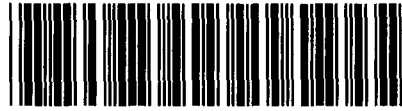




Control Number: 23730



Item Number: 1941

Addendum StartPage: 0

RECEIVED

PROJECT NO. 23730

2018 FEB 28 PM 12: 57

ELECTRIC GENERATING §
CAPACITY REPORTS §
PURSUANT TO SUBST. R. 25.91 §

BEFORE THE PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

LUMINANT'S STATEMENT OF EXEMPTION FOR PROTECTED MATERIALS

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Luminant Generation Company LLC, Big Brown Power Company LLC, Comanche Peak Power Company LLC, La Frontera Holdings, LLC, Oak Grove Management Company LLC, and Sandow Power Company LLC (collectively reporting as "Luminant") file this Statement of Exemption for Protected Materials within the annual Electric Generating Capacity Report for calendar year 2017¹ and respectfully show as follows:

I.

Paragraph No. 3 of the Protective Order applicable to this report requires a reporting party to file a written statement with the Public Utility Commission of Texas ("Commission"), on or before the date the reporting party provides Protected Materials to the Commission: (1) specifically identifying the portions of the Generating Capacity Report that are confidential; (2) indicating any and all applicable exemptions from the Texas Public Information Act ("TPIA")²; (3) setting forth the reasons supporting the reporting party's claim that the information is exempt from public disclosure under the TPIA and subject to treatment as Protected Materials; and (4) stating that counsel for the reporting party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the TPIA and merits the Protected Material designation.³

¹ As required by Commission rule, this report provides information for the calendar year preceding the year in which the report is filed. See 16 TEX. ADMIN. CODE ("TAC") § 25.91. Luminant is filing the instant report in 2018, with data for calendar year 2017, but with footnotes that provide updates regarding plant retirements in 2018. To clarify, the total capacity reported in Table 1 includes the capacity that was retired after the end of the reporting year (2017), but before the filing date of this report (i.e., 4,273 MW); however, since that capacity has now been retired, Table 1 does not report that 4,273 MW of capacity as capacity to be retired in the next 12 months (instead, Tables 2 and 3 include footnotes providing actual retirement dates for the capacity that has already been retired as of the filing date of this report).

² TEX. GOV'T CODE ANN., Chapter 552 (West 2004 & Supp. 2017).

³ See *In the Matter of Generating Capacity Reports*, Project No. 21081, Protective Order at 2 (Mar. 7, 2001). Consistent with the requirements of Paragraph No. 3, recited above, Paragraph No. 1 defines "Protected Materials" as "information that is exempt from public disclosure under the [TPIA]."

For the reasons set forth below, Luminant claims that the redacted information in Tables 1 and 3 of the Generating Capacity Report for calendar year 2017 is Protected Material that is exempt from disclosure under the TPIA.

II.

The relevant exemptions to the TPIA are in Sections 552.101, 552.104, and 552.110.

Section 552.101 of the TPIA exempts information that is considered “confidential by law, either constitutional, statutory, or by judicial decision.” Section 39.001(b)(4) of the Public Utility Regulatory Act (“PURA”)⁴ provides that it is in the public interest to “protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information during the transition to a competitive market and after the commencement of customer choice.” Thus, all competitively sensitive information is statutorily exempt from disclosure.

Section 552.104(a) excepts from disclosure “information that, if released, would *give advantage to a competitor* or bidder.”⁵ In *Boeing Company v. Paxton*,⁶ the Texas Supreme Court held that “a private party may assert [this] exception to protect its competitively sensitive information.”⁷ The Court then applied the exception to protect information that the Court concluded would “benefit the private party’s competitors” and thus “‘give advantage to a competitor’ of the private party asserting the exception.”⁸ The Court additionally held that the exception protected not only “ongoing competitive bidding,” but also applied to the current contract prices in that case, because in the particular industry, “disclosure of current contract prices gives competitors a distinct advantage by telling them precisely how to undercut the current contractor when contracts are re-bid.”⁹

Section 552.110 of the TPIA exempts from disclosure both trade secrets and “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was

⁴ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-58.302 (West 2016 & Supp. 2017), §§ 59.001-66.016 (West 2007 & Supp. 2017) (PURA).

⁵ TEX. GOV’T CODE § 552.104(a) (emphasis added).

⁶ 466 S.W.3d 831 (Tex. 2015).

⁷ *Id.* at 833.

