

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-445]

### TXU Generation Company LP; Comanche Peak Steam Electric Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License No. NPF-87 Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF-87, issued to TXU Generation Company LP (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Unit 1, located in Somervell County, Texas.

The proposed amendment would revise Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)," by adding topical report WCAP-13060-P-A, "Westinghouse Fuel Assembly Reconstitution Evaluation Methodology," to the list of NRC approved methodologies to be used at CPSES, Unit 1.

By application dated April 27, 2005, as supplemented by letter dated July 20, 2005, the licensee requested the approval of the proposed amendment by October 8, 2005. The approval of the proposed amendment is needed to permit the licensee to use the reconstitution method of fuel assembly repair at CPSES Unit 1. The NRC staff inadvertently did not publish a **Federal Register** notice of Consideration of Issuance of Amendments to Facility Operating Licenses, and Proposed No Significant Hazards Consideration Determination, in time to permit a 30 days period for prior public comment as required by Section 50.91 of Title 10 of the Code of Federal Regulations (10 CFR). The Commission finds that exigent circumstances exist, in that the licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards

consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature and as such does not impact the condition or performance of any plant structure, system or component. The core operating limits are established to support Technical Specifications 3.1, 3.2, 3.3, 3.4, and 3.9. The core operating limits ensure that fuel design limits are not exceeded during any conditions of normal operation or in the event of any Anticipated Operational Occurrence (AOO). The methods used to determine the core operating limits for each operating cycle are based on methods previously found acceptable by the NRC and listed in TS section 5.6.5.b. Application of these approved methods will continue to ensure that acceptable operating limits are established to protect the fuel cladding integrity during normal operation and AOOs. The requested Technical Specification change does not involve any plant modifications or operational changes that could affect system reliability, performance, or possibility of operator error. The requested change does not affect any postulated accident precursors, does not affect any accident mitigation systems, and does not introduce any new accident initiation mechanisms.

As a result, the proposed change to the CPSES Technical Specifications does not involve any increase in the probability or the consequences of any accident or malfunction of equipment important to safety previously evaluated since neither accident probabilities nor consequences are being affected by this proposed administrative change.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in nature, and therefore does not involve any change in station operation or physical modifications to the plant. In addition, no changes are being made in the methods used to respond to plant transients that have been previously analyzed. No changes are being made to plant parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions, and no new failure modes are being introduced.

Therefore, the proposed administrative change to the CPSES Technical Specifications does not create the possibility of a new or different kind of accident or malfunction of equipment important to safety from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature and does not impact station operation or any plant structure, system or component that is relied upon for accident mitigation. Furthermore, the margin of safety assumed in the plant safety analysis is not affected in any way by the proposed administrative change.

Therefore, the proposed change to the CPSES Technical Specifications does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should

the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set

forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it

immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see the application for amendments dated April 27, 2005, and supplement dated July 20, 2005, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/>

*reading-rm.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, 301-415-4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of September 2005.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Senior Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52469; File No. SR-Amex-2005-089]

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Options Licensing Fees for Certain Vanguard ETF Options

September 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 9, 2005, the American Stock Exchange, Inc. (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by Amex. Amex submitted the proposed rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its options fee schedule by adopting a per-contract side licensing fee for the orders of specialists, registered options traders (“ROTs”), firms, non-member market makers, and broker-dealers in connection with transactions in options on certain Vanguard exchange-traded funds (“ETFs”).

The text of the proposed rule change is available on Amex’s Web site <http://www.amex.com>, at Amex’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange has entered into numerous license agreements with issuers and owners of indexes for the purpose of trading options on certain ETFs. The requirement to pay an index licensing fee to third parties is a condition to the listing and trading of these ETF options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per-contract side licensing fee for the orders of specialists, ROTs, firms, non-member market makers, and broker-dealers collected on every transaction in certain designated products in which such market participant is a party.<sup>5</sup>

The purpose of the proposal is to charge a per-contract side licensing fee in connection with transactions in certain options on the Vanguard ETFs (“Vanguard ETF Options”). Specifically, Amex seeks to charge an options licensing fee of \$0.10 per contract side for specialist, ROT, firm, non-member market maker, and broker-dealer orders executed on the Exchange in connection with the following Vanguard ETFs:

- (1) Vanguard Consumer Discretionary VIPERs (symbol: VCR);
- (2) Vanguard Consumer Staples VIPERs (symbol: VDC);
- (3) Vanguard Energy VIPERs (symbol: VDE);

- (4) Vanguard Financials VIPERs (symbol: VFH);
- (5) Vanguard Health Care VIPERs (symbol: VHT);
- (6) Vanguard Industrials VIPERs (symbol: VIS);
- (7) Vanguard Information Technology VIPERs (symbol: VGT);
- (8) Vanguard Materials VIPERs (symbol: VAW);
- (9) Vanguard Utilities VIPERs (symbol: VPU);
- (10) Vanguard Telecommunication Services VIPERs (symbol: VOX);
- (11) Vanguard REIT VIPERs (symbol: VNQ);
- (12) Vanguard Small-Cap Growth VIPERs (symbol: VBK);
- (13) Vanguard Small-Cap Value VIPERs (symbol: VBR);
- (14) Vanguard Mid-Cap VIPERs (symbol: VO);
- (15) Vanguard Large-Cap VIPERs (symbol: VV);
- (16) Vanguard Growth VIPERs (symbol: VUG);
- (17) Vanguard Value VIPERs (symbol: VTV); and
- (18) Vanguard Small-Cap VIPERs (symbol: VB).

In addition, the Exchange also proposes to charge an options licensing fee of \$0.09 per contract side for specialist, ROT, firm, non-member market maker, and broker-dealer orders executed on the Exchange in connection with the Vanguard Extended Market VIPERs (symbol: VXF). The proposal also revises Section V (Options Licensing Fee) of the Options Fee Schedule to designate the SPDR O-Strip by its symbol “OOO.” In all cases, the fees set forth in the Options Fee Schedule are charged only to Exchange members through whom the orders are placed.

The proposed options licensing fees will allow the Exchange to recoup its costs in connection with index licensing fees for the trading of the Vanguard ETF Options. The fees will be collected on every Vanguard ETF Option order of a specialist, ROT, firm, non-member market maker, and broker-dealer executed on the Exchange. The Exchange believes that collection of a per-contract side licensing fee in connection with Vanguard ETF Options orders placed by those market participants that are the beneficiaries of the Exchange’s index license agreements is justified and consistent with the rules of the Exchange.

The Exchange notes that Amex in recent years has revised a number of fees to better align Exchange fees with the actual cost of delivering services and to reduce Exchange subsidies of such

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> See File No. SR-Amex-2005-087 (filed on August 31, 2004, and pending before the Commission).