

Control Number: 45633



Item Number: 49

Addendum StartPage: 0



Taylor  
2705 West Lake Drive  
Taylor TX 76574  
F 512.248.3000  
F 512.248.3095

Austin  
7620 Metro Center Drive  
Austin TX 78744  
F 512.225.7000  
F 512.225.7320

RECEIVED

ercot.com

2017 MAR 23 PM 2:15

March 23, 2017

PUBLIC UTILITY COMMISSION  
FILING CLERK

Public Utility Commission of Texas  
Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.,  
Commissioner Brandy Marty Marquez  
1701 North Congress Avenue  
Austin, Texas, 78711

Re: *Public Utility Commission Project No. 45633, Project To Identify Issues Pertaining To Lubbock Power & Light's Proposal To Become Part Of The Electric Reliability Council Of Texas*

Dear Chairman and Commissioners,

At the July 20, 2016 open meeting of the Public Utility Commission of Texas ("Commission"), you requested that Electric Reliability Council of Texas, Inc. ("ERCOT") and the Southwest Power Pool, Inc. ("SPP") conduct coordinated studies of the impact of the proposed transition of the Lubbock Power & Light ("LP&L") system from the SPP region into the ERCOT region. Since that date, ERCOT has been in contact with LP&L regarding the study that they are simultaneously conducting concerning the impact of the proposed transition. ERCOT has worked with LP&L to provide any and all data and documentation that they require to complete their study.

Over this period of cooperation, LP&L has requested data – namely, generator-unit specific data – that ERCOT, pursuant to ERCOT Protocols, is only authorized to provide to Transmission Service Providers ("TSPs") or Distribution Service Providers ("DSPs").<sup>1</sup> Generator-unit specific data is considered Protected Information under the ERCOT Protocols.<sup>2</sup> While LP&L is not currently an authorized TSP or DSP, nor is it an entity that under typical ERCOT procedures would be authorized to access this data, ERCOT does not want to delay any efforts by LP&L to access data that may be necessary for their studies in a future contested case. As such, ERCOT has worked with LP&L's outside counsel to draft a confidentiality agreement that would authorize certain LP&L representatives (specifically limited to outside counsel and consultants) to utilize the generator-unit specific data in their studies. Attached to this correspondence is a copy of the draft Confidentiality Agreement which was modeled in part on the terms and processes contained in the Commission's standard protective order.

Ultimately, ERCOT is at the will of the Commission on this issue and has no preference on the final outcome. As the Commission knows, the LP&L proposed transition creates unique procedural questions that are not clearly defined in any rule or Protocol. However, ERCOT reached a conclusion that it would be appropriate to provide generator-unit specific data to certain LP&L representatives in advance of the anticipated contested

<sup>1</sup> See paragraph (1)(g) of Protocol Section 1.3.6, Exceptions. ("To a TSP or DSP engaged in the ERCOT Transmission Grid or Distribution System planning and operating activities, provided that the TSP or DSP has executed a confidentiality agreement with requirements substantially similar to those in Section 1.3.")

<sup>2</sup> See paragraph (1)(m) of Protocol Section 1.3.1.1, Items Considered Protected Information. ("Resource-specific costs, design and engineering data, including such data submitted in accordance with a verifiable cost appeal.")

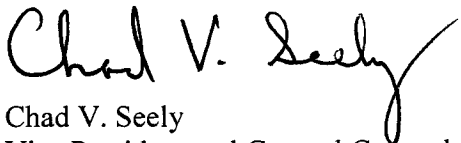
49

case because this is data that ERCOT is using in preparing its Commission-requested study, and thus would likely be necessary to any similar study conducted by LP&L. Further, ERCOT believes that this data would likely be available to LP&L (or any other party) in the future contested case concerning LP&L's transition into the ERCOT region under the Commission's standard protective order. Thus, the issue is one of timing – to provide the data now and allow LP&L to continue with their proposed schedule, or wait and potentially provide the data after the anticipated filing of a contested case at the Commission. In any event, ERCOT will continue to work with LP&L on any additional conditions that the Commission may deem necessary to ensure that ERCOT's interests and the interests of the competitive market (e.g., Resource Entities with generator-specific unit data) are protected.

ERCOT respectfully requests that the Commission discuss and consider this matter at the March 30, 2017 Open Meeting. If the Commission determines that it is appropriate to provide generator-unit specific data to LP&L in advance of any contested case on their proposed transition to the ERCOT region, then ERCOT would further propose an appropriate Market Notice informing all Resource Entities of the Commission's discussion and consideration and an opportunity for any Resource Entity to raise questions or comments to ERCOT on the draft Confidentiality Agreement. ERCOT will provide sufficient notice and once that time has elapsed, ERCOT and LP&L would then execute the Confidentiality Agreement and file a copy in this Project.

We appreciate your consideration of this request. Please do not hesitate to contact us if you have any questions.