⁸ *Id.*

⁹ *Id.* at 841.

obtained.” The Texas Supreme Court defines trade secrets according to the definition in the Restatement of Torts:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.¹⁰

The Texas Attorney General has likewise adopted the Restatement definition of trade secrets as the appropriate standard.¹¹ PURA further instructs the Commission to consider “customer names and addresses, prices, individual customer contracts, and *expected load and usage data*” filed in tariff proceedings as highly sensitive trade secrets.¹²

A trade secret need not be a patentable device or process.¹³ Items such as customer lists, pricing information, client information, customer preferences, and market strategies have all been shown to be trade secrets.¹⁴ When an effort is made to keep away from competitors material that is important to a particular business, trade secret protection is warranted.¹⁵ Furthermore, while some individual underlying components may be available to the public, a trade secret exists if the overall compilation is not generally known or readily available.¹⁶

¹⁰ See *In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003); RESTATEMENT (FIRST) OF TORTS § 757 cmt. b. (1939); see also RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 39, cmt. d (1995) (setting forth a similar definition of trade secret). Section 757, comment b, of the Restatement (First) of Torts lists six factors to be considered when determining whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company’s] business;
- (2) the extent to which it is known by employees and others involved in [the company’s] business;
- (3) the extent of the measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and to [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

¹¹ Tex. Att’y Gen. ORD-652 (1997); Tex. Att’y Gen. ORD-552 at 2 (1990).

¹² PURA § 32.101(c) (emphasis added).

¹³ See *K & G Oil Tool & Serv. Co. v. G & G Fishing Tool Serv.*, 314 S.W.2d 782, 789 (Tex. 1958).

¹⁴ See *Evan’s World Travel, Inc. v. Adams*, 978 S.W.2d 225, 231 (Tex. App.—Texarkana 1998, no pet.); *T-N-T Motorsports, Inc. v. Hennessey Motorsports, Inc.*, 965 S.W.2d 18, 22 (Tex. App.—Houston [1st Dist.] 1998, pet. dismissed); *Miller Paper Co. v. Roberts Paper Co.*, 901 S.W.2d 593, 601 (Tex. App.—Amarillo 1995, no writ).

¹⁵ See *Evan’s World Travel*, 978 S.W.2d at 232; *T-N-T Motorsports*, 965 S.W.2d at 22; *Rugen v. Interactive Bus. Sys., Inc.*, 864 S.W.2d 548, 552 (Tex. App.—Dallas 1993, no writ).

¹⁶ See *T-N-T Motorsports*, 965 S.W.2d at 22–23 (finding that while individual retail prices and the general notion of upgrading performance were available to the public, trade secret protection existed for the overall process and production of an automotive performance upgrade).

III.

The redacted information in Tables 1 and 3 of Luminant's Generating Capacity Report (i.e., the data provided in Lines 2 and 4 through 13 in Table 1 and in column 4 (entitled Annual Generation) in Table 3) is Protected Material. These tables include information related to Luminant's plans for retiring existing capacity; the manner in which Luminant uses its capacity (e.g., the amount available for sale to others, the amount reserved for self-consumption, and the amount under contract to others); Luminant's sales of energy and capacity to affiliates; and Luminant's annual energy production and sales. This information is confidential competitively sensitive and proprietary trade secret information of Luminant.

Disclosure of the information described above would provide competitors with an advantage and cause substantial harm to the competitive position of the Luminant companies as they are in direct competition with other electric generation suppliers in Texas. These specific and detailed operating statistics for Luminant's generating units are highly valuable to the Luminant companies and would be highly valuable to their competitors in the electric generation industry. The Luminant companies are actively engaged in the competitive wholesale electricity market in the Electric Reliability Council of Texas ("ERCOT"). Disclosure of the specific, detailed generating unit operational and sales information described above would put the Luminant companies at a competitive disadvantage in their participation in the ERCOT markets and, accordingly, disclosure would enable the companies' competitors to ascertain how they operate their generating units to offer wholesale energy for sale.

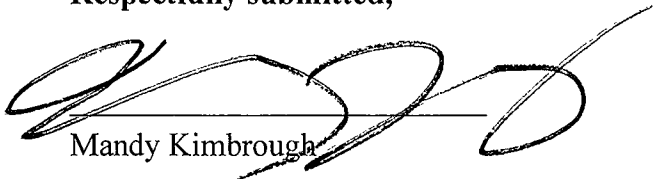
The Luminant companies have taken active measures to protect the redacted information in Tables 1 and 3 to keep it confidential within Luminant. It would be very difficult for others to acquire or duplicate this information, except by Luminant's disclosure of this highly sensitive competitive and proprietary information.

