



Control Number: 38275



Item Number: 23

Addendum StartPage: 0

PUC DOCKET NO. 38275

FILING OF LUMINANT GENERATION COMPANY LLC TO ESTABLISH DATE TO TRANSFER ELECTRIC SERVICE IN COMPLIANCE WITH DOCKET NO. 30037

§  
§  
§  
§  
§  
§  
§

BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS

LUMINANT'S RESPONSE TO RUSK COUNTY ELECTRIC COOPERATIVE, INC.'S APPEAL OF ORDER NO. 2

RECEIVED  
OCT 18 2010  
5:18 PM  
FILED  
CLERK  
LUMINANT'S

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Pursuant to P.U.C. PROC. R. 22.123(a), Luminant Generation Company LLC ("Luminant Generation") and Luminant ET Services Company ("Luminant ET Services") (collectively "Luminant" or the "Companies") timely file this Response to Rusk County Electric Cooperative, Inc.'s Appeal of Order No. 2 Denying Rusk County's Motion for Reconsideration of Order No. 1.<sup>1</sup> In support of this Response, Luminant respectfully shows as follows:

I. INTRODUCTION

There is actually a very simple solution to the problems asserted by Rusk County Electric Cooperative, Inc. ("RCEC") in its Appeal of Order No. 2. Namely, if RCEC would provide Luminant with meaningful answers to the questions posed in Luminant's September 2, 2010 correspondence to RCEC's counsel, then Luminant could file the detailed transition plan it has been ordered by the Public Utility Commission of Texas ("Commission") to file in this proceeding.<sup>2</sup> Unfortunately, rather than respond to those questions, RCEC filed numerous time-consuming motions and pleadings in this proceeding asking for the Commission's intervention.

<sup>1</sup> Rusk County Electric Cooperative, Inc.'s Appeal of Order No. 2 was filed at the Commission on October 12, 2010; thus, Luminant's response to RCEC's Appeal would be due on October 19, 2010. See P.U.C. PROC. R. 22.123(a)(4) (providing that a response to an appeal shall be filed within five working days of the filing of the appeal).

<sup>2</sup> Those questions, which relate to the cost of the proposed facilities and the locations and specifics of interconnection, are included in an attachment to RCEC's Request for Enforcement of Commission Order and Request to Close Proceeding ("RCEC Request for Enforcement"), as well as set forth in Luminant's September 29, 2010 response to RCEC's Request. See RCEC Request for Enforcement, Attachment 3 (Sep. 17, 2010); Rusk Request for Enforcement, Attachment 3 (Sep. 22, 2010) (redacted version); Luminant's Response to Rusk County Electric Cooperative, Inc.'s Request for Enforcement of Commission Order and Request to Close Proceeding at 5-8 (Sep. 29, 2010).

It was only until just five days ago, subsequent to filing its appeal, that RCEC conditionally agreed to provide Luminant with its requested information. Specifically, on October 14, 2010, counsel for RCEC sent a communication to Luminant indicating that such information might be provided, but to date, that exchange of information has not yet occurred.<sup>3</sup> Luminant is working with counsel for RCEC to develop a reasonably prudent arrangement for the confidential protection of the information that Luminant has requested. As of the date of this filing, however, such an agreement has not yet been reached between the parties.

As for the February 15, 2011 transition date proposed in RCEC's Appeal of Order No. 2, Luminant does not necessarily take issue with that date as the deadline for the transition of service for the Beckville and Tatum mining areas.<sup>4</sup> However, Luminant is unable to definitively state whether that date could reasonably be met by RCEC. Accordingly, in the event that the Commission determines that it should grant RCEC's request to order a February 15, 2011 transition date, Luminant respectfully requests that the Commission's order make clear that, if RCEC is unable to provide service on that date, Luminant will not be found to be in violation of the Commission's order establishing same or the Order on Rehearing in Docket No. 30037.

