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DOCKET NO. 54739

REQUEST FOR APPROVAL OF AN	§	PUBLIC UTILITY COMMISSION
AMENDED VOLUNTARY MITIGATION	§	
PLAN FOR LUMINANT ENERGY	§	OF TEXAS
COMPANY LLC PURSUANT TO PURA	§	
§ 15.023(f) AND 16 TAC § 25.504(e)	§	

**APPLICATION FOR APPROVAL OF A SETTLEMENT AGREEMENT AND
AMENDED VOLUNTARY MITIGATION PLAN**

The Staff of the Public Utility Commission of Texas (Commission) and Luminant Energy Company LLC (Luminant Energy) (collectively, parties) file this application for approval of a settlement agreement and amended voluntary mitigation plan (VMP). The parties enter into the attached settlement agreement, which includes, as attachments to the settlement agreement: the amended VMP, an affidavit of the Independent Market Monitor for the Electric Reliability Council of Texas (ERCOT) in support of the amended VMP, and a proposed order. The settlement agreement recommends approval of the amended VMP for Luminant Energy pursuant to PURA¹ § 15.023(f) and 16 Texas Administrative Code § 25.504(e). The amended VMP specifies offering practices for Non-Spin Reserve Service that Luminant Energy can use when offering services into the ERCOT day-ahead ancillary services market during the term of the agreement, and adherence to such offering practices will be considered an absolute defense against an allegation of market power abuse.

Commission Staff, on behalf of the parties, respectfully requests that this application for approval of the settlement agreement be granted.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

Dated: March 15, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS

**DIVISION OF COMPLIANCE &
ENFORCEMENT**

Barksdale English
Division Director

/s/Van Moreland
Van Moreland
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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 via electronic mail on March 15, 2023, in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/Van Moreland
Van Moreland

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PLAN FOR LUMINANT ENERGY	§	OF TEXAS
COMPANY LLC PURSUANT TO PURA	§	
§ 15.023(f) AND 16 TAC § 25.504(e)	§	

**SETTLEMENT AGREEMENT, AMENDED VOLUNTARY MITIGATION PLAN, AND
PROPOSED ORDER**

The Staff of the Public Utility Commission of Texas (Commission) and Luminant Energy Company LLC (Luminant Energy) (collectively, parties) enter into this settlement agreement (agreement), and request approval of the agreement and the attached amended voluntary mitigation plan (VMP), which was developed pursuant to PURA¹ § 15.023(f) and 16 Texas Administrative Code (TAC) § 25.504(e). The amended VMP imposes clear guidelines regarding Luminant Energy's offering of Non-Spin Reserve Service (NSRS) in the Electric Reliability Council of Texas's (ERCOT's) day-ahead market.

The parties agree as follows:

1. The parties stipulate to the facts contained in the attached proposed order² and request entry of the proposed order by the Commission.
2. The Commission has jurisdiction over this matter under PURA §§ 14.051, 15.023, and 39.157.
3. Because this matter is filed under PURA Chapter 15, Subchapter B, the parties to this proceeding are limited by statute to Luminant Energy and the Commission, including the Independent Market Monitor (IMM).³
4. Luminant Energy's VMP was approved by the Commission on December 13, 2019, in Docket No. 49858.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-66.016 (PURA).

² Attachment 3.

³ PURA § 15.024(f) states, in part, "The parties to a proceeding under [PURA Chapter 15, Subchapter B] shall be limited to the person and the commission, including the independent market monitor."

5. Commission Staff has raised concerns related to outcomes in the ERCOT day ahead market for NSRS that Commission Staff believes are uneconomic. After extensive and detailed discussions between Commission Staff, including the IMM, and Luminant, the parties agreed to amend the VMP as it relates to Luminant's NSRS offers in the ERCOT day ahead market.
6. The amended VMP addresses Luminant Energy's offers for NSRS in the ERCOT day-ahead market and is supported by the IMM, as detailed in the attached affidavit.⁴
7. The amended VMP is attached to this agreement⁵ and incorporated herein.
8. The parties agree that the amended VMP establishes a reasonable method to ensure compliance with PURA § 39.157(a) and 16 TAC § 25.503(g)(7) and provides regulatory and financial certainty for Luminant Energy while ensuring protection against market power abuse.
9. The parties agree that adherence to the amended VMP, while it remains effective, provides Luminant Energy an absolute defense against an allegation brought under PURA § 39.157(a) and 16 TAC § 25.503(g)(7) of market power abuse with respect to the specific behaviors addressed by the amended VMP.
10. Should Luminant Energy not adhere to the amended VMP, it will have no absolute defense against any allegations of market power abuse with respect to the specific behaviors that do not adhere to the amended VMP.
11. Failure to adhere to a VMP approved by the Commission does not, of itself, constitute a violation of 16 TAC § 25.503(g)(7), but may be treated in the same manner as any other violation of a Commission order.
12. The act of proposing the amended VMP is not an admission that Luminant Energy has had or currently has market power, that Luminant Energy is engaging in or has ever engaged in market power abuse, or that the amended VMP is a response to any allegation by

⁴ Attachment 2.

