, the underlying decision from which the appeal is taken should be vacated. See, e.g., United States v.

18/ In an analogous case, the Federal Communications Commission (FCC) has held that completion of construction and issuance of an operating license moots both an extension of the CP and all outstanding challenges to the extension's issuance. Sunbury Broadcasting Corp., Radio Station WKOK, Sunbury, PA, BMP-12870, 23 F.C.C. 2d 598 (1970). FCC case law addressing these issues is particularly relevant because the AEA Section 185 licensing scheme, including its two-step licensing process, is modeled on the Communications Act of 1934, as amended, see e.g. Virginia Electric and Power Co. (North Anna Power Station, Unit 2), CLI-80-29, 12 NRC 137, 144 n.7 (1980) ("The Federal Communications Act ... served as the model for the 1954 Atomic Energy Act ... .").

19/ In Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Unit 1) LBP-84-19, 19 NRC 1076 (1984) reconsideration denied, LBP-84-23, 19 NRC 1412 (1984), the licensing board held hearings on a completed activity conducted pursuant to a license amendment issued under the "Sholly Amendment," which amended Section 189a(2) of the Atomic Energy Act. For several reasons, that decision is not applicable here. First, in this case, the CP extension was issued pursuant to Section 189a(1), not Section 189a(2). Second, Grand Gulf involved an amendment to an operating license which was necessary to confer the authority for continued operation of a reactor. In contrast, TU Electric has completed construction and no longer needs authorization to construct CPSES Unit 2.

Munsingwear, Inc., 340 U.S. 36, 39-40 (1950) ("The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." Id. at 39 (footnote omitted)). 20/ The NRC has consistently followed this principle. See, e.g., Fewell Geotechnical Engineering, Ltd. (Thomas E. Murray, Radiographer), CLI-92-5, 35 NRC 83, 84 (1992); Consumers Power Co. (Palisades Nuclear Power Facility), CLI-82-18, 16 NRC 50, 51 (1982); Puget Sound Power and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), CLI-80-34, 12 NRC 407, 408 (1980); US Ecology, Inc. (Sheffield, Low-Level Radioactive Waste Disposal Site), ALAB-866, 25 NRC 897, 898 (1987). Indeed, "under established NRC practice, unreviewed judgments are vacated when their appellate review becomes unavailable because of mootness." Palisades, supra, CLI-82-18, 16 NRC at 51. Moreover, when a license that is the subject of an appeal is terminated during the pendency of an appeal, "the original order [modifying the license] cease[s] to have any operative effect or purpose ..., the proceeding is moot ... [and] the decision below normally will be vacated." CLI-92-5, 35 NRC at 84.

20/ In A.L. Mechling Barge Lines, Inc. v. United States, 368 U.S. 324 (1961), the Supreme Court further held that the Munsingwear rule applies to unreviewed administrative orders.

As demonstrated above, issuance of the CPSES Unit 2 OL by the NRC rendered the CP extension proceeding for CPSES Unit 2 moot. Consequently, since this proceeding is moot, under Munsingwear and NRC precedent, the underlying Board order (LBP-92-37) denying Petitioners' request for a hearing on the Unit 2 CP extension should be vacated.

C. The CPSES Unit 2 Construction Permit Expired Upon The Issuance Of The CPSES Unit 2 Operating License

As discussed in Section A above, the CPSES Unit 2 CP expired with the issuance of the Unit 2 OL. On February 2, 1993, the Commission converted the Unit 2 CP into the CPSES Unit 2 OL, which effectively terminated the CP. Consequently, the CPSES Unit 2 CP expired when the NRC issued the CPSES Unit 2 OL on February 2, 1993.