Luminant would hope that the solution to the problems alleged by RCEC is not to remand this case to the State Office of Administrative Hearings, as suggested by Commission Staff.<sup>5</sup> However, if RCEC does not timely provide meaningful answers to the questions posed by Luminant in the Company's September 2, 2010 letter—either by providing perfunctory responses or by setting conditions to the release of that information that cannot practically be met by Luminant—then it is possible that Commission Staff's suggested solution may be needed. With that said, Luminant continues to believe that this proceeding can be resolved without need for further Commission action. Thus, Luminant respectfully requests that the Commission direct this proceeding to carry on in an informal manner, as originally proposed and implemented. Accordingly, Luminant requests that the Commission allow RCEC an opportunity to respond to

---

<sup>3</sup> RCEC Letter Addressed to Counsel for Luminant (Oct. 14, 2010).

<sup>4</sup> Rusk County Electric Cooperative, Inc.'s Appeal of Order No. 2 Denying Rusk County's Motion for Reconsideration of Order No. 1 at 11-12 (Oct. 12, 2010) (hereafter "RCEC's Appeal of Order No. 2").

<sup>5</sup> Commission Staff's Response to Order No. 1 at 2 (Oct. 7, 2010).

Luminant's September 2, 2010 questions, which will enable Luminant to expeditiously reach an agreement with RCEC sufficient to file a complete transition plan in this proceeding.

## **II. RESPONSE TO RCEC'S APPEAL OF ORDER NO. 2**

### **A. Luminant has no intention of delaying the transition of service to RCEC.**

In its Appeal of Order No. 2, RCEC accuses Luminant of engaging in a "calculated strategy of delay" and asks the Commission to order that service to the Beckville and Tatum mining loads be transferred to RCEC no later than February 15, 2011.<sup>6</sup> Luminant does not challenge its obligation to take service from RCEC consistent with the Commission's Order on Rehearing in Docket No. 30037. As correctly pointed out by RCEC's Appeal of Order No. 2, Luminant did not appeal the Commission's final order in Docket No. 30037.<sup>7</sup> Moreover, since the Order on Rehearing was issued, Luminant has not, in any way, stood in the way of RCEC providing physical electric service to the Beckville and Tatum mining areas.

It is the responsibility of RCEC, the electric cooperative and prospective supplier of service, to construct and/or implement the infrastructure necessary to serve the Martin Lake Steam Electric Station ("MLSES") auxiliary loads located at the Beckville and Tatum mining area. As the customer, Luminant's obligation can only be to comply with the order in this matter by filing a plan outlining the transition of service to RCEC. Up until a month ago, Luminant believed the parties were engaged in discussions to facilitate the filing of that plan. However, the tone of RCEC's Appeal of Order No. 2 indicated that RCEC was no longer interested in engaging in direct dialogue with or answering questions posed by Luminant regarding the transition of service. While RCEC's October 14, 2010 letter filed in this docket indicates that RCEC may provide answers to Luminant's questions, provided certain conditions are met, that exchange of information has not yet occurred.

Consequently, while the February 15, 2011 transition date proposed by RCEC's Appeal of Order No. 2 might be a reasonable expectation by which transition of the retail electric loads could occur, at this time, Luminant is unable to definitively state whether that date could

---

<sup>6</sup> RCEC Appeal of Order No. 2 at 2 and 11-12 (Oct. 12, 2010).

<sup>7</sup> RCEC Appeal of Order No. 2 at 3 (Oct. 12, 2010).

reasonably be met, since neither Luminant nor Oncor Electric Delivery Company (“Onco”) – an entity whose facilities may also be impacted by RCEC’s proposed service arrangement – have received adequate information regarding how RCEC proposes to physically deliver power to the mining load.<sup>8</sup>

It seems to Luminant unreasonable for RCEC to have accused Luminant of somehow impeding progress towards effectuating the change in service when RCEC had, until just five days ago, refused to answer Luminant’s questions regarding such change and, as of a few weeks ago, had yet to substantively communicate with Oncor regarding the necessary physical actions to effectuate that change. As demonstrated by e-mail correspondence among counsel for Oncor, Luminant, RCEC, and Commission Staff, RCEC had not (as of September 22, 2010) contacted Oncor or attempted provide Oncor with any of the information that Oncor needed to account for any impact to its facilities caused by RCEC’s proposed transition.<sup>9</sup> Luminant understands that the potential impact on Oncor’s facilities and any mitigating actions taken in response, should be addressed in the transition plan Luminant is required to file in this proceeding. More importantly, however, the current status of RCEC’s communications with both Luminant and Oncor would seem to reduce the likelihood that RCEC will be able to serve the MLSES by its proposed date of February 15, 2011.