⁵ Attachment 1.


Commission Staff or the IMM that Luminant Energy is engaging in or has ever engaged in market power abuse.

13. The parties agree that the amended VMP is in the public interest and should be approved by the Commission as part of its approval of this agreement.
10. The amended VMP will remain in effect from the date it is approved by the Commission until terminated by the executive director of the Commission or Luminant Energy, subject to ratification of the termination or reinstatement of the amended VMP by the Commission if the amended VMP was terminated by the executive director.
11. The amended VMP may be modified by mutual agreement of the executive director or the executive director's designee and Luminant Energy. The modification will become effective when approved by the Commission.
12. If at any time the executive director or the executive director's designee determines that continuation of the amended VMP or part of the amended VMP may no longer be in the public interest, the executive director or the executive director's designee may terminate the amended VMP, in whole or in part, by providing Luminant Energy with written notice of termination at least three business days prior to the effective date of termination, subject to ratification of the termination or reinstatement of the amended VMP by the Commission. If the amended VMP is terminated in part under this paragraph, the remaining part of the amended VMP will remain in effect or may be modified pursuant to the terms of Paragraph 11 above. The executive director or the executive director's designee may withdraw the notice of termination at any point prior to the termination date.
13. Luminant Energy may terminate the amended VMP by providing the executive director with written notice of termination at least three business days prior to the effective date of termination. Luminant Energy may withdraw the notice of termination at any point prior to the termination date.
14. The parties agree, pursuant to Texas Rule of Evidence 408, that confidential information exchanged between the parties and the negotiations underlying the publicly-filed terms of the amended VMP will remain confidential and will not be admissible as evidence.

15. All information supporting the amended VMP that is classified as Protected Information by the ERCOT Nodal Protocols will remain confidential and subject to the restrictions of ERCOT Nodal Protocols § 1.3, or its successor. Commission Staff agrees that the information supporting the amended VMP does not lose its confidential status as a result of the filing of the amended VMP with the Commission and that the information should be treated as confidential information under the Commission's procedural rules.
16. The parties agree that all required notices have been provided or are hereby waived.
17. Except as provided herein, nothing in this agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules for activities not covered by the amended VMP.
18. A party's support of the resolution of this docket in accordance with this agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a party is under no obligation to take the same position as set out in this agreement in other proceedings not referenced in this agreement, whether those dockets present the same or a different set of circumstances. The parties' agreement to entry of a final order of the Commission consistent with this agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this agreement.
19. In the event the Commission materially changes the terms of this agreement, the parties agree that any party adversely affected by that material alteration has the right to withdraw from this agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other party written notice within 20 calendar days of the date the Commission files the final order acting on this agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this agreement made by the Commission.

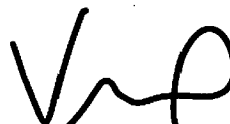
20. This agreement is the final and entire agreement between the parties regarding its terms and supersedes all other communications among the parties or their representatives regarding its terms.
21. Each person executing this agreement represents that he or she has been authorized to sign on behalf of the party represented. Copies of signatures are valid to show execution. If this agreement is executed in multiple counterparts, each is deemed an original, but all counterparts constitute the same agreement.
22. Each party executing this agreement warrants that it has read this agreement carefully, knows the contents thereof, and signs the same as its free act.

EXECUTED by the Parties by their authorized representatives designated below.



Shawn Stuckey
Senior Vice President
Luminant Energy Company, LLC

Date: 3/15/23



Van Moreland
Attorney
Division of Compliance and Enforcement
Public Utility Commission of Texas

