



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 25, 2013

Mr. Rafael Flores
Senior Vice President and
Chief Nuclear Officer
Attention: Regulatory Affairs
Luminant Generation Company LLC
P.O. Box 1002
Glen Rose, TX 76043

SUBJECT: COMANCHE PEAK NUCLEAR POWER PLANT, UNITS 1 AND 2 - ORDER
APPROVING INDIRECT TRANSFER REGARDING THE PROPOSED ENERGY
FUTURE HOLDINGS CORPORATE INTERNAL RESTRUCTURING
(TAC NOS. ME9767 AND ME9768)

Dear Mr. Flores:

The U.S. Nuclear Regulatory Commission (NRC) staff has completed its review of the application dated October 11, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12312A157), as supplemented by letters dated October 24, November 26, December 5, and December 17, 2012 (ADAMS Accession Nos. ML12312A071, ML12340A446, ML12354A058, and ML12363A028, respectively), filed by Luminant Generation Company LLC, the licensee for Comanche Peak Nuclear Power Plant (CPNPP), Units 1 and 2. Pursuant to Section 50.80 of Title 10 of the *Code of Federal Regulations* (10 CFR), the licensee requested NRC consent to the proposed indirect license transfer of the CPNPP, Units 1 and 2, Facility Operating Licenses Nos. NPF-87 and NPF-89, respectively, to the extent affected by the proposed Energy Future Holdings Corporation restructuring. Portions of the letters dated October 11, November 26, and December 5, 2012, contain sensitive unclassified non-safeguards information (proprietary) and, accordingly, those portions are withheld from public disclosure.

A copy of the Order approving the proposed indirect ownership transfer pursuant to 10 CFR 50.80 and subject to the conditions described therein, is provided in Enclosure 1. The NRC staff has determined that the related safety evaluation (SE) contains proprietary information pursuant to 10 CFR 2.390, "Public inspections, exemptions, requests for withholding." Accordingly, the NRC staff has also prepared a non-proprietary version of the SE, which is provided in Enclosure 2. The proprietary version of the SE is provided in Enclosure 3.

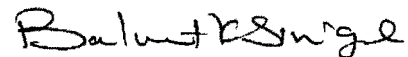
Enclosure 3 to this letter contains Proprietary Information. Upon separation from Enclosure 3, this letter is DECONTROLLED.

R. Flores

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The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,



Balwant K. Singal, Senior Project Manager
Plant Licensing Branch IV
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-445 and 50-446

Enclosures:

1. Order
2. Safety Evaluation (Non-proprietary)
3. Safety Evaluation (Proprietary)

cc w/Encl 1 and 2: Distribution via Listserv

ENCLOSURE 1

Order Approving Application Regarding Proposed Corporate
Internal Restructuring and Indirect Transfer of Licenses
Comanche Peak Nuclear Power Plant, Units 1 and 2

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
)	
LUMINANT GENERATION)	
COMPANY LLC)	
)	
)	
Comanche Peak Nuclear Power)	Docket Nos. 50-445 and 50-446
Plant, Units 1 and 2)	License Nos. NPF-87 and NPF-89
)	

ORDER APPROVING THE PROPOSED INTERNAL RESTRUCTURING AND
INDIRECT TRANSFER OF LICENSE

I.

Luminant Generation Company LLC (Luminant, the licensee), is the holder of the Facility Operating License Nos. NPF-87 and NPF-89, which authorizes the possession, use, and operation of the Comanche Peak Nuclear Power Plant, Units 1 and 2 (CPNPP), and its Independent Spent Fuel Storage Installation Facility. CPNPP is located in Somervell County, Texas.

II.

By application dated October 11, 2012, as supplemented by letters dated October 24, November 26, December 5, and December 17, 2012, the licensee, acting on behalf of Energy Future Holdings Corporation (EFH), Energy Future Competitive Holdings Company (EFCH),

Texas Competitive Electric Holdings Company LLC, and Luminant Holding Company LLC, the applicants, seek approval pursuant to 10 CFR 50.80 of the indirect transfer of control of CPNPP, Units 1 and 2, Facility Operating License Nos. NPF-87 and NPF-89, respectively. The transfer also involves the general license for CPNPP Independent Spent Fuel Storage Installation Facility.