Respectfully,



Chad V. Seely  
Vice President and General Counsel  
Electric Reliability Council of Texas  
(512) 225-7035

**Confidentiality Agreement**

**Between the City of Lubbock, acting by and through Lubbock Power and Light  
("Lubbock Power & Light" or "LP&L") and Electric Reliability Council of Texas, Inc.  
Regarding Disclosure of Certain Protected Materials to Representatives of Lubbock Power and Light  
for Purposes of Conducting a Study to Address Issues Identified by the Commission  
Concerning a Request to Transition to the ERCOT Region**

**WHEREAS**, LP&L, a municipally-owned electric utility of the City of Lubbock, is currently connected to the Southwest Power Pool ("SPP") and seeks interconnection with the Electric Reliability Council of Texas, Inc. ("ERCOT") Region as set forth in Public Utility Commission of Texas ("Commission") Project No. 45633; and

**WHEREAS**, the Commission has directed ERCOT and SPP staff to complete a joint study of the potential LP&L transition to the ERCOT Region, the scope of which is described in an ERCOT/SPP filing on September 15, 2016 in Project No. 45633; and

**WHEREAS**, LP&L has stated to the Commission an intent to complete its own study adhering to the same scope as the ERCOT and SPP studies; and

**WHEREAS**, LP&L intends to initiate a proceeding at the Commission to occur over the second half of 2017 seeking a finding from the Commission that its transition from SPP to the ERCOT Region is in the public interest (herein, the "Transition Case"), with the aforementioned studies being a key component of the evidence in the Transition Case; and

**WHEREAS**, ERCOT will utilize generating unit-specific data in the UPLAN model in completing its own study; and

**WHEREAS**, as an entity that is currently not an ERCOT Transmission Service Provider ("TSP"), LP&L's consultants DNV-GL require, but do not have access to, generating unit-specific data utilized by ERCOT; and

**WHEREAS**, ERCOT and LP&L seek to make such information available only to persons who are outside counsel for LP&L, or outside consultants for LP&L working under the direction of LP&L's outside counsel (collectively, "LP&L Reviewing Representatives") to prepare a study to be presented in the Transition Case;

**NOW, THEREFORE**, LP&L and ERCOT agree that LP&L Reviewing Representatives shall be permitted access to the requested information ("Protected Materials") under the following conditions:

- I. **Definition of Protected Materials.** Subject to the terms of this agreement, Protected Materials shall include:
  - a. UPlan model input data utilized by ERCOT to perform the LP&L study including the following information:

- i. All existing and planned generators in UPLAN models, including the unit statuses in each of the study years (operating, retired, mothballed, etc.);
- ii. Generator attributes used in economic analyses; and
- iii. Any other generator or transmission specific information used in the economic models.

II. **Persons Permitted Access to Protected Materials.** The only individuals who may access Protected Materials on behalf of LP&L are LP&L Reviewing Representatives who have signed the Confidentiality Agreement Certification (*see* Attachment A). LP&L Reviewing Representatives are limited to persons directly engaged in the Transition Case and limited to LP&L's outside counsel and staff, and LP&L's outside consultants who are working under the direction of LP&L's outside counsel. Individuals who are officers or employees of LP&L shall not have access to Protected Materials.

III. **Restrictions on Copying and Inspection of Protected Materials.** Except as expressly provided herein, only one printed copy may be made of any Protected Materials except that additional copies may be made, subject to the requirement that LP&L Reviewing Representatives notify ERCOT, so as to have sufficient copies for introduction of the material into the evidentiary record, if the material is to be offered for admission into the record of a future contested case proceeding instituted at the Commission by LP&L. LP&L Reviewing Representatives shall maintain a record of all copies made of Protected Materials and shall send a duplicate of the record to ERCOT when the copy or copies are made. The record shall specify the location and the person possessing the copy. Limited notes may be made of Protected Materials, and such notes shall themselves be treated as Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

IV. **Required Certification and Notification of Receipt.** Each LP&L Reviewing Representative who inspects Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Confidentiality Agreement:

I certify my understanding that Protected Materials are provided to me pursuant to the terms and restrictions of the Confidentiality Agreement Between Lubbock Power & Light and Electric Reliability Council of Texas, Inc. Regarding Disclosure of Certain Protected Materials to Representatives of Lubbock Power and Light for Purposes of Conducting a Study to Address Issues Identified by the Commission Concerning a Request to Transition to the ERCOT Region ("Confidentiality Agreement") and that I have been given a copy of it, have read the Confidentiality Agreement, and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from Protected Materials shall not be disclosed to anyone other than in accordance with the Confidentiality Agreement.

LP&L, through its outside counsel, shall provide ERCOT with a copy of each certification signed by a LP&L Reviewing Representative who will have access to Protected Materials pursuant to this Confidentiality Agreement. Further, LP&L, through its outside counsel, shall file notice and a copy of each certification in Project No. 45633.

V. **Protection of Protected Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner that protects Protected Materials from unauthorized disclosure.

VI. **Return of Protected Materials.** Within 30 days of the conclusion of the Transition Case described above, each LP&L Reviewing Representative who has received Protected Materials shall, through LP&L's outside counsel, return Protected Materials to ERCOT or delete or destroy it, as ERCOT may direct. In addition, LP&L's outside counsel shall provide to ERCOT a letter informing ERCOT that, to the best of his/her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from Protected Materials (including copies of Protected Materials) that have not been returned to ERCOT, if any, have been destroyed.

ERCOT and LP&L have caused this Confidentiality Agreement to be executed by their duly authorized representatives on the date first written.

AGREED & ACCEPTED \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**For and on behalf of LP&L:**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**For and on behalf of ERCOT:**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT A**

**Confidentiality Agreement Certification**

I certify my understanding that Protected Materials are provided to me pursuant to the terms and restrictions of the Confidentiality Agreement Between Lubbock Power & Light and Electric Reliability Council of Texas, Inc. Regarding Disclosure of Certain Protected Materials to Representatives of Lubbock Power and Light for Purposes of Conducting a Study to Address Issues Identified by the Commission Concerning a Request to Transition to the ERCOT Region (“Confidentiality Agreement”) and that I have been given a copy of it, have read the Confidentiality Agreement, and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from Protected Materials shall not be disclosed to anyone other than in accordance with the Confidentiality Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name