D. CPSES Unit 2 Construction Is Substantially Completed

As explained in more detail above, as one of the bases for issuance of the CPSES Unit 2 OL license authorizing low-power operation, the Director of Nuclear Reactor Regulation made the determination that "[c]onstruction of the Comanche Peak Steam Electric Station, Unit No. 2 has been substantially completed in conformity with its construction permit, CPPR-127 and the application, as amended, the provisions of the Act, and the regulations of the Commission." 21/ This conclusion, which

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21/ Texas Utilities, (Comanche Peak Steam Electric Station, Unit 2), Facility Operating License No. NPF-88.

was grounded upon NRC's detailed inspections and licensing reviews of CPSES, confirmed TU Electric's statement that as of January 30, 1993 the "design, construction and preoperational testing of CPSES Unit 2" had been "substantially completed." 22/

CONCLUSION

For the reasons stated above, the Commission should find that the appeals of the December 15, 1992 Licensing Board Order are moot and should be dismissed; the Commission should vacate the Licensing Board's underlying Order in accordance United States v. Munsingwear, Inc., 340 U.S. 36, 39-40 (1950); and the Commission should affirm that the CP for CPSES Unit 2 expired as of February 2, 1993, the issuance date for the CPSES Unit 2 OL.

Respectfully submitted,

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Attorneys for TU Electric

March 9, 1993

22/ TXX-93001, Letter to NRC from W.J. Cahill, Jr. (TU Electric) dated Jan. 30, 1993 (attached as Exhibit A).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE COMMISSION

In the Matter of	
TEXAS UTILITIES ELECTRIC COMPANY	Docket No. 50-446-CPA ASLBP No. 92-668-01-CPA (Construction Permit Amendment)
(Comanche Peak Steam Electric Station, Unit 2)	

CERTIFICATE OF SERVICE

I hereby certify that copies of Response of TU Electric to the Commission's Order Dated March 5, 1993 were served upon the following persons by deposit in the United States Mail (and also as indicated below), postage prepaid and properly addressed, on the date shown below:

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Office of the Secretary*
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Chief, Docketing
and Service Section
(Original Plus Two Copies)

Janice E. Moore*
Marian L. Zobler
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U.S. Nuclear Regulatory Commission
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*Also served by hand

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Citizens for Fair Utility Regulations
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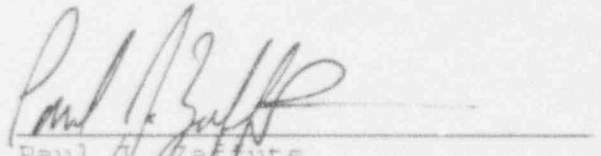
Fort Worth, TX 76140

Dated this 9th day of March, 1993.



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**Also served by fax and overnight courier

ATTACHMENT A

Log # TXX-93001
File # 10010
Ref. # 10CFR50.57

TU ELECTRIC January 30, 1993

William J. Cahill, Jr.
Group Vice President

U. S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555

SUBJECT: COMANCHE PEAK STEAM ELECTRIC STATION (CPSES)
DOCKET NO. 50-446
REQUEST FOR ISSUANCE OF THE UNIT 2 OPERATING LICENSE

Gentlemen:

TU Electric has substantially completed the design, construction, and preoperational testing of CPSES Unit 2. Enclosure 1 to this letter describes the current status of activities to support issuance of an operating license. In addition, TU Electric's internal Operational Readiness Assessment by the Independent Safety Engineering Group (ISEG) has been completed and concluded that CPSES Unit 2 is ready for fuel load and operation.

CPSES Units 1 and 2 have been determined to be ready for combined unit operation in accordance with the License Application and the FSAR as amended.

The NRC's Operational Readiness Assessment Team has completed its assessment. Enclosure 2 to this letter lists the NRC's findings and describes the follow-up actions taken by TU Electric.

TU Electric is performing the final actions and assessments needed to enter Mode 6 and commence fuel load activities. It is TU Electric's intent to complete these final actions and assessments in a controlled and deliberate manner.

TU Electric requests that an Operating License for CPSES Unit 2 be issued authorizing fuel load and operation.

Sincerely,

William J. Cahill, Jr.

RC/ds

9302030277

400 N. Olive Street L.B. 81 Dallas, Texas 75201

Enclosure (1) CPSES Operational Readiness Status
(2) NRC Operational Readiness Assessment for CPSES

c - Mr. J. L. Milhoan, Region IV
Resident Inspectors, CPSES (2)
NRC Project Manager

CPSES OPERATIONAL READINESS STATUS

A. Operational Readiness

Nuclear Operations initiated a transition plan to identify and assess actions necessary to support successful licensing, startup, and operation of CPSES Unit 2. This effort also examined readiness for dual unit operation. This plan considered staffing, qualifications, programs, procedures and facilities as required to meet operational objectives.