EFCH is a direct, wholly owned subsidiary of EFH. EFCH, through its wholly owned subsidiaries, owns Luminant, the owner and operator of CPNPP. EFH is planning an internal transaction, the ultimate result of which is to convert EFCH from a Texas corporation into a Delaware limited liability corporation. Following the conversion, EFCH will remain a wholly owned subsidiary of EFH, and EFH will retain the same assets, liabilities, owners, board of directors, and management. There will be no change of control of EFH, EFCH, or Luminant as a result of this internal restructuring. No physical changes to the CPNPP facilities or operational changes are proposed.

The internal restructuring will be completed in several steps. EFH would form a new wholly owned subsidiary known as EFH2 corporation (EFH2), which would be a Texas corporation. EFH would then contribute its stock in EFCH to EFH2 causing EFCH to become a wholly owned subsidiary of EFH2. EFCH would then convert to a Delaware limited liability company by operation of applicable Texas and Delaware law. Finally, EFH would merge with and into EFH2 with EFH2 being the surviving entity, and EFH2 would change its name to Energy Future Holdings Corporation and adopt the current certificate of formation and bylaws of EFH.

Approval of the indirect transfer of the facility operating license was requested by Luminant. A notice entitled, " Consideration of Approval of Application Containing Sensitive Unclassified Non-Safeguards Information Regarding Proposed Energy Future Holdings Corporation Internal Restructuring," was published in the *Federal Register* on January 2, 2013 (78 FR 119), and a correction notice was published on January 10, 2013 (78 FR 2295). No comments or hearing requests were received. The supplemental letters dated November 26, December 5, and December 17, 2012, provided additional information that clarified the application and did not expand the scope of the application as originally noticed.

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 U.S. Nuclear Regulatory Commission (NRC) shall give its consent in writing. Upon review of the information in the application as supplemented, and other information before the Commission, and relying upon the representations and agreements in the application, the NRC staff has determined that the proposed indirect transfer of control of the subject licenses held by the licensee to the extent such will result from the proposed internal restructuring, as described in the application, will not affect the qualifications of the licensee to hold the respective licenses and is 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 findings set forth above are supported by a safety evaluation dated February 22, 2013.

III.

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

50.80, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer is approved, subject to the following condition:

On October 10, 2007, Luminant Holding Company LLC, the immediate parent company of Luminant Power, provided Luminant Power with a support agreement in the amount of \$250 million.

“IT IS HEREBY ORDERED that in connection with the proposed transaction, Luminant Holding Company LLC shall increase the amount available under this support agreement to \$300 million, which provides a source of funding in an amount that is adequate to fund approximately one year’s worth of the average projected expense for the fixed operations and maintenance (O&M) of CPNPP.”

IT IS FURTHER ORDERED that after receipt of all required regulatory approvals of the proposed indirect transfer action, Luminant shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 5 business days prior to the date of the closing of the indirect transfer. Should the proposed indirect 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.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 11, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12312A157), as supplemented by letters dated October 24, November 26, December 5, and

December 17, 2012 (ADAMS Accession Nos. ML12312A071, ML12340A446, ML12354A058, and ML12363A028, respectively), and the safety evaluation dated February 22, 2013, 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 22nd day of February 2013.

FOR THE NUCLEAR REGULATORY COMMISSION



Michele G. Evans, Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

ENCLOSURE 2

Safety Evaluation (Non-Proprietary)

Proprietary information pursuant to 10 CFR 2.390 has been redacted from this document.