**B. Luminant’s requests for information from RCEC have been eminently reasonable as Luminant is a prospective large industrial customer of RCEC.**

Throughout its Appeal of Order No. 2, RCEC discounts Luminant’s requests for information pertaining to the terms of service under which RCEC proposes to provide retail electric service to the Beckville and Tatum mining areas. Even RCEC’s October 14, 2010 letter, which indicates that RCEC may finally provide such information, discounts the relevance of Luminant’s requests. Luminant’s requests are far from irrelevant. In order to address myriad long and short term issues associated with the viability of the operation of the Beckville and Tatum mining areas and the operation and fuel mix of the MLSES, it is extremely important that

---

<sup>8</sup> See Luminant’s Response to Rusk County Electric Cooperative, Inc.’s Request for Enforcement of Commission Order and Request to Close Proceeding at Attachment 1 (Sep. 29, 2010).

<sup>9</sup> Luminant’s Response to Rusk County Electric Cooperative, Inc.’s Request for Enforcement of Commission Order and Request to Close Proceeding at Attachment 1 (Sep. 29, 2010) (Emails from Howard Fisher to Nelson H. Nease, with counsel for Commission Staff and Luminant cc’d, dated September 22, 2010).

the Company understand the financial and practical implications of the interconnection and retail service options proposed by RCEC. Luminant's questions to RCEC regarding the estimated cost for electric service to Luminant Mining are particularly relevant because there is more than one possible structure under which service to the Beckville and Tatum mining areas could be accomplished.<sup>10</sup> Luminant has requested information from RCEC regarding whether Luminant will have a choice among those possible structures but, to date, RCEC has yet to substantively respond.<sup>11</sup>

As acknowledged in RCEC's Appeal of Order No. 2, service to the Beckville and Tatum mining areas could be accomplished from either ERCOT or SPP.<sup>12</sup> Accordingly, a comparison of the costs associated with those options (*e.g.*, evaluation of whether RCEC would seek contribution in aid of construction for the facilities associated with each alternative) is essential to determine what the plan should be for transitioning retail electric service to RCEC.<sup>13</sup> While RCEC's Appeal of Order No. 2 indicates that RCEC initially intends to install a metering point on the already existing facilities and use those facilities to "serve" the Beckville and Tatum mining areas from ERCOT,<sup>14</sup> it is unclear how that arrangement would constitute true service by RCEC and not just an accounting exercise.<sup>15</sup> However, RCEC's metering-only alternative, although of questionable legal basis, may be preferable if the costs RCEC intends seek from Luminant Mining to build RCEC-owned transmission and/or distribution facilities from ERCOT or SPP to the Beckville and Tatum mining areas are significant.

---

<sup>10</sup> *See, e.g.*, RCEC Request for Enforcement at Attachment 3 (Letter from Kirk D. Rasmussen to Nelson H. Nease dated Sep. 2, 2010) at 3-4 (setting forth questions regarding various interconnection models).

<sup>11</sup> *Id.*

<sup>12</sup> RCEC's Appeal of Order No. 2 at 11-12 (Oct. 12, 2010).

<sup>13</sup> *See, e.g.*, RCEC Request at Attachment 3 (Letter from Kirk D. Rasmussen to Nelson H. Nease dated Sep. 2, 2010) at 3-4 (setting forth questions regarding various interconnection models).

<sup>14</sup> RCEC Appeal of Order No. 2 at 6 ("To establish retail service to Luminant Mining from a resource located in the Electric Reliability Council of Texas ("ERCOT"), Rusk County must only (1) install one or more meter facilities, and (2) arrange for a wholesale supply contract.").