Date: 3/15/23

**ATTACHMENT 1: LUMINANT ENERGY AMENDED
VOLUNTARY MITIGATION PLAN**

1 Voluntary Mitigation Plan Definitions and Acronyms

- 1.1 Energy Offer Curve (EOC): A proposal to sell energy at a Settlement Point at a monotonically increasing price with increasing quantity.
- 1.2 Executive Director: the Executive Director of the PUC or his/her designee.
- 1.3 Fees: any charges or changes to administrative fees charged to generators, or changes resulting from federal, state or local laws that impose new or modified fees or costs on Luminant's generation that are beyond Luminant's control.
- 1.4 Price for Coal: the month's settled commodity price published in Platt's Coal Trader, in the OTC Broker Index table, under the heading "PRB 8,800 Btu/lb" in \$/ton plus the month's settled transportation price published in Argus' Coal Transportation in the Western US Rail Rate Plus Fuel Surcharge table, for delivery into ERCOT by BNSF in \$/ton, converted to \$/MMBtu. $[\$/\text{MMBtu}] = [\$/\text{ton}] * [1 \text{ lb}/8,800 \text{ Btu}] * [\text{ton}/2,000 \text{ lb}] * [1 \times 10^6 \text{ Btu}/\text{MMBtu}]$.
- 1.5. Price for Natural Gas: "Fuel Index Price (FIP)" as defined by the ERCOT Protocols plus the higher of \$0.50/MMBtu or the Verifiable Fuel Cost Adder.
- 1.6 Price for No. 2 Fuel Oil: "Fuel Oil Price (FOP)" as defined by the ERCOT Protocols plus \$0.25/gal.
- 1.7 HASL: High Ancillary Service Limit.
- 1.8 HSL: High Sustained Limit.
- 1.9 HCAP: the then-existing high system wide offer cap, as defined in 16 Tex. Admin. Code § 25.505(g)(6) or its successor.
- 1.10 IMM: the ERCOT Independent Market Monitor.
- 1.11 Incremental Heat Rate (MMBtu/MWh): the generating unit values submitted by Luminant and approved via the ERCOT verifiable cost process, or if generating unit values have not been submitted by Luminant and approved by ERCOT, 8 MMBtu/MWh.
- 1.12 NOx Allowance Price: the sum of the "Price", expressed in \$/ton, published in Argus Air Daily, in the Clean Air Interstate Rule (CAIR) allowances OR the Cross-State Air Pollution Rule allowances, whichever is the current binding regulation, under the heading "NOx, Annual" plus – during the months of May through September – the "Price", expressed in \$/ton, under the heading "NOx, Seasonal". For Saturdays, Sundays, holidays, and other days for which Argus Air Daily does not publish a price, the NOx Allowance Price shall be the NOx Allowance Price for the Operating Day preceding the holiday or day without a published price.
- 1.13 NOx Emissions Cost (\$/MWh): $[\text{The unit's Incremental Heat Rate (MMBtu/MWh)}] * [\text{The unit's emission rate for NOx (lb/MMBtu) approved via the ERCOT verifiable cost process}] * [1 \text{ NOx allowance/ton}] * [\text{NOx Allowance Price (\$/allowance) published in Argus Air Daily}] * [\text{ton}/2,000 \text{ lb}]$.

- 1.14 Non-Quick Start Operated Natural Gas Unit: A natural-gas fired steam cycle unit or a combustion turbine unit not operating as a Quick Start Operated CT.
- 1.15 Non-Spinning Reserve Service (NSRS): An Ancillary Service that is provided through the use of Off-Line Generation Resources that can be synchronized and ramped to a specific output level within 30 minutes and that can operate at a specified output level for at least one hour. Non-Spin may also be provided from unloaded On-Line capacity that meets the 30-minute response requirements and that is reserved exclusively for use for this service. NSRS from Quick Start CTs is considered Online, NSRS from CTs not operating in Quick Start mode is considered Offline.
- 1.16 Online: A unit is considered to be online if it is shown as online in the final Current Operating Plan for an Operating Hour.
- 1.17 PUC: Public Utility Commission of Texas.
- 1.18 Quick Start Operated CT: A combustion turbine (CT) that is qualified as a Quick Start Qualified Resource (QSGR) that is shown in the applicable Current Operating Plan as operating in quick start mode for an hour. A CT that is operating in quick start mode is shown in the applicable Current Operating Plan with a Resource Status of OFFQS.
- 1.19 SO₂ Allowance Price: the "Price", expressed in \$/ton, published in Argus Air Daily, in the Clean Air Interstate Rule (CAIR) allowances, under the heading "SO₂, Acid Rain Program" OR the Cross-State Air Pollution Rule allowances, under the heading "SO₂, Group 2", depending on whether CAIR or CSAPR is the current binding regulation. For Saturdays, Sundays, holidays, and other days for which Argus Air Daily does not publish a price, the SO₂ Allowance Price shall be the SO₂ Allowance Price for the Operating Day preceding the holiday or day without a published price.
- 1.20 SO₂ Emissions Cost (\$/MWh): $[\text{The unit's Incremental Heat Rate (MMBtu/MWh)}] * [\text{The unit's emission rate for SO}_2 \text{ (lb/MMBtu) approved via the ERCOT verifiable cost process}] * [\text{SO}_2 \text{ EPA Allowance Factor (SO}_2 \text{ allowances/ton)}] * [\text{SO}_2 \text{ Allowance Price (\$/allowance) published in Argus Air Daily}] * [\text{ton}/2,000\text{lb}]$.
- 1.21 SO₂ EPA Allowance Factor: the number of SO₂ allowances that are required by the EPA to be retired for emitting 1 ton of SO₂. For 2014, the SO₂ EPA Allowance Factor is 2.0. For 2015 and beyond under the Clean Air Interstate Rule (CAIR), the SO₂ EPA Allowance Factor is 2.86. For 2015 and beyond under the Cross-State Air Pollution Rule (CSAPR), the SO₂ EPA Allowance Factor is 1.0.
- 1.22 Summer Rating HSL: as submitted in the most current filing of Luminant's Resource Asset Registration Forms, an individual unit's "Seasonal Net Maximum Sustainable rating – Summer."
- 1.23 Summer Rating LSL: as submitted in the most current filing of Luminant's Resource Asset Registration Forms, an individual unit's "Seasonal Net Minimum Sustainable rating – Summer."
- 1.24 Variable O&M (\$/MWh): the generating unit values submitted by Luminant and approved via the ERCOT verifiable cost process, or if generating unit values have not been submitted