Activities necessary to support Unit 2 operation have been completed. All Unit 2 systems were turned over to Operations in December 1992. Unit 2 Systems will be operational today except for the Heater Drain System and the completion of slave relay testing which is in progress and is tied to system operable mode requirements.

B. ISEG Operational Readiness Assessment

The Nuclear Overview Department initiated an ISEG Operational Readiness Assessment to determine if programs to support CPSES operations were being implemented as required by applicable regulations and procedures. This assessment reviewed a broad spectrum of areas of plant operations. NRC inspection modules, INPO good practices, previous NRC areas of concern, and industry guidelines were considered when developing the assessment plan for each area. Items which required action prior to fuel load and operation have been completed.

C. Preoperational Testing

Preoperational tests will have been substantially completed prior to fuel load in accordance with the FSAR (as amended). Limited preoperational testing will be performed after fuel load. The affected test activities can be delayed without impact on the safe and reliable operation of Unit 2 during the Initial Startup Program. Appropriate measures are in place to assure that these activities are planned and scheduled in conformance with the needs of startup and power ascension of Unit 2. TU Electric letters TXX-93011 of January 8, 1993 and TXX-93051 of January 25, 1993 discuss the preoperational testing to be performed after fuel load.

D. Plant Procedures

Procedures required for fuel load and power operation are complete as necessary to support license issuance.

E. Exemptions

The FSAR documents conformance of Unit 2 to the NRC rules and regulations set forth in 10CFR50, including Appendix A (General Design Criteria). Attachment A to this Enclosure lists the exemptions which have been requested in prior correspondence.

F. Licensed Personnel

The current number of licensed operators exceeds that required to fulfill the shift complement levels of the draft CPSES Technical Specifications for dual unit operation.

G. Thermo-Lag

An engineering evaluation (ER-ME-067) of the CPSES Thermo-Lag systems was submitted to the NRC on December 23, 1992 (ref. TXX-92626). This engineering report describes the qualification of the Thermo-Lag fire barriers used at CPSES. Copies of the laboratory test reports which document the results of testing described in the engineering report were transmitted to the NRC on January 19, 1993 (ref. TXX-93023). These test reports confirmed the conclusions provided in the engineering report. Additional information and commitments in response to NRC staff questions was provided on January 25, 1993 (ref. TXX-93060), and January 28, 1993 (ref. TXX-93061). Thermo-Lag fire barrier system installations are complete consistent with commitments described in the correspondence referenced above.

H. Work Items

Open work items have been evaluated for impact on fuel load and operation. The evaluations concluded that these items will not affect safe reliable operation. The total number of open items will not place an undue burden on the operations staff.

I. Nuclear Reactor Regulation (NRR) Licensing Issues

TU Electric has maintained communications with the NRR Licensing Project Manager to assure expeditious and satisfactory resolution of licensing issues. Licensing issues are identified in the CPSES Safety Evaluation Report and its supplements. The most recent supplement, number 25, identifies thirty one (31) Outstanding Issues, seven (7) Confirmatory Issues and three (3) potential License Conditions applicable to Unit 2. It is TU Electric's understanding that the Outstanding and Confirmatory Issues applicable to Unit 2 have been resolved. TU Electric also expects that the three (3) potential License Conditions listed in Attachment B to this Enclosure will be included in the CPSES Unit 2 Operating License.

The NRC Staff has requested information, in addition to that in the Safety Evaluation Report and its supplements, via letters addressed to TU Electric. TU Electric has responded to such letters received to date.

The NRC staff also requests specific action or information via Generic Letters. For the Generic Letters received to date, the actions and responses required by fuel load for a unit with a construction permit have been completed.

