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April 20, 2015

Office of the Chief Clerk
ATTN: Agenda Docket Clerk
Texas Commission on Environmental
Quality
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Docket No. 2015-0496-AIR
Luminant Generation Company LLC
Contested Case Hearing Request(s) filed on Permit No. 933
Permit Renewal Application
Air Quality Permit Number 933
Martin Lake Steam Electric Station

Dear Docket Clerk:

Attached for filing is Applicant Luminant Generation Company LLC's Response to Hearing Request(s). Persons on the mailing list provided with the Chief Clerk's April 8, 2015, correspondence pertaining to this matter have been provided a copy of this filing, as indicated on the Certificate of Service accompanying this response.

Thank you for your assistance in this matter.

Very truly yours,

Bracewell & Giuliani LLP

John A. Riley

Enclosure

TCEQ DOCKET NO. 2015-0496-AIR

RENEWAL APPLICATION BY	§	BEFORE THE
LUMINANT GENERATION	§	
COMPANY LLC	§	TEXAS COMMISSION ON
MARTIN LAKE STEAM ELECTRIC	§	
STATION	§	ENVIRONMENTAL QUALITY
AIR QUALITY PERMIT NO. 933	§	

APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS:

Luminant Generation Company LLC (“Luminant”) submits the following response in opposition to requests for a contested case hearing filed with the Texas Commission on Environmental Quality (“TCEQ” or “Agency”) pertaining to Luminant’s application for renewal of TCEQ Air Quality Permit No. 933 (Martin Lake Steam Electric Station), which was received by the Agency on March 3, 2014. At the outset, Luminant agrees with the Executive Director’s (“ED’s”) discussion of the hearing requests, as expressed in the ED’s Response to Comments (“RTC”), especially with respect to the fact that a contested case hearing is not available for this renewal application. Notably, while Texas Campaign for the Environment submitted comments in common with the Environmental Integrity Project (“EIP”) and Sierra Club, only EIP and Sierra Club requested, albeit deficiently, a contested case hearing.¹ Further, Luminant maintains that if a contested case were available – which it is not – EIP is not a membership organization and, unlike Sierra Club, does not have members on whose behalf EIP can request a contested case. Similarly, Caddo Lake Institute’s (“CLI’s”) request somewhat confusingly makes

¹ See Letter dated April 14, 2014 signed by Ilan Levin of EIP Re: Public Comments and Request for a Contested Case Hearing Regarding Renewal of Permit No. 933 (Luminant Generation Company LLC's Martin Lake Steam Electric Station, Rusk County), pages 1 and 5.

reference to a 2008 hearing request CLI made pertaining to a different permit application that is not at issue here and, otherwise, joins in the EIP comments but, again, fails to identify any affected person it represents or that is a member of the organization that satisfies the requirements for a request by a group or association.² In short, only Sierra Club even attempts to identify a member that might qualify as an “affected person” if a contested case was available for this permit renewal - which it is not. Finally, to the extent that CLI is claiming that it is an affected person, CLI has not substantially complied with the requirements for making a contested case hearing request as an affected person.

I. BACKGROUND

This permit renewal application was received by the Agency on March 3, 2014, and declared administratively complete on March 10, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit renewal application was published in English