Accordingly, the redacted information is exempt from disclosure under Sections 552.101, 552.104, and 552.110 of the TPIA and therefore constitutes Protected Material under the Protective Order applicable to Generating Capacity Reports.

IV.

The undersigned counsel has reviewed the information sufficiently to, and hereby does, state in good faith that the designated information is exempt from public disclosure under the TPIA and merits designation as Protected Materials.

Respectfully submitted,



Mandy Kimbrough

State Bar No. 24050613

ENOCH KEVER PLLC

5918 W. Courtyard Dr., Suite 500

Austin, Texas 78730

(512) 615-1200 (phone)

(512) 615-1198 (fax)

mkimbrough@enochkever.com

**ATTORNEY FOR
LUMINANT GENERATION COMPANY LLC,
BIG BROWN POWER COMPANY LLC,
COMANCHE PEAK POWER COMPANY LLC,
LA FRONTERA HOLDINGS, LLC,
OAK GROVE MANAGEMENT COMPANY LLC,
AND SANDOW POWER COMPANY LLC**

REPORTING FORM FOR GENERATING CAPACITY REPORTS

Provide the legal name of the party filing this report Luminant Generation Company LLC, Big Brown Power Company LLC, Comanche Peak Power Company LLC, La Frontera Holdings, L.L.C., Oak Grove Management Company LLC, and Sandow Power Company LLC (collectively reporting as "Luminant")

Provide the name, company, and telephone number of the person who may be contacted for clarification of information contained in this report: Brenda Hampton, Luminant, (512) 349-6416

The Reporting Form for Generating Capacity Reports consists of this cover sheet, the attached four tables, and an affidavit. Please review the *Instructions to the Reporting Form for Generating Capacity Reports* before completing this reporting form.

This reporting form and the instructions may be obtained from the Commission's Central Records Division or downloaded from Commission website at <http://www.puc.state.tx.us>. Information may be inserted in the form electronically. As necessary, reply spaces may be expanded and/or rows may be added to the tables in order to provide the information requested.

The completed report must be filed with the Public Utility Commission of Texas, Attention: Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. Submit four (4) copies, including the original.

Generating Capacity Reports – Table 1

	Reliability Council (or Power Region)				
	ERCOT	Name:		Name:	
		Texas Area	Total Rel. Council (or Pwr. Region)	Texas Area	Total Rel. Council (or Pwr. Region)
1. Total capacity of generating facilities that are connected with a transmission or distribution system.	18,083	0	0	0	0
2. Total capacity of generating facilities used to generate electricity for consumption by the person owning or controlling the facility.					
3. Total capacity of generating facilities that will be connected with a transmission or distribution system and operating within 12 months.	180 ¹	0	0	0	0
4. Total affiliate installed generation capacity.					
5. Total amount of capacity available for sale to others.					
6. Total amount of capacity under contract to others.					
7. Total amount of capacity dedicated to own use.					
8. Total amount of capacity that has been subject to auction as approved by the Commission.					
9. Total amount of capacity that will be retired within 12 months.					
10. Annual capacity sales to affiliated retail electric providers (REPs).					
11. Annual wholesale energy sales.					
12. Annual retail energy sales.					
13. Annual energy sales to affiliate REPs.					

¹ Castle Gap Solar facility - based on December 2017 CDR, the discounted capacity is 135 MW. See Staff Estimate of Installed Capacity in ERCOT, Project No. 30970

Revised 12/09

Generating Capacity Reports – Table 2

Generating Facility Name	Facility Capacity	Location (County)	Utility Service Area	Reliability Council	Transmission Congestion Zone (if applicable)
Big Brown Steam Electric Station (BBS) (Retired) ¹	1,208	Freestone	Oncor	ERCOT	North
Comanche Peak Nuclear Power Plant (CPNPP)	2,400	Somervell	Oncor	ERCOT	North
DeCordova SES	278	Hood	Oncor	ERCOT	North
Torney	1,822	Kaufman	Oncor	ERCOT	North
Kiraham SES	624	Young	Oncor	ERCOT	West
Lake Hubbard SES	915	Dallas	Oncor	ERCOT	North
Lamar Power Partners	1,040	Lamar	Oncor	ERCOT	North
Martin Lake SES	2,410	Rusk	Oncor	ERCOT	North
Monticello SES (Retired) ²	1,865	Titus	Oncor	ERCOT	North
Morgan Creek SES	407	Mitchell	Oncor	ERCOT	West
Oak Grove SES	1,665	Robertson	Oncor	ERCOT	North
Permian Basin SES	340	Ward	Oncor	ERCOT	West
Sandow SES (Retired) ³	1,200	Milam	Oncor	ERCOT	South
Stryker Creek SES	679	Cherokee	Oncor	ERCOT	North
Tinidad SES	239	Henderson	Oncor	ERCOT	North
Odessa Ector CCS	991	Ector	Oncor	ERCOT	West
Total	18,083				