J. Design and Construction Assurance Reviews

CPSES has undergone a series of extensive reviews to assure design and construction conform to applicable requirements. These reviews are discussed in TU Electric letter to the NRC dated April 27, 1992 (TXX-92215). The status of the major reviews are as follows:

- Design Validation - TU Electric has completed design validation for CPSES Unit 2, making full use of the validated design for Unit 1 and common areas.

- Hardware Validation - TU Electric has completed hardware validation for CPSES Unit 2 based upon the lessons learned from the Post Construction Hardware Validation Program (PCHVP) for Unit 1 and documented evaluations.

- Quality Assurance Audits and Surveillance - TU Electric has completed numerous Quality Assurance audits and surveillances of design and hardware validation activities for CPSES Unit 2. The results of these audits and surveillances indicate that these activities have generally been carried out in a technically sound manner and in accordance with program requirements.

- Independent Assessments - In 1991, TU Electric completed independent self-assessments of the design and hardware activities for CPSES Unit 2. These assessments were modeled after NRC's Independent Design Assessments and Construction Appraisal Team inspections. The results were satisfactory, and identified findings were subject to corrective and preventive actions.

K. Inspection, Bulletin and Reportable Items

TU Electric maintains a systems for tracking and resolving NRC inspection items, 10CFR50.55(e) items, 10 CFR Part 21 items, and NRC Bulletins. TU Electric actions for those items required for license issuance are complete. The remaining actions will be completed consistent with applicable commitments to the NRC.

L. Technical Specifications

CPSES Technical Specifications for Unit 2 have received substantial internal review. A NRC draft version of the combined Technical Specifications for Units 1 and 2 was submitted with its letter dated September 9, 1992. TU Electric provided corrections to these Technical Specifications and certified that, with the corrections, the Technical Specifications reflected the as-built plant. The NRC Staff issued a "Final Draft Version of Comanche Peak Units 1 and 2 Combined Technical Specifications (TAC No. M81963)" with its letter from S. C. Black to W. J. Cahill, Jr., dated January 22, 1993. TU Electric provided editorial corrections to these Technical Specifications in a conference call on January 27, 1993, and recertifies that, with these corrections,

these Technical Specifications accurately reflect the as-built plant and are consistent with the Final Safety Analysis Report.

M. Emergency Preparedness

On July 23, 1985, the Federal Emergency Management Agency (FEMA) approved, pursuant to 44CFR350, the Radiological Emergency Plan for CPSES submitted by the State of Texas.

Since the July 1989 full participation exercise, three (3) additional exercises have been conducted: a 1990 exercise graded by the NRC; a 1991 exercise graded by the NRC and FEMA; and a 1992 exercise graded by the NRC.

The NRC reviewed the CPSES onsite emergency preparedness response during the period of November 16-20, 1992 (1992 Annual Emergency Exercise). The summary of this inspection, Number 50-445/92-46; 50-446/92-46 indicates that three exercise weaknesses were identified which needed corrective action. TU Electric provided a response to the NRC on January 8, 1993, with a description of corrective measures and schedule for completing these actions.

N. Security

The NRC has reviewed and accepted the CPSES Physical Security Plan, the CPSES Safeguards Contingency Plan, and the CPSES Security Training and Qualification Plan. Security lockdown was achieved in December 1992.

O. Insurance

To satisfy NRC license requirements for Unit 2 of CPSES, TU Electric has arranged for or received commitments from appropriate insurance carriers to provide 1) financial protection as required by 10CFR140.11(a)(4) in the form of the nuclear energy liability insurance policy set forth in 10CFR140.91, Appendix A and the secondary financial protection policy set forth in 10CFR140.109, Appendix I, 2) on-site property damage insurance required by 10CFR50.54(w) in the form of nuclear property insurance policies in the maximum amounts of insurance currently available from American Nuclear Insurers/Mutual Atomic Energy Liability Underwriters, jointly, and Nuclear Electric Insurance Limited and 3) evidence of guarantee of payment of deferred premiums under 10CFR140.21.