Redacted information is identified by blank space enclosed within double-brackets.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SAFETY EVALUATION BY THE OFFICE OF NUCLEAR REACTOR REGULATION

INDIRECT TRANSFER OF CONTROL OF FACILITY OPERATING LICENSES

DUE TO CORPORATE RESTRUCTURING WITHIN

ENERGY FUTURE HOLDINGS CORPORATION

LUMINANT GENERATION COMPANY LLC

COMANCHE PEAK NUCLEAR POWER PLANT, UNITS 1 AND 2

DOCKET NOS. 50-445 AND 50-446

1.0 INTRODUCTION:

By letter dated October 11, 2012 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12312A157), as supplemented by letters dated October 24, November 26, December 5, and December 17, 2012 (collectively, the application) (ADAMS Accession Nos. ML12312A071, ML12340A446, ML12354A058, and ML12363A028, respectively), Luminant Generation Company LLC (Luminant, the licensee), acting on behalf of Energy Future Holdings Corp. (EFH), Energy Future Competitive Holdings Company (EFCH), Texas Competitive Electric Holdings Company LLC, and Luminant Holding Company LLC, requested that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of operating licenses NPF-87 and NPF-89 for Comanche Peak Nuclear Power Plant, Units 1 and 2 (CPNPP), now held by Luminant as owner and operator. There is also an Independent Spent Fuel Storage Installation (ISFSI) licensed under a general license that will be transferred as a result of the indirect transfer.

Portions of the letters dated October 11, November 26, and December 5, 2012, contain sensitive unclassified non-safeguards information (proprietary) and, accordingly, those portions are withheld from public disclosure.

2.0 BACKGROUND

EFCH is a direct wholly owned subsidiary of EFH. EFCH, through its wholly owned subsidiaries, owns Luminant, the owner and operator of CPNPP. EFH is planning an internal transaction, the ultimate result of which is to convert EFCH from a Texas corporation into a Delaware limited liability company. Following the transaction, EFCH will remain a wholly owned subsidiary of EFH. Under the proposed internal restructuring, EFH would form a new wholly owned subsidiary known as EFH2 Corp. (EFH2), which would be a Texas corporation. EFH would then contribute its stock in EFCH to EFH2 causing EFCH to become a wholly owned subsidiary of EFH2. EFCH would then convert to a Delaware limited liability company by

operation of applicable Texas and Delaware law.¹ Finally, EFH would merge with and into EFH2 with EFH2 being the surviving entity, and EFH2 would change its name to Energy Future Holdings Corp. and adopt the current certificate of formation and bylaws of EFH. After the transaction, EFCH will remain a wholly owned subsidiary of EFH, and EFH will retain the same assets, liabilities, owners, board of directors, and management.²

According to the applicants, the proposed transactions involve no changes to any of CPNPP facility operating licenses; therefore, Luminant did not request a conforming license amendment.

According to the applicants, none of Luminant's qualifications to own the facilities is affected by the proposed indirect transfer. Specifically, Luminant's financial qualifications and decommissioning funding assurance will not change as part of the proposed transaction.

Luminant is the licensed operator for CPNPP. The application does not request, or involve any change to Luminant's continued operation of CPNPP. The application does not request approval of any physical changes in the plant, or any changes to the conduct of operations at CPNPP. After the proposed transactions, Luminant will continue to operate and maintain each plant in accordance with its respective licensing basis. Other than having a new legal entity that is created and then survives as EFH, the transaction does not involve any change in the ownership or control of any entity in the chain that directly or indirectly owns, operates, or controls CPNPP, including Luminant.

The applicants do not request any license amendments or make additional commitments to the NRC, except a commitment to increase the amount of an existing financial support agreement.

3.0 REGULATORY EVALUATION

The applicants' request for approval of the indirect transfer of control of the licenses for the units discussed in this safety evaluation (SE) and ISFSI is made under Section 50.80, "Transfer of licenses," in Title 10 of the *Code of Regulations* (10 CFR). The Commission's regulation at 10 CFR 50.80(a) states, in part, the following:

No license for a production or utilization facility (including, but not limited to, permits under this part and Part 52 of this chapter, and licenses under parts 50 and 52 of this chapter), or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

The regulations in 10 CFR 72.50(a) state that

No license or any part included in a license issued under this part for an ISFSI or MRS [monitored retrievable storage installation] shall be transferred, assigned, or

¹ The applicants have stated that the feasibility of this proposed change is solely dependent on a positive private letter ruling from the Internal Revenue Service.