by Luminant and approved by ERCOT, the Variable O&M shall be deemed to be \$1.50/MWh.

- 1.25 Verifiable Fuel Cost Adder: A plant-specific fuel cost adder approved by ERCOT in accordance with the Nodal Protocols and the Verifiable Cost Manual.
- 1.26 Verifiable CT Heat Rate: A plant-specific heat rate calculated as the simple average of all units' average heat rates (at 70 MW) at a plant site using the unit values from the input-output curves determined and updated through the ERCOT verifiable cost process.

2 Voluntary Mitigation Plan Energy Offer Curve Procedures

- 2.1 Day-Ahead Market (DAM) Offers and Bids:
 - 2.1.1 Offers and/or bids for energy and ancillary services, except for NSRS, in the DAM can be made at prices up to and including HCAP.
 - 2.1.2 Offers for NSRS in the DAM may not exceed \$20/MWh.
- 2.2 Loads in SCED: Bids for energy may be submitted at any price, subject to any load bid caps set by the PUC.
- 2.3 Nuclear Units: Energy Offer Curves (EOCs) for the Comanche Peak units shall be submitted into the real-time market with values no higher than \$10/MWh.
- 2.4 Lignite and Coal Units: EOCs from each unit shall be no higher than the greater of the values calculated in section 2.4.1 or 2.4.2 below, except for energy offered pursuant to 2.4.3 or 2.8 below:
 - 2.4.1 $[(\text{Incremental Heat Rate} * \text{Price for Coal}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] * 1.5$
 - 2.4.2 $[(\text{Incremental Heat Rate} * \text{Price for Coal}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] + \$15/\text{MWh}$
 - 2.4.3 A portion of each unit EOC may be offered at no higher than \$500/MWh. The quantity that may be offered from each unit at this level is calculated as $(\text{Summer Rating HSL} - \text{Summer Rating LSL}) * 5\%$.
 - 2.4.4 If offered in any hour of the operating day, the quantity calculated from 2.4.3 above must be offered in the same price / quantity pairs for all hours of the operating day for which the unit is Online. If MWs offered pursuant to the \$500/MWh limit are offered on a unit that is derated or becomes unavailable, Luminant shall not offer the lost MWs on another unit.
- 2.5 Non-Quick Start Operated and Non-Combined Cycle Natural Gas Units: EOCs from each unit shall be no higher than the values calculated in section 2.5.1 or 2.5.2 below based on the appropriate fuel type, except for energy offered pursuant to 2.5.3, 2.5.4, or 2.8 below:
 - 2.5.1 For the portion of a unit burning natural gas, the greater of:

- 2.5.1.1 $[(\text{Incremental Heat Rate} * \text{Price for Natural Gas}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] + \$35/\text{MWh}$
- 2.5.1.2 $[(\text{Incremental Heat Rate} * \text{Price for Natural Gas}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] * 1.5$
- 2.5.2 For the portion of a unit burning No. 2 fuel oil, the greater of:
 - 2.5.2.1 $[(\text{Incremental Heat Rate} * \text{Price for No. 2 Fuel Oil}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] + \$35/\text{MWh}$
 - 2.5.2.2 $[(\text{Incremental Heat Rate} * \text{Price for No. 2 Fuel Oil}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] * 1.5$
- 2.5.3 A portion of each unit EOC may be offered at no higher than \$500/MWh. The quantity that may be offered from each unit at this level is calculated as $(\text{Summer Rating HSL} - \text{Summer Rating LSL}) * 12\%$.
- 2.5.4 A portion of each unit EOC may be offered at no higher than the HCAP. The quantity that may be offered from each unit at this level is calculated as $(\text{Summer Rating HSL} - \text{Summer Rating LSL}) * 3\%$.
- 2.5.5 If offered in any hour of the operating day, the quantity calculated from 2.5.3 and 2.5.4 above must be offered in the same price / quantity pairs for all hours of the operating day for which the unit is Online. If MWs offered pursuant to 2.5.3 and/or 2.5.4 are offered on a unit that is derated or becomes unavailable, Luminant shall not offer the lost MWs on another unit.
- 2.6 Combined Cycles: EOCs from each unit shall be no higher than the greater of the values calculated in 2.6.1 or 2.6.2 below, except for energy offered pursuant to 2.8 below:
 - 2.6.1 $[(\text{Incremental Heat Rate} * \text{Price for Natural Gas}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] + \$25/\text{MWh}$
 - 2.6.2 $[(\text{Incremental Heat Rate} * \text{Price for Natural Gas}) + \text{Variable O\&M} + \text{SO}_2 \text{ Emissions Cost} + \text{NO}_x \text{ Emissions Cost} + \text{Fees}] * 1.5$
- 2.7 Quick Start CTs: When operating in quick start mode, Luminant's quick start certified units shall be offered as follows:

EOCs for Luminant's Quick Start Operated CTs shall be no higher than 2.7.1 or 2.7.2 below, as applicable based on fuel type, and may not be any lower than any applicable price floor established in the ERCOT Protocols:

 - 2.7.1 $\$850 + (14 \text{ Incremental Heat Rate} * \text{Price for Natural Gas}); \text{ or}$
 - 2.7.2 $\$850 + (14 \text{ Incremental Heat Rate} * \text{Price for No. 2 Fuel Oil}).$
- 2.8 Non-Spinning Reserve Service: Any MWs from On-Line and Off-Line NSRS shall be offered at prices no higher than \$250/MWh, unless required by an applicable ERCOT Protocol. This section does not apply to offers pursuant to 2.7 above.

- 2.9 Intermittent Renewable Resources (IRRs): Any MWhs from IRRS (including wind and solar) shall be offered at no higher than \$10.00/MWh.
- 2.10 Batteries: EOCs from each unit shall be no greater than the higher of (1) the price point on the ERCOT Power Balance Penalty Curve associated with capacity equal to the Summer Rating HSL of each unit or (2) five (5) times the highest hourly DAM price for the Resource Node for the operating day.

3 Voluntary Mitigation Plan Expiration and Miscellaneous Terms

- 3.1 The Voluntary Mitigation plan shall automatically terminate without any further action by a Party upon the earlier of:
 - 3.1.1 ERCOT's go-live date for Real Time Co-optimization;
 - 3.1.2 The day that is seven (7) years from the date the Commission approves this Voluntary Mitigation Plan; or
 - 3.1.3 The day Luminant's Installed Generation Capacity, as that term is defined in 16 Tex. Admin Code § 25.5, drops below 5% of the total ERCOT Installed Generation Capacity in the most recent Estimate of Installed Generation Capacity in ERCOT Memorandum filed in Project No. 39870, or its successor project. In the event this occurs, Luminant will file an affidavit in this docket, stating that the VMP has terminated, including the exact date the agreement terminated.
- 3.2 With respect to nuclear, coal, and natural gas fired units, the VMP will only apply to units in Luminant's fleet at the time of approval of the VMP.

**ATTACHMENT 2: AFFIDAVIT OF CARRIE BIVENS, IMM
DIRECTOR**

DOCKET NO. 54739

REQUEST FOR APPROVAL OF AN	§	PUBLIC UTILITY COMMISSION
AMENDMENT VOLUNTARY	§	
MITIGATION PLAN FOR LUMINANT	§	OF TEXAS
ENERGY COMPANY LLC PURSUANT	§	
TO PURA § 15.023(f) AND 16 TAC	§	
§ 25.504(e)		

AFFIDAVIT OF CARRIE BIVENS

STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared Carrie Bivens, known to me to be the person whose name is subscribed below, upon oath depose and stated as follows:

I. Qualifications and Purpose

1. My name is Carrie Bivens. My business address is 8000 Metropolis Drive (Building E), Suite 100, Austin, Texas, 78744. I am over eighteen (18) years of age. The facts set forth herein are true to the best of my knowledge, information, and belief.
2. I am employed by Potomac Economics and currently serve as the Director of the Independent Market Monitor ("IMM") for the Electric Reliability Council of Texas ("ERCOT") wholesale markets. Potomac Economics specializes in providing expert economic analysis and monitoring of wholesale electricity markets. In our role as the IMM for the ERCOT wholesale markets, we are charged with the responsibilities to monitor wholesale market activities so as to: (1) detect and prevent market manipulation strategies and market power abuses; and (2) evaluate the operations of the wholesale market with the current market rules and proposed changes to the market rules, and recommend measures to enhance market efficiency.
3. I have served as the Director of the ERCOT IMM since 2020 and have twenty years of

experience in the industry. Immediately prior to joining Potomac Economics, I was employed by ERCOT for nearly fourteen years in various roles, most recently as Director, Wholesale Operations. Immediately prior to joining ERCOT I was employed by the Federal Energy Regulatory Commission ("FERC") in Washington, D.C. as an Energy Industry Analyst. I have a Bachelor of Business Administration in Operations Management from the University of Houston.

4. On December 13, 2019, the Commission approved the Application, Settlement Agreement and Voluntary Mitigation Plan ("Original VMP") of Luminant Energy Company LLC ("Luminant") by Final Order in PUC Docket No. 49858.
5. On March __, 2023, Commission Staff and Luminant filed an Application for Approval of Settlement Agreement and Amended Voluntary Mitigation Plan ("Amended VMP") relating to amendments to Luminant's Original VMP.
6. The purpose of this affidavit is to support the request for approval of Luminant's Amended VMP by explaining how it provides protections against a potential abuse of market power in violation of PURA § 39.157(a), while affording increased regulatory certainty to Luminant regarding certain ancillary service offers in the ERCOT day-ahead market.

II. Key Elements of the Luminant Amended VMP

7. In approving Luminant's Original VMP on December 13, 2019, the Commission found that the Original VMP "establishes a reasonable method for compliance with PURA § 39.157(a) and 16 TAC § 25.503(g)(7) and is consistent with PURA § 15.023(f) and the Commission's goals in 16 TAC § 25.504(e) of providing for regulatory and financial certainty for market participants, while ensuring protection for the market."¹

¹ See *Commission Staff Request for Approval of a Voluntary Mitigation Plan for Luminant Energy Company, LLC under PURA § 15.023(f) and 16 TAC § 25.504(e)*, Docket No. 49858, Final Order, Conclusion of Law No. 6, (Dec. 13, 2019).

8. In approving Luminant's Original VMP, the Commission stated that, "the VMP may be modified by mutual agreement of the executive director and Luminant Energy. The modification is effective when approved by the Commission."²
9. Because a Commission-approved VMP provides a generation entity an absolute defense against an allegation pursuant to PURA §39.157(a) and P.U.C. Subst. R. §25.503(g)(7) of an abuse of market power with respect to behaviors addressed by the VMP, it is important that the VMP provides sufficient protection against the abuse of market power in all the market products it covers. If it becomes apparent that such protection is no longer being provided by a VMP, an adjustment must be made.
10. As part of its conservative operations posture instituted in the latter part of 2021, ERCOT increased its procurement of Non-Spinning Reserve Service ("NSRS" or "non-spin") from an hourly range of 1,175 MW to 1,838 MW in 2020 to an hourly range of 3,654 MW to 4,303 MW in 2022. Given that the total available submitted offers of non-spin over the past 12 months, averaging roughly 7,000 MW,³ has been relatively consistent with total available submitted offers from recent years, ERCOT's increase in procurement affected the amount of excess supply that exists. Decreasing the excess supply of product increases the likelihood that the largest suppliers of that product become pivotal to meeting the procurement requirement. In this way, the increase in non-spin procurements in the day-ahead market has fundamentally changed the competitiveness of the market from the time that the Original VMP was approved.
11. Given that there is currently no planned end date to ERCOT's increased non-spin procurement, the Original VMP is not effectively mitigating anti-competitive conduct in the non-spin market as it exists today. Given the change in competitive conditions caused by ERCOT's sizable increase in non-spin procurements and the non-competitive costs that have already accrued as a result of the conservative operational approach, a modification of the Original VMP is necessary to ensure continued protection against

² *Id.* at Finding of Fact No. 9.

³ This value does not take into account whether the submitted offers were able to be awarded based on day-ahead market resource constraints.

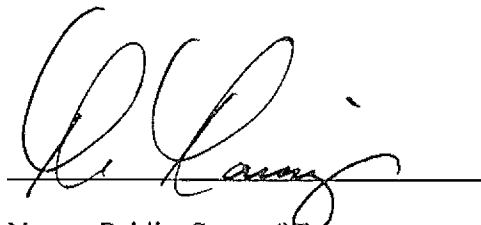
market power abuses.