¹ Retired on Feb. 12, 2018

² Retired on Jan. 4, 2018

³ Retired on Jan. 11, 2018

Generating Capacity Reports – Table 3

Generating Facility Name	Generating Unit Name	Unit Capacity	Annual Generation	Primary Fuel or Nonfuel Resource	Technology of Natural Gas Generator	Date of Commercial Operation
Big Brown SES (Retired)	Big Brown 1	606		Lignite/Coal	N/A	12/23/71
Big Brown SES (Retired)	Big Brown 2	602		Lignite/Coal	N/A	12/06/72
Comanche Peak NPP	Comanche Peak 1	1,205		Nuclear	N/A	08/30/91
Comanche Peak NPP	Comanche Peak 2	1,195		Nuclear	N/A	08/03/93
DeCordova SES	DeCordova CT 1	71		Natural Gas	CT	03/01/91
DeCordova SES	DeCordova CT 2	70		Natural Gas	CT	03/01/91
DeCordova SES	DeCordova CT 3	69		Natural Gas	CT	03/01/91
DeCordova SES	DeCordova CT 4	68		Natural Gas	CT	03/01/91
Forney	Forney 1	911		Natural Gas	Combined Cycle	2/1/2003
Forney	Forney 2	911		Natural Gas	Combined Cycle	2/1/2003
Graham SES	Graham 1	234		Natural Gas	Steam	12/19/60
Graham SES	Graham 2	306		Natural Gas	Steam	06/05/61
Lake Hubbard SES	Lake Hubbard 1	392		Natural Gas	Steam	06/18/71
Lake Hubbard SES	Lake Hubbard 2	521		Natural Gas	Steam	11/20/73
Lamar Power Partners	Lamar 1	521		Natural Gas	Combined Cycle	7/4/2000
Lamar Power Partners	Lamar 2	521		Natural Gas	Combined Cycle	7/4/2000
Martin Lake SES	Martin Lake 1	800		Lignite/Coal	N/A	05/16/77
Martin Lake SES	Martin Lake 2	805		Lignite/Coal	N/A	05/23/75
Martin Lake SES	Martin Lake 3	805		Lignite/Coal	N/A	04/01/77
Monticello SES (Retired)	Monticello 1	535		Lignite/Coal	N/A	12/23/74
Monticello SES (Retired)	Monticello 2	535		Lignite/Coal	N/A	12/08/75
Monticello SES (Retired)	Monticello 3	795		Lignite/Coal	N/A	08/01/78
Morgan Creek SES	Morgan Creek CT 1	68		Natural Gas	CT	07/01/83
Morgan Creek SES	Morgan Creek CT 2	68		Natural Gas	CT	07/01/83
Morgan Creek SES	Morgan Creek CT 3	68		Natural Gas	CT	08/01/83
Morgan Creek SES	Morgan Creek CT 4	68		Natural Gas	CT	07/01/83

¹ Retired on Feb. 12, 2018

² Retired on Jan. 4, 2018

Revis:

Generating Capacity Reports – Table 3 (continued)

Generating Facility Name	Generating Unit Name	Unit Capacity	Annual Generation	Primary Fuel or Nonfuel Resource	Technology of Natural Gas Generator	Date of Commercial Operation
Morgan Creek SES	Morgan Creek CT 5	68		Natural Gas	CT	07/01/88
Morgan Creek SES	Morgan Creek CT 6	67		Natural Gas	CT	07/01/88
Oak Grove SES	Oak Grove 1	840		Lignite Coal	N/A	10/13/10
Oak Grove SES	Oak Grove 2	825		Lignite Coal	N/A	04/19/11
Permian Basin SES	Permian Basin CT 1	68		Natural Gas	CT	05/01/88
Permian Basin SES	Permian Basin CT 2	65		Natural Gas	CT	05/01/88
Permian Basin SES	Permian Basin CT 3	68		Natural Gas	CT	05/01/88
Permian Basin SES	Permian Basin CT 4	69		Natural Gas	CT	05/01/90
Permian Basin SES	Permian Basin CT 5	70		Natural Gas	CT	05/01/90
Sandow SES (Retired)	Sandow 4	600		Lignite Coal	N/A	05/15/81
Sandow SES (Retired)	Sandow 5	600		Lignite Coal	N/A	01/06/10
Stryker Creek SES	Stryker Creek 1	67		Natural Gas	Steam	06/26/58
Stryker Creek SES	Stryker Creek 2	502		Natural Gas	Steam	12/2/65
Stryker Creek SES	Stryker Creek Diesels 1-5	10		Fuel Oil	N/A	07/30/66
Trinidad SES	Trinidad 6	235		Natural Gas	Steam	05/26/65
Trinidad SES	Trinidad Diesels 1-2	4		Fuel Oil	N/A	08/20/66
Odessa Ector CCS	Odessa 1	497		Natural Gas	Combined Cycle	06/01/2001
Odessa Ector CCS	Odessa 2	494		Natural Gas	Combined Cycle	06/01/2001
	Total	18,083				