² The application dated October 11, 2012, contained a simplified organization chart of the current and intended corporate structure; see Enclosure 1 Exhibits A and B.

in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing.

In addition, the regulations in 10 CFR 50.80(b) and (c) and 10 CFR 72.50(b) and (c) apply. The regulations in 10 CFR 50.80(b) state, in part, that an application for a license transfer shall include as much information described in 10 CFR 50.33, "Contents of applications; general information," and 10 CFR 50.34, "Contents of applications; technical information," "with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license."

The regulations in 10 CFR 50.80(c) state, in part, that

[t]he Commission will approve an application for the transfer of a license, if the Commission determines: (1) That the proposed transferee is qualified to be the holder of the license; and (2) That transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

4.0 FINANCIAL QUALIFICATIONS

The regulations in 10 CFR 50.33(f) provide, in part, that each application shall state that

Except for an electric utility applicant for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22, information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

The regulations in 10 CFR 50.2 define an electric utility, in part, as follows:

Electric utility means any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

The NRC concludes that the licensee of CPNPP, Luminant, does not qualify as an electric utility as defined in 10 CFR 50.2. In accordance with 10 CFR 50.33(f), a non-utility applicant must provide information sufficient to demonstrate its financial qualifications to carry out the activities for which the license is being sought. The information must show that the applicant possesses, or has reasonable assurance of obtaining, the funds necessary to cover estimated operating costs for the period of the license. In making this showing, the applicant must submit estimated total annual operating costs for the first 5 years of facility operations and indicate the source(s) of funds to cover these costs. For license transfers, direct or indirect, the relevant 5-year period is that time immediately following the proposed merger. For indirect license transfers, the information submitted must demonstrate that the proposed merger and indirect transfers will not affect the financial qualifications of the licensee.

Also, 10 CFR 50.33(k)(1) requires that the licensees for the aforementioned facilities must provide information as described in 10 CFR 50.75, "Reporting and recordkeeping for decommissioning planning," demonstrating that there will be no effect on the licensee's provision of reasonable assurance that funds will be available to decommission the aforementioned facilities. Section 5.0 of this SE discusses decommissioning funding assurance.

The NRC evaluated whether the financial qualifications of the licensees would be affected by the proposed transfers in a manner that is consistent with the guidance provided in NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," March 1999 (ADAMS Accession No. ML013330264). The NRC reviewed the financial projections for the reasonableness of estimated operating costs, the reasonableness of financial projections and underlying assumptions, and the sensitivity of plant revenue projections to determine if the licensee possesses or has reasonable assurance of obtaining the funds necessary to cover the estimated operating costs for the period of the licenses.

4.1 Comanche Peak Nuclear Power Plant, Units 1 and 2

According to the applicants, Luminant will continue to possess, or have reasonable assurance of obtaining, the funds necessary to cover the estimated operating costs of CPNPP for the period of the licenses in accordance with 10 CFR 50.33(f)(2) and NUREG-1577, Revision 1.

The applicants provided financial information concerning EFH as a whole is contained in the EFH Annual Report for the year ending December 31, 2011, as filed by EFH with the Securities and Exchange Commission (SEC) on February 21, 2012. A copy of this filing, SEC Form 10K, is maintained by the SEC at:

<http://www.sec.gov/Archives/edgar/data/1023291/000102329112000004/efh-20111231x10k.htm>

EFH's income statement for the year ended December 31, 2011, and balance sheet as of December 31, 2011, are provided in Item 6 at pages 50-51 of the Annual Report. This Annual Report shows that EFH had total assets of more than \$44 billion, including net property, plant and equipment of more than \$19 billion.