REQUESTED EXEMPTIONS

SUBJECT	REFERENCE REGULATION	LETTER	DATE	NRC APPROVAL
Criticality Monitoring Requirements	10CFR70.24	TXX-92618	12/18/92	Concurrent with OL *
Airlock Leak Testing	10CFR50 Appendix J	TXX-4618	1/20/86	SSER-22 Sect. 6.2.5.1

* This letter requested an exemption for Unit 2. The equivalent exemption for Unit 1 was requested by TXX-8943B of June 30, 1989, approved by SSER 22 Section 9.1.1, and is included in the operating license for CPSES Unit 1 (NPF-87).

NRR LICENSING ISSUES

POTENTIAL LICENSE CONDITIONS	STATUS	REQUIRED ACTION
Control of Mineral Exploration (SER Section 2.1.2, 2.2 and and 2.3)	This is expected to remain a license condition.	Can remain as proposed with no additional action required.
Fire Protection Program (Section 9.5.1)	Required by NRC staff.	Can remain as proposed with no additional action required.
Security Program (Section 13.6)	Required by NRC staff.	Can remain as proposed with no additional action required.

NRC OPERATIONAL READINESS ASSESSMENT TEAM INSPECTION

The NRC ORAT identified three areas of weakness during the January 22, 1993 exit. The following provides a status of TU Electric's actions in these areas.

A. System Configuration Control

Procedure ODA-410, "System Status Control", has been enhanced to assure positive controls for system valve alignments and OWI-203 ("Operations Department Management Periodic Reviews") requirements for monitoring and periodically statusing valve positions will be maintained throughout 1993. Safety related system lineups are near completion and will be complete as required prior to Mode 6 entry. A clearance task team has been implemented to provide recommended enhancements to the clearance process to help maintain system control and status.

Additionally, procedures have been enhanced to require AFW test header isolation valves to be closed under flow conditions.

B. Procedural Compliance and Adequacy

The specific procedural problems, identified during the ORAT inspection has been corrected. Procedure ODA-407, "Guideline on Use of Procedures", has been changed to clarify and strengthen procedure usage requirements.

Additionally, a long range procedural upgrade program has been initiated to find and address any similar problems. This program will be completed within the next two years.

ABN-803B, "Response to a Fire in the Control Room or Cable Spreading Room", has been walked down with additional errors corrected. Additional reviews and walkdowns of all Unit 2 and common ABN procedures will be performed to verify that all components used in the ABNs are correctly identified and correctly located by procedure. ABNs will be divided into three groups (Mode 6, Mode 4 and Mode 2) for the above review, depending on complexity and Mode requirements. Any additional errors will be corrected prior to the Mode for which that procedure is required.

Contract Auxiliary Operators (AO) have been restricted from performing any inplant manipulations or activities that would require specific AO training. All safety related lineups or clearance activities performed by contract AOs after Designated Date (12/21/92) have been reverified. Prior to performing any inplant manipulations, the subject operators will have received the required training.

C. Corrective Actions

Specific and generic corrective actions have been implemented for the system configuration control problems and procedural problems discussed above. In addition to enhancing the AFW procedures for test header isolation valve closure, these valves are being evaluated for possible upgrades, or to determine the need for replacement at a later date. Management has re-emphasized the need for prompt and thorough implementation of corrective and preventive actions.

ATTACHMENT B

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 2, 1993

Docket No. 50-446

Mr. William J. Cahill, Jr.
Group Vice President, Nuclear
TU Electric
400 North Olive Street, L.B. 81
Dallas, Texas 75201

Dear Mr. Cahill:

SUBJECT: ISSUANCE OF FACILITY OPERATING LICENSE NO. NPF-88 FOR COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 2

The U.S. Nuclear Regulatory Commission (NRC) has issued the enclosed Facility Operating License No. NPF-88, together with the Technical Specifications, the Environmental Protection Plan, and the Antitrust Conditions for the Comanche Peak Steam Electric Station, Unit 2 (Enclosure 1). Authorization to operate beyond 5-percent power is still under consideration by the NRC. The issuance of this license authorizing operation up to 5 percent of full power is without prejudice to future consideration by the Commission with respect to operation at power levels in excess of 5 percent.