12. The Original VMP provided that offers in the day-ahead market for ancillary services could be made up to and including the high system-wide offer cap. The Amended VMP places a cap on offers in the day-ahead market for non-spin of \$20 per MWh for all resources.
13. The \$20 per MWh offer cap in the day-ahead market for non-spin significantly narrows Luminant's offer discretion, providing enhanced guardrails. Had this offer cap been in place and followed by Luminant since the start of ERCOT's increased non-spin procurement, the outcomes of the non-spin market would have been better reflective of expected competitive outcomes. The Amended VMP effectively addresses the potential for market power abuse in the non-spin market.
14. In conclusion, it is my opinion that the Amended VMP will continue to provide increased regulatory certainty to Luminant and that behavior consistent with the terms of the Amended VMP will provide reasonable safeguards against the potential exercise of market power in the ERCOT markets that may constitute an abuse of market power.
15. This concludes my affidavit.



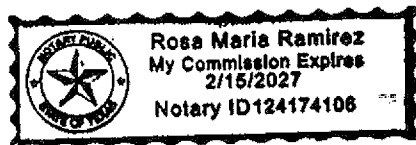
Carrie Bivens

SUBSCRIBED and SWORN TO before me, a Notary Public, in and for the State of Texas, this 15th day of March 2023.



Notary Public, State of Texas

My commission expires:



ATTACHMENT 3: PROPOSED ORDER

DOCKET NO. 54739

REQUEST FOR APPROVAL OF AN	§	PUBLIC UTILITY COMMISSION
AMENDED VOLUNTARY	§	
MITIGATION PLAN FOR	§	OF TEXAS
LUMINANT ENERGY COMPANY	§	
LLC PURSUANT TO PURA § 15.023(f)	§	
AND 16 TAC § 25.504(e)	§	

PROPOSED ORDER

This Order addresses the settlement agreement (agreement) between the Staff of the Public Utility Commission of Texas (Commission) and Luminant Energy Company, LLC (Luminant Energy), each of which recommends approval of an amended Voluntary Mitigation Plan (VMP). The Commission approves the agreement and approves the amended VMP for Luminant Energy.

I. Findings of Fact

Commission Staff and Luminant Energy stipulated to the following findings of fact.

Applicant

1. Luminant Energy is a domestic limited liability company registered with the Texas secretary of state under filing number 800878187.
2. Luminant Energy is affiliated with the following entities that are registered as power generation companies (PGCs) with the Commission: Luminant Generation Company, LLC (PGC No. 20202); Brightside Solar, LLC (PGC No. 20665); Coleto Creek Power, LLC (PGC No. 20158); Comanche Peak Power Company LLC (PGC No. 20407); Emerald Grove Solar, LLC (PGC No. 20666); Ennis Power Company, LLC (PGC No. 20003); Hays Energy, LLC, (PGC No. 20047); La Frontera Holdings, LLC (PGC No. 20395); Midlothian Energy, LLC (PGC No. 20014); Oak Grove Management Company LLC (PGC No. 20225); Upton County Solar 2, LLC (PGC No. 20464); and Wise County Power Company, LLC (PGC No. 20099).
3. Luminant Energy controls one or more generation resources in the Electric Reliability Council of Texas (ERCOT) region.

4. Luminant Energy is registered with ERCOT as a qualified scheduling entity and is responsible for submitting offers from its affiliated generation resources into the ERCOT market.

Original VMP

5. On August 16, 2019, Luminant Energy filed a request for approval of a VMP (Original VMP).¹
6. On December 13, 2019, the Commission issued an order approving the Original VMP.²
7. The Original VMP can be modified by mutual agreement of the Commission's executive director and Luminant Energy, and the modification will become effective when approved by the Commission.³

Amended VMP

8. In the latter part of 2021, ERCOT instituted its current operational posture, which includes the increased procurement of Non-Spinning Reserve Service (NSRS) in the day-ahead market.
9. The largest suppliers of NSRS to the ERCOT market, including Luminant Energy, are the generation entities and affiliates that own the largest percentage of generation capacity providing NSRS in the ERCOT power region. NSRS market outcomes are impacted by offers from all suppliers in this market.
10. The increased procurement of NSRS in the day-ahead market warrants reconsideration of the original VMP terms regarding NSRS.
11. There is currently no planned end date to ERCOT's increased procurement of NSRS.
12. The Commission believes that Luminant Energy's Original VMP, which provides Luminant Energy with an absolute defense against allegations of market power abuse pertaining to the submission of offers for ancillary services at prices up to the HCAP,

¹ *Request for Approval of a Voluntary Mitigation Plan for Luminant Energy Company LLC, Pursuant to PURA § 15.023(f) and 16 TAC §25.504(e)*, Docket No. 49858, Application for Approval of Settlement Agreement (Aug. 16, 2019).