Luminant provided financial information, which includes: (1) pro forma projected income statement for CPNPP as a stand-alone operation for the 5-year period from January 1, 2013, through December 31, 2017; (2) a balance sheet as of December 31, 2011 and pro forma projected income statement for Luminant as a whole (including its non-nuclear generation assets) for the same 5-year period; and (3) a balance sheet of Luminant Holding Company LLC as of December 31, 2011.³

The NRC staff notes that Luminant's projected net income is impacted by depreciation and amortization charges required by the purchase accounting rules found in generally accepted

³ Copies of the balance sheets and projected income statements (with related schedules) are contained in a proprietary version of Enclosure 1 Exhibit D of letter dated October 11, 2012. Luminant requested that this Addendum be withheld from public disclosure, as described in the Section 2.390 Affidavit of Fred W. Madden.

accounting principles. The applicants state that these rules are applicable to EFH and Luminant because of the acquisition of EFH in 2007 by its current owners. This depreciation and amortization is a non-cash item. Thus, Luminant's earnings before interest, taxes, depreciation and amortization (EBITDA) and its separate cash flow statement demonstrate an availability of operating cash flow to support the safe operation of CPNPP.

The pro forma projected income statements show that anticipated revenues from sales of energy from CPNPP provide reasonable assurance of an adequate source of funds to meet the needs and obligations for CPNPP's ongoing operating and maintenance expenses. Furthermore, the pro forma projected income statements for Luminant as a whole (including its coal-fired generation assets) demonstrate its capacity to meet its own operating expenses as well as those of CPNPP's ongoing operating and maintenance expenses.

The following is an abbreviated version of the projected income statement submitted in Enclosure 1, Addendum Exhibit D, of letter dated October 11, 2012:

Table 1

(Abbreviated) Projected Income Statement
Luminant Generation Company LLC
Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2
\$ MILLIONS

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Total Revenue:	[[]]	[[]]	[[]]	[[]]	[[]]
Total Operating Expenses:	[[]]	[[]]	[[]]	[[]]	[[]]
Operating Income:	[[]]	[[]]	[[]]	[[]]	[[]]
Less Expenses and Tax:	[[]]	[[]]	[[]]	[[]]	[[]]
Net Income:	[[]]	[[]]	[[]]	[[]]	[[]]

The NRC staff's review of the projected income statement for Luminant indicates that the licensee for CPNPP has a negative net income for the fiscal years 2013 and 2014, as well as a very weak net income for fiscal year 2015. Based solely on the projected income statement above, the NRC staff would be unable to conclude that Luminant has reasonable assurance of obtaining the revenue funds necessary to cover estimated operating costs for the period of the license.

The NRC staff has previously made only one finding of reasonable assurance of financial qualifications for a plant with a negative income statement as part of an indirect license transfer. The finding, summarized in the April 11, 2008, SE for an indirect transfer related to a restructuring of Entergy Corporation (ADAMS Accession No. ML080920596), addressed a negative income statement for the Vermont Yankee Nuclear Power Station (VYNPS). The NRC staff found VYNPS financially qualified, based in part on additional financial assurance provided by support agreements put in place by Entergy Corporation, the parent company of VYNPS, as well as access to a line of credit.

The NRC staff has chosen to test the sensitivity of the financial information set forth in Table 1 above by analyzing two scenarios: one changes the assumptions for revenue by changing the market price for a megawatt hour of electricity, and the other that changes the assumptions for purchased power by changing the capacity factor.

The applicants have provided a projected income statement that assumes a 10 percent reduction in market prices. This schedule reflects reduced market revenues each year by 10 percent beginning with the year 2013.

The applicants also provided a projected income statement that assumes a 10 percent reduction capacity factor.

The NRC staff notes that, in the market price scenario, if the price per megawatt hour drops by an average of 10 percent, the effect on the 5-year net income stream is a drop from the projected average of [[] million per year, to a possible [[] million per year. In the capacity factor scenario, if the capacity factor drops by an average of 10 percent, the effect on the 5-year net income stream is a drop from the projected average of [[] million per year to a possible [[] million per year.

According to the application, Luminant proposed an amendment to an existing support agreement which was referenced in its letter dated October 11, 2012. This support agreement provides approximately \$300 million in financial support, an increase from the original support agreement of \$250 million, which is sufficient to cover a 6-month outage scenario for the two plants (Commitment No. 4484874). A copy of the executed support agreement was provided by Luminant's letter dated November 5, 2007 (ADAMS Accession No. ML073180490). The proprietary version of Enclosure 1 Exhibit D of the submitted dated October 11, 2012, also provides balance sheet and projected income information for Luminant Holding Company LLC.