The Technical Specifications being issued with this license are the Combined Technical Specifications for both Comanche Peak Steam Electric Station, Units 1 and 2 (NUREG-1468). The Combined Technical Specifications have been issued separately as Amendment No. 14 to the Unit 1 Operating License No. NPF-87, in response to the April 2, 1991, application, as supplemented by letters dated August 31, 1992, October 29, 1992 and December 14, 1992.

The technical basis for the license is included in the Safety Evaluation Report related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2 (NUREG-0797) and Supplements 1 through 26. Supplement No. 26 (SSER 26) is provided as Enclosure 2 to this letter. All previously open issues have been reviewed by the staff and have been satisfactorily resolved.

Enclosure 3 is a copy of a related Federal Register notice, the original of which has been forwarded to the Office of the Federal Register for publication.

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Three copies of Amendment No. 9 to Indemnity Agreement No. B-96 are included as Enclosure 4. Please countersign all copies and return one signed copy of Amendment No. 9 to this office.

Sincerely,

Jack W Roe

Jack W. Roe, Director
Division of Reactor Projects III/IV/V
Office of Nuclear Reactor Regulation

Enclosures:
1. Facility Operating License No. NPF-88
2. SSER 26
3. Notice
4. Amendment No. 9 to Indemnity Agreement No. B-96

cc w/enclosures:
See next page

cc w/enclosures*:
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U.S. Nuclear Regulatory Commission
P. O. Box 1029
Granbury, Texas 76048

Regional Administrator, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 1000
Arlington, Texas 76011

Mrs. Juanita Ellis, President
Citizens Association for Sound Energy
1426 South Polk
Dallas, Texas 75224

Owen L. Thero, President
Quality Technology Company
Lakeview Mobile Home Park, Lot 35
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Mr. Roger D. Walker, Manager
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Chief, Texas Bureau of Radiation Control
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

Honorable Dale McPherson
County Judge
P. O. Box 851
Glen Rose, Texas 76043

Director, Criteria and Standards
(ANR-460)
Office of Radiation Programs
U.S. Environmental Protection Agency
Post Office Box 3009
Montgomery, Alabama 36193

Director, Eastern Environmental
Radiation Facility
U.S. Environmental Protection Agency
Post Office Box 3009
Montgomery, Alabama 36193

EIS Review Coordinator
Environmental Protection Agency
Region VI
Dallas, Texas 75270

*Appendix A to NPF-88 (NUREG-1468) was provided with the January 29, 1993 letter to William J. Cahill.

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

TEXAS UTILITIES ELECTRIC COMPANY, ET AL.*

DOCKET NO. 50-446

COMANCHE PEAK STEAM ELECTRIC STATION, UNIT NO. 2

FACILITY OPERATING LICENSE

License No. NPF-88

1. The Nuclear Regulatory Commission (the Commission) has found that:

   A. The application for a license filed by Texas Utilities Electric Company (TU Electric) acting for itself and as agent for Texas Municipal Power Agency, (licensees), complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations set forth in 10 CFR Chapter I, and all required notifications to other agencies or bodies have been duly made;

   B. Construction of the Comanche Peak Steam Electric Station, Unit No. 2 (the facility), has been substantially completed in conformity with Construction Permit No. CPPR-127 and the application, as amended, the provisions of the Act, and the regulations of the Commission;

   C. The facility will operate in conformity with the application, as amended, the provisions of the Act, and the regulations of the Commission (except as exempted from compliance in Section 2.D below);

   D. There is reasonable assurance: (i) that the activities authorized by this operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the Commission's regulations set forth in 10 CFR Chapter I, except as exempted from compliance in Section 2.D. below;

   E. TU Electric is technically qualified to engage in the activities authorized by this operating license in accordance with the Commission's regulations set forth in 10 CFR Chapter I;

*The current owners of the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company and Texas Municipal Power Agency. Transfer of ownership from Texas Municipal Power Agency to Texas Utilities Electric Company was previously authorized by Amendment No. 8 to Construction Permit CPPR-127 on August 25, 1988 to take place in 10 installments as set forth in the Agreement attached to the application for Amendment dated March 4, 1988. At the completion thereof, Texas Municipal Power Agency will no longer retain any ownership interest.

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