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COMPLAINT AND REQUEST FOR	§	PUBLIC UTILITY COMMISSION
EMERGENCY RELIEF BY LUMINANT	§	
ENERGY COMPANY LLC AGAINST	§	OF TEXAS
THE ELECTRIC RELIABILITY	§	
COUNCIL OF TEXAS, INC.	§	

COMMISSION STAFF’S REPLIES TO EXCEPTIONS

I. BACKGROUND

The conclusions reached by the ALJ in his Proposal for Decision (PFD) are correct and should be maintained over the objections of Luminant Energy Company, LCC (Luminant). Staff (Staff) of the Public Utility Commission of Texas (Commission) remains supportive of the ALJ’s reasoned consideration of the issues before them and supports their conclusions.

Here, Staff replies to certain exceptions Luminant raised to the PFD.

II. STAFF’S REPLIES TO LUMINANT’S EXCEPTIONS

a. Interpreting the Protocols as written is not a policy choice

Luminant states that “the PFD errs by recommending the Commission uphold an ERCOT decision that conflicts with the PUC’s policy of encouraging generators to procure firm gas transportation.”¹ To the extent that “demand charges”² *should* be included in the fuel adder prospectively, the ERCOT Nodal Protocols should be revised—not reimaged. And as Luminant understands, this requires the completion of the Nodal Protocol revision request procedure. Until such time, the Protocols must be interpreted as written and as ERCOT interpreted them after determining that its prior decision was inconsistent with the law. Furthermore, it is for the Commission to determine whether ERCOT interpreted its Protocols as written.

¹ Luminant Energy Company LLC’s Exceptions to the PFD at 6 (Feb. 6, 2023) (Luminant’s Exceptions)

² Luminant states that “demand charges that are a prerequisite to obtaining firm fuel transportation.” Luminant’s Exceptions at 4.

b. **The issue is whether “demand charges” meet the definition of “minimum requirements fees (MRF).”**

The PFD explains the meaning of “minimum requirements fee” using hypotheticals but actually compares Luminant’s contract to the definition of MRF—not a hypothetical contract as Luminant asserts.³ The nature of a “minimum requirements fee” is that it is not a fixed cost that does not vary from month to month. Luminant responds with its own hypothetical contract with a fee that can theoretically change from month to month but does not due to circumstances. However, this is irrelevant because the minimum requirements fee provision is based on “contract terms”—not circumstances. There is no possible MRF that would be necessarily triggered every month in an unvarying amount without regard to volume, which is the type of charge at issue here.

c. **The Variable Cost Manual (VCM) does not define the MRF as a fixed dollar amount.**

Luminant’s argument is based on the false premise that the inputs in the VCM § 3.5(3) formula are fixed. Under § 3.5(3), the MRF formula is $MRF (\$/MMBtu) = TMRFD (\$) / TF (MMBtu)$,⁴ where:

MRF = Minimum Requirements Fee;

TMRFD = Total Minimum Requirements Fee Dollars, and

TF = Total Fuel Transported to storage, to a resource net of supply from storage, and for third-party sales net of supply from storage.⁵

These inputs are not necessarily fixed. There is no basis to infer the TMRFD must be a flat dollar amount as alleged by Luminant.⁶ The ALJ agrees with this interpretation in the PFD,⁷ explaining that a MRF is not a cost that is unwaveringly incurred at a fixed amount every month or year.⁸ The fee is incurred when a resource transports less fuel than a minimum amount specified in a contract with a supplier, it is not incurred when the resource transports the minimum amount (or more) of

³ Luminant’s Exceptions at 5-17.

⁴ VCM § 3.5(3)

⁵ *Id.*

⁶ Luminant’s Exceptions at 14.

⁷ PFD at 7-8.

⁸ *Id.*

fuel specified in the contract.⁹ The ALJ continues to state that because the fee is “based on the contract terms,” the amount of the fee, when it is incurred, could vary from month to month or year to year.¹⁰ Ultimately, the ALJ concluded that the payments at issue in this case simply do not meet the criteria of a MRW.¹¹ Staff agrees.

d. ERCOT’s decisions are not rules

Luminant provided no support for its contention that “ERCOT issued decisions that are effectively rules.”¹² The fact that ERCOT may “at any time, review and reject the Verifiable Costs that it has previously approved” is a conclusive indicator that approval decisions are not official interpretations of rules.¹³ Furthermore, Luminant claims that in revising its interpretation of its rule regarding the fuel adders, this constitutes an amendment or repeal of a rule, and this is a rule in and of itself.¹⁴ But a change in the interpretation of a rule is not a change to a rule. Although Luminant insists this is true, it cites to no legal authority to bolster this claim. There is none. There is a revision process for ERCOT Nodal Protocols and the VCM, but the interpretation of its own rules does not rise to the level of a revision of either. Again, Luminant offers no legal authority to demonstrate this.

In its exception, Luminant poses the rhetorical question “why are rules excluded?” and answers “because they are dealt with by other APA provisions that require that rules can only be change through formal rulemaking, not by ad-hoc corrections.”¹⁵ However, the PFD was clear that the Administrative Procedure Act (APA) is not applicable to ERCOT.¹⁶ ERCOT is not subject to the APA because it does not have statewide jurisdiction.¹⁷ As further explained in ERCOT’s response to Luminant’s motion for summary judgement, while ERCOT’s Protocols are legally

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Luminant’s Exceptions at 21.

¹³ PFD at 10 (citing VCM § 11.1(1)).

¹⁴ Luminant’s Exceptions at 18-20.

¹⁵ *Id.* at 21.

¹⁶ Proposal for Decision on Motions for Summary Decision at 9 (Jan. 6, 2023).

¹⁷ ERCOT’s Response to Luminant’s Motion for Summary Decision at 3-4 (Jul. 2, 2021).

binding rules with the force and effect of statutes, ERCOT's stakeholder-driven Protocol revision process does not fully align with certain aspects of APA rulemaking.¹⁸ Furthermore, unlike a state agency subject to the APA, ERCOT lacks any authority to issue an order addressing comments submitted to its rules.¹⁹ Additionally, nothing in the APA bars a state agency from reconsidering its interpretation of a rule if the prior interpretation is found to be contrary to law.²⁰ ERCOT's change in course was not merely an election among competing policy outcomes but a correction to ensure conformity with the law.²¹

III. CONCLUSION

Staff respectfully requests the ALJ deny Luminant's Exceptions and requests the issuance of an order consistent with the Proposal for Decision filed in this docket on January 6, 2023.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

Dated: February 13, 2023

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on February 13, 2023 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Phillip Lehmann
Phillip Lehmann