These sensitivities analyses are solely for the purpose of testing the robustness of the required five-year pro-forma. Therefore, the NRC staff has determined that funds provided in support agreement, would result in sufficient revenue funds to cover anticipated maintenance and operation expenses for Comanche Peak.

Accordingly, based on the above, the NRC staff concludes that Luminant has reasonable assurance of obtaining the funds necessary to cover estimated operating costs for the period of the license, including a 6-month outage, and thus will continue to be financially qualified to hold the license, notwithstanding the indirect transfer of Luminant in accordance with 10 CFR 50.33(f)(2) and NUREG-1577, Revision 1.

Therefore, this SE contains the following condition of the transfer:

On October 10, 2007, Luminant Holding Company LLC, the immediate parent company of Luminant, provided Luminant with a support agreement in the amount of \$250 million.

"IT IS HEREBY ORDERED that in connection with the proposed transaction, Luminant Holding Company LLC shall increase the amount available under this

support agreement to \$300 million, which provides a source of funding in an amount that is adequate to fund approximately one year's worth of the average projected expense for the fixed operations and maintenance (O&M) of CPNPP."

Table 2 provides an abbreviated projected income statement for Luminant Holding Company LLC. The NRC staff reviewed this statement for reasonable assurance that Luminant Holding Company LLC has the ability to support the proposed \$300 million support agreement with Luminant.

Table 2

(Abbreviated) Projected Income Statement
Luminant Holding Company LLC
\$ MILLIONS

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Total Revenue:	[[]]	[[]]	[[]]	[[]]	[[]]
Total Operating Expenses:	[[]]	[[]]	[[]]	[[]]	[[]]
Operating Income:	[[]]	[[]]	[[]]	[[]]	[[]]
Less Expenses and Tax:	[[]]	[[]]	[[]]	[[]]	[[]]
Net Income:	[[]]	[[]]	[[]]	[[]]	[[]]

The NRC staff concludes that Luminant Holding Company LLC has provided reasonable assurance of its ability to support the \$300 million support agreement with Luminant. The NRC staff notes that Luminant Holding Company LLC states in the application that, as of June 30, 2012, it possesses \$1.869 Billion in revolving credit.

5.0 DECOMMISSIONING FUNDING ASSURANCE

As stated by the applicants, the financial qualifications of Luminant to continue to own the 100 percent undivided ownership interest in CPNPP are further demonstrated by the fact that Luminant will continue to provide financial assurance for decommissioning funding in accordance with 10 CFR 50.75(e)(1)(i) and (ii), using the external sinking fund method with access to non-bypassable charges to retail electric customers. See Texas Utilities Code § 39.205. Luminant currently maintains and will continue to maintain decommissioning trust funds that have been established to provide funding for decontamination and decommissioning for CPNPP. A report regarding the status of these funds was submitted to the NRC on March 28, 2011, as Luminant's biennial 50.75(f) report (ADAMS Accession No. ML110960274). Letter dated October 24, 2012 provide an update to this status report.

In addition, Luminant states in the application that it will continue to receive contributions to those trust funds pursuant to a non-bypassable charge (within the meaning of 10 CFR 50.75(e)(1)(ii)(B)). These decommissioning funding arrangements were specifically approved by the Public Utility Commission of Texas. These arrangements assure that Luminant

will have the total amount of funds estimated to be needed for decommissioning pursuant to 10 CFR 50.75.

Decommissioning Funding Assurance for CPNPP will be reviewed under a separate action involving Decommissioning Funding Status Reports due to the NRC by March 31, 2013.

6.0 ANTITRUST REVIEW

The Atomic Energy Act of 1954, as amended, does not require or authorize antitrust reviews of post-operating license transfer applications. Kansas Gas and Electric Co., et al. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441 (1999). The application here postdates the issuance of the operating licenses for the units under consideration in this SE and, therefore, no antitrust review is required or authorized.