<sup>15</sup> RCEC does not currently have any transmission or distribution facilities located in close proximity to the Beckville and Tatum mining areas; the transmission line that currently serves the area is owned by Luminant Mining. RCEC has expressed that it is not interested in purchasing Luminant Mining's transmission line. *See* Docket No. 30037, Order on Rehearing at 4, Finding of Fact No. 3 and 5. (May 19, 2010); RCEC Request, Attachment 9 (Letter from Nelson H. Nease to Kirk D. Rasmussen dated July 30, 2010) (Sep. 17, 2010) (explaining that "Rusk County has considered the possibility of purchasing the transmission facilities located at the Beckville and Tatum mining areas and has determined that Rusk County is not interested in purchasing said facilities.").

Unfortunately, it is not yet clear to Luminant whether RCEC proposes to charge Luminant for capital costs associated with an interconnection into either ERCOT or SPP, what those costs might be, and whether they are reasonable. Further, regardless of whether RCEC proposes that Luminant or RCEC will expend such capital, it is necessary for Luminant to understand such costs in order to make both short and long-range planning decisions regarding the ongoing operations at the mining areas. Likewise, Luminant has requested information about the pricing of retail electric service proposed to be provided by RCEC and the associated proposed terms of service. None of that reasonably-requested information has yet to be provided by RCEC. At present, Luminant does not know whether RCEC will propose to charge \$10 or \$1,000 per MWh for power. Such basic cost inputs are important for Luminant's short and long-range planning. Further, it is this type of basic information that any prospective large industrial customer would reasonably expect to receive from its prospective electricity supplier.

On September 2, 2010, Luminant submitted a list of questions to RCEC designed to elicit the basic information that Luminant needs as a prospective large industrial customer of RCEC to reasonably evaluate the prospective service.<sup>16</sup> On October 14, 2010, RCEC filed a letter in this docket indicating that it may conditionally respond to those questions.<sup>17</sup> The parties are currently working through a disclosure arrangement, as one of RCEC's conditions is that certain of the requested information not be shared by Luminant Mining with Luminant Generation. However, as demonstrated by the record evidence in Docket No. 30037, Luminant Mining and Luminant Generation operate the MLSES and Beckville and Tatum mining areas as a single, cohesive power production unit and share management. Consequently, it is exceedingly difficult, if not impossible, for RCEC's proposed electric service cost information to be isolated to just Luminant Mining. Nonetheless, Luminant remains hopeful that it will be able to provide an arrangement satisfactory to RCEC so that Luminant can obtain the information it needs to evaluate the service options from RCEC.

---

<sup>16</sup> RCEC Request, Attachment 3 (Sep. 17, 2010); Rusk Request, Attachment 3 (Sep. 22, 2010) (redacted version).

<sup>17</sup> RCEC Letter to Counsel for Luminant (Oct. 14, 2010) ("Accordingly, Rusk County insists that its confidential pricing information and related information you have requested on behalf of Luminant Mining not be provided to Luminant Generation.").

For the Commission's reference, the questions posed in Luminant's September 2, 2010 letter are listed below and demonstrate the lack of basic information, only part of which relates to pricing information, that has been provided by RCEC thus far:

Pricing of Energy and Terms of Service

1. With respect to the indicative pricing attached to your letter of July 30, 2010, please explain the fixed / variable elements within this indicative pricing. To the extent the indicative pricing is set against a market indicator at a future date, what is that market indicator and what are the mechanisms under which RCEC intends to establish the pricing?
2. What is the price for energy that RCEC proposes to provide retail electric service to Luminant Mining's Beckville and Tatum mining areas?
  - a. Does the pricing include:
    - i. Gas cost adjustment? If so, when does the adjustment occur and at what frequency?
    - ii. Transmission, transformation, or distribution wires charges? If not, please specify those charges based on an interconnection into either ERCOT or SPP?
    - iii. Local congestion charge pass-throughs?
    - iv. ISO fee adjustments?
    - v. Pass-through of incremental government charges? If so, what, specifically might these be comprised of / limited to?
    - vi. Any other variable or incremental charges?
  - b. Is the pricing for baseload or shaped energy?
  - c. Is demand limited to [xx] MW? What if the load exceeds [xx] MW, how will the energy be priced?
  - d. Will the agreed demand level / demand charge increase if [xx] MW is exceeded by 1x? More than 1x?
  - e. Are there any adjustments to fixed pricing elements (e.g., monthly demand charges) that should be accounted for by Luminant Mining?
3. In addition to price, what are the contract terms under which RCEC proposes to provide retail electric service to the Beckville and Tatum mining areas, including:



- a. What is the proposed duration of the initial agreement term under which RCEC is proposing to provide service?
- b. How firm is the supply that RCEC intends to provide to Luminant Mining?
4. Please provide the agreement form that RCEC intends to utilize for retail electric service to the Beckville and Tatum mining areas.
5. Does RCEC have a tariff under which retail electric service will be provided to the Beckville and Tatum area mining facilities? If so, please provide a copy of that tariff. If not, why not?

#### Interconnection

1. Does RCEC believe that Luminant Mining has a choice regarding the reliability council from which retail electric service will be provided by RCEC to the Beckville and Tatum mining areas?
2. Where does RCEC intend to interconnect with the Luminant Mining facilities at the Beckville and Tatum mining areas in order to provide retail electric service to those areas if that service is from ERCOT?
3. Is RCEC offering Luminant Mining a choice regarding the location at which RCEC intends to interconnect with the Luminant Mining facilities in order to provide retail electric service to the Beckville and Tatum mining areas from ERCOT?
4. Does RCEC intend to seek any form of contribution in aid of construction ("CIAC") from Luminant Mining for the provision of retail electric service from ERCOT?
5. If RCEC is offering alternative locations to which RCEC will interconnect with the Luminant Mining facilities in order to provide retail electric service to the Beckville and Tatum mining areas from ERCOT, and RCEC intends to seek a CIAC for such interconnection from Luminant Mining, what are the different CIAC amounts that will be required in order to establish the various interconnection points?
6. Where does RCEC intend to interconnect with the Luminant Mining facilities at the Beckville and Tatum mining areas in order to provide retail electric service to those areas if the service is from SPP?
7. Is RCEC offering Luminant Mining a choice regarding the location at which RCEC intends to interconnect with the Luminant Mining facilities in order to provide retail electric service to the Beckville and Tatum mining areas from SPP, including, but not limited to:

- a. A point of service from AEP/RCEC/SPP in the Tatum Mine just off highway 1794;
  - b. A point of service at the existing Oak Hill mining area point of service with the construction of a 138 kV line from Oak Hill to Martin Lake plant area owned and operated by Luminant Mining; or
  - c. A point of service originating from the existing Oak Hill mining area point of service with the construction of a 138 kV line from Oak Hill to Martin Lake plant area owned and operated by RCEC?
8. Does RCEC intend to seek any form of CIAC from Luminant Mining for the provision of retail electric service from SPP?
  9. If RCEC is offering alternative locations to which RCEC will interconnect with the Luminant Mining facilities in order to provide retail electric service to the Beckville and Tatum mining areas from SPP, and RCEC intends to seek a CIAC for such interconnection from Luminant Mining, what are the different CIAC amounts that will be required in order to establish the various interconnection points?

The answers to these questions are critical for Luminant to be able to file a detailed transition plan, as required by the Commission, in this proceeding. Because Luminant has yet to receive answers to those questions, Luminant is placed in a difficult position in responding to the obligations placed on the Company by the Commission's order. The Commission specifically established this proceeding to implement the issues that were not addressed in Docket No. 30037, namely the details of a plan that establishes the manner in which retail electric service to the Beckville and Tatum mining areas will be transitioned to RCEC.<sup>18</sup> Luminant cannot file that plan unless and until RCEC provides Luminant with answers to the above-referenced questions.