¹ Retired on Jan. 11, 2018

Revised 12/09

Generating Capacity Reports – Table 4

1. Provide the facility name and unit name of each generating unit that is jointly owned. For each such unit provide the names of the joint owners and their respective ownership percentages.

Luminant solely owns all of its generating units, which are listed in Table 3. Luminant does not have a joint ownership interest in any other generating unit.

2. Provide the facility name and unit name of each generating unit that is owned but not controlled. For each such unit, provide the name of the controlling party and briefly describe the nature of the other party's control of the unit.

No Luminant generating unit was owned or controlled by a third party in 2017.

3. Provide the facility and unit name of each generating that is located on the boundary between two power regions (i.e., reliability councils) and able to deliver electricity directly into either power region. For each such unit, provide the total energy sales to each power region during the preceding year.

Luminant does not own any generating units that are located on a boundary between two power regions that are able to deliver electricity directly into either power region.

4. If the reporting party is subject to PURA Sec. 39.154(e), provide the facility name and unit name of each "grandfathered" unit that is located in an ozone non-attainment area. Attach to this report copies of any applications to the Texas Natural Resources Conservation Commission (TNRCC) for a permit for the emission of air contaminants related to the grandfathered units. Also attach a written description of the progress made since the last Generating Capacity Report on achieving approval of each such TNRCC permit.

See Attachment A for list of Luminant's generating units located in an ozone non-attainment area for which permits have been issued pursuant to PURA § 39.264.

Generating Capacity Reports – Table 4 (continued)

5. For each power region (i.e., reliability council) in Texas in which the reporting party owns generation facilities, identify the amount of transmission import capability that has been reserved and is available to import electricity during the summer peak into the power region from generating facilities that are owned by the reporting party or its affiliate in another power region

Luminant does not have any import capability reserved to import electricity over the HVDC Ties. Luminant does not have any preemptive rights over the use of the HVDC Ties. To obtain transmission service over the HVDC Ties Luminant would have to make a reservation request on the SPP Oasis, using the Southwest Power Pool (SPP) Open-Access Transmission Tariff (Regional Tariff), and request ERCOT approval of an E-tag, just like any other eligible transmission user

ATTACHMENT A

LUMINANT'S GENERATING FACILITIES LOCATED IN AN OZONE NON-ATTAINMENT AREA FOR WHICH
ELECTRIC GENERATING FACILITY PERMITS HAVE BEEN ISSUED PURSUANT TO PURA § 39.264

<u>Facility Name</u>	<u>Unit No.</u>	<u>Summer Net Capacity (MW)</u>	<u>Owner</u>	<u>County</u>	<u>Reliability Council</u>	<u>TCEQ EGFP Permit No.</u>	<u>Permit Issuance Date</u>
Lake Hubbard	1	392	Luminant Generation Company LLC	Dallas	ERCOT	45415	09/06/2002
Lake Hubbard	2	<u>523</u>	Luminant Generation Company LLC	Dallas	ERCOT	45415	09/06/2002
Total		<u>915</u>					

AFFIDAVIT
(Must be notarized by a public notary)

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on their oath that they are entitled to make this Affidavit, and that the statements contained below and in the foregoing are true and correct.

I swear or affirm that the attached report was prepared under my direction, and that I have the authority to submit this report on behalf of the reporting party. I further swear or affirm that all statements made in the report are true, correct and complete and that any substantial changes in such information will be provided to the Public Utility Commission of Texas in a timely manner.

Barry Boswell

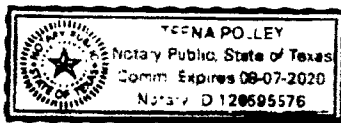
Signature of Authorized Representative

Barry Boswell

Printed Name

Luminant

Name of Reporting Party



Sworn and subscribed before me this 27th day of February, 2018.
Month Year

Jane Kelly

Notary Public in and for the State of TX