7.0 FOREIGN OWNERSHIP, CONTROL, OR DOMINATION

According to the applicants, no material changes have been made to the U.S.-based control exercised through the ownership structure of EFH and its subsidiaries that own CPNPP since the NRC approved EFH's (then TXU Corp.'s) change in ownership in 2007. In addition, there are no material adverse changes to the other information previously provided regarding both U.S.-based control exercised through the ownership structure of EFH and the citizenship of EFH's and Luminant's directors and key management personnel. Since approval in 2007, one EFH board member, who had been a foreign citizen, has become a U.S. citizen, and a new EFH board member with Canadian citizenship has joined the EFH board. Thus, EFH continues to have just one non-U.S. citizen board member.

On September 10, 2007, the NRC determined in its safety analysis report approving the license transfers for the structure of the then "TXU Corp." would "not result in any foreign ownership, domination, or control of TXU Power within the meaning of the AEA." Since the 2007 approval, there have been no material changes to the U.S.-based control exercised through the ownership structure of EFH, the successor company to TXU Corp., and its subsidiaries that own CPNPP, and there are no material changes being made as a result of the proposed transaction, there will continue to be no foreign ownership, control, or domination (FOCD) of EFH or its subsidiaries, including Luminant.

In addition, the NRC staff has previously imposed negation measures to address any potential FOCD issue in the form of the following License Condition 2.C.(9) in each of the Licenses for CPNPP:

Following the subject indirect transfer of control of the licenses, all of the officers of the general partner or controlling member of the licensee of CPNPP shall be U.S. citizens. This condition may be amended upon application by the licensee and approval by the Director of the Office of Nuclear Reactor Regulation.

The NRC staff does not have reason to believe that Luminant and its immediate controlling parent, Luminant Holding Company LLC, are owned, controlled, or dominated by an alien, foreign corporation, or foreign government.

8.0 TECHNICAL QUALIFICATIONS

The applicants have stated that the technical qualifications of Luminant are not affected by the proposed indirect license transfers. There will be no changes in the officers, personnel, or day-to-day operations of CPNPP in connection with the indirect transfer of control. It is anticipated that Luminant will at all times remain the licensed operator of the CPNPP.

Based on the applicants' statements above, the NRC staff expects that the technical qualifications that were in place immediately before the proposed transfers will continue after the proposed transfer is executed. Therefore, no further technical qualifications review is needed.

9.0 PRICE-ANDERSON INDEMNITY AND NUCLEAR INSURANCE

According to the application, the proposed indirect transfers of control of the licenses would not affect the existing Price-Anderson indemnity agreements and the required nuclear property damage insurance under 10 CFR 50.54(w) and nuclear energy liability insurance required under Section 1770 of the AEA and 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

Also, the NRC has no reason to believe that the proposed indirect transfer will affect the ability of Luminant to meet its financial obligations for its pro rata share of obligations for retrospective premiums for CPNPP.

Therefore, in consideration of the foregoing, the NRC staff concludes that the indirect transfers of control of the licensees held by Luminant will have no adverse impact on its ability to provide required nuclear insurance and indemnity coverage and its ability to meet its nuclear insurance obligations.

10.0 CONCLUSION

In view of the foregoing, the NRC staff concludes that the proposed indirect transfer of the licensee for the CPNPP as a result of change in Energy Future Competitive Holding Company, a Texas corporation, to Energy Future Competitive Holding Company LLC, a Delaware limited liability company, will not affect the qualifications of the holder of the license, Luminant, for CPNPP, and that the transfer of the licenses is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Principal Contributor: Michael A. Dusaniwskyj

Date: February 25, 2013

PLS

R. Flores

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The Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Balwant K. Singal, Senior Project Manager
Plant Licensing Branch IV
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Docket Nos. 50-445 and 50-446

Enclosures:

- 1. Order
- 2. Safety Evaluation (Non-proprietary)
- 3. Safety Evaluation (Proprietary)

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