**C. Luminant's requested information is not remarkably different than the information relating to the Luminant and RCEC Oakhill mine service agreement.**

In its Appeal of Order No. 2, RCEC explains that it ultimately intends to serve the Beckville and Tatum mining areas in the same manner that RCEC presently services Luminant

---

<sup>18</sup> RCEC Request at Attachment 1 (Open Meeting Transcript) at 44-48 (Sep. 17, 2010) (explaining that this companion docket to Docket No. 30037 was developed for the purpose of fleshing out the terms of service of and details for transitioning electric service to the Beckville and Tatum mining areas); Rusk Request at Attachment 1 (Sep. 22, 2010) (redacted version).

Mining at the Oakhill mine.<sup>19</sup> This statement only further evidences the reasonableness of Luminant's requested information. Luminant is not asking RCEC to provide any information that is remarkably different from the terms contained in Oakhill mine service agreement or dissimilar to the descriptions of the physical manner of service provided to the Oakhill mine. Specifically, RCEC provides electric service to the Oakhill mine at a specified price. Accordingly, Luminant desires to know what the price of service would be for the Beckville and Tatum mining areas. RCEC provides electric service to the Oakhill mine via certain locations of interconnection and types of facilities. Accordingly, Luminant desires to know the possible locations of interconnection and types of facilities needed to serve the Beckville and Tatum mining areas. For reasons unclear to Luminant, RCEC had, until just five days ago, refused to provide that information.

The transfer of electric service to the primary fuel source of the MLSES, which is the largest lignite-fueled electric generation station in Texas, is a serious matter. All parties involved need to ensure such transfer is done correctly and does not compromise the continued reliability of the generation output of the MLSES. Thus, meaningful dialogue between RCEC and Luminant is crucial and will continue to be important once the transfer of retail electric service to RCEC for the Beckville and Tatum mining areas is complete. Accordingly, Luminant is hopeful that RCEC will soon respond to the questions posed in Luminant's September 2, 2010 correspondence so that the parties can work together—without the need for Commission intervention—to effectuate the transfer of service to the Beckville and Tatum mining areas.

### **III. CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, Luminant respectfully requests that the Commission deny RCEC's Appeal of Order No. 2 and allow RCEC time to respond to the questions posed in Luminant's September 2, 2010 correspondence so that Luminant can file the detailed transition plan required in this proceeding. Further, in the event that the Commission determines that it should grant RCEC's request to order a February 15, 2011 transition date, Luminant respectfully requests that the Commission's order make clear that if RCEC is unable to

---

<sup>19</sup> RCEC Appeal of Order No. 2 at p. 5, n. 1 and p. 7. (Oct. 12, 2010).

provide service on that date that Luminant will not be found to be in violation of either the Commission's order establishing same or the Order on Rehearing in Docket No. 30037.

**Respectfully submitted,**

Thomas E. Oney  
Vice President, Regulatory Law and CCO  
LUMINANT  
State Bar No. 24013270  
500 N. Akard St., 10th Floor  
Dallas, Texas 75201  
(214) 875-9086 (phone)  
(214) 875-9042 (fax)

Kirk D. Rasmussen  
WINSTEAD PC  
State Bar No. 24013374  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270  
(214) 745-5410 (phone)  
(214) 745-5390 (fax)

Kristina F. Rollins  
State Bar No. 24033012  
401 Congress Ave., Ste. #2100  
Austin, Texas 78701  
(512) 370-2880 (phone)  
(512) 370-2850 (fax)

**ATTORNEYS FOR LUMINANT  
GENERATION COMPANY LLC  
AND LUMINANT ET SERVICES  
COMPANY**

By: Kirk Rasmussen by KFR at permission

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing has either been faxed, hand delivered, sent first class U.S. mail, or sent via Federal Express overnight mail, to the Staff of the Public Utility Commission of Texas and to all other parties of record on this the 19 th day of October, 2010.

Kirk Rasmussen by KFR at permission  
Kirk D. Rasmussen