² Docket No. 49858, Order (Dec. 13, 2019).

³ *Id.*, Finding of Fact No. 9. and Ordering Paragraph No. 1.

requires updates to address changes in market conditions, including ERCOT's increased procurement of NSRS.

13. The amended VMP addresses Luminant Energy's offers for NSRS in the ERCOT day-ahead market.
14. The amended VMP establishes a reasonable method for compliance with PURA and Commission rules and provides regulatory certainty for Luminant Energy, while ensuring protection against market power abuse.

Settlement Agreement

15. On March 15, 2023, the parties entered into a settlement agreement, which recommends approval of the amended VMP, attached as Attachment 1 to the agreement.
16. The amended VMP was developed after detailed discussions between Commission Staff, ERCOT's Independent Market Monitor (IMM), and Luminant Energy.
17. The amended VMP is supported by the IMM, as detailed in the affidavit of Carrie Bivens, director of the IMM, attached as Attachment 2 to the agreement.
18. Under the agreement, the amended VMP will remain in effect from the date it is approved by the Commission until terminated by the executive director of the Commission or Luminant Energy, subject to ratification of the termination or reinstatement of the amended VMP by the Commission if the termination was by the executive director.
19. Under the agreement, the amended VMP may be modified by mutual agreement of the executive director and Luminant Energy. The modification will become effective when approved by the Commission.
20. Under the agreement, if at any time the executive director or the executive director's designee determines that continuation of the amended VMP or part of the amended VMP may no longer be in the public interest, the executive director or the executive director's designee may terminate the amended VMP, in whole or in part, by providing Luminant Energy with written notice of termination at least three business days prior to the effective date of termination, subject to ratification of the termination or reinstatement of the amended VMP by the Commission. If the amended VMP is terminated in part, the remaining part of the amended VMP may remain in effect or may be modified pursuant to

Finding of Fact No. 19. The executive director may withdraw the notice of termination at any point prior to the termination date.

21. Under the agreement, Luminant Energy may terminate the amended VMP by providing the executive director with written notice of termination at least three business days prior to the effective date of termination. Luminant Energy may withdraw the notice of termination at any point prior to the termination date.

Notice

22. Notice of the agreement was provided to the parties.

Informal Disposition

23. At least 15 days have passed since the completion of all notice requirements.
24. Commission Staff, including the IMM, and Luminant Energy are the only parties to this proceeding.
25. No party requested a hearing, and no hearing is needed.
26. Commission Staff recommended approval of the agreement.
27. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this matter under PURA §§ 14.051, 15.023, and 39.157.
2. Luminant Energy is a qualified scheduling entity under 16 TAC § 25.5(95).
3. Luminant Energy and its affiliates are generation entities as that term is defined in 16 TAC § 25.504(b)(1).
4. Under 16 TAC 25.504(b)(2), market power is the ability to control prices or exclude competition in a relevant market. Under PURA § 39.157(a), a market power abuse is a practice by a person possessing market power that is unreasonably discriminatory or tends to unreasonably restrict, impair, or reduce the level of competition.

5. PURA § 39.157(a) and 16 TAC § 25.503(g)(7) prohibit market power abuses.
6. Under PURA § 15.023(f) and 16 TAC § 25.504(e), the Commission may approve a generation entity's VMP to ensure compliance with PURA § 39.157(a) and 16 TAC § 25.503(g)(7).
7. Under PURA § 15.024(f), the only parties allowed in the proceeding are Commission Staff, including the IMM, and Luminant Energy.
8. Luminant Energy's amended VMP establishes a reasonable method for compliance with PURA § 39.157(a) and 16 TAC § 25.503(g)(7).
9. Under PURA § 15.023(f), adherence to the amended VMP, if approved by the Commission, by Luminant Energy provides Luminant Energy with an absolute defense against an allegation under PURA § 39.157(a) and 16 TAC § 25.503(g)(7) of an abuse of market power with respect to activities covered by the amended VMP.
10. Failure to adhere to a VMP approved by the Commission does not, standing alone, constitute a violation of 16 TAC § 25.503(g)(7), but may be treated in the same manner as any other violation of a Commission Order.
11. The Commission processed this docket in accordance with the requirements of applicable statutes and Commission rules.
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the agreement and the amended VMP attached to the agreement.
2. Nothing prohibits the Commission from imposing penalties for violations that do not pertain to the specific behaviors covered by the amended VMP.

3. The amended VMP approved by this Order must remain in effect from the date it is approved by the Commission until terminated in accordance with the termination provisions in the agreement.
4. The amended VMP may be modified by mutual agreement of the Commission's executive director and Luminant Energy. The modification will become effective if approved by the Commission.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the ____ day of _____, 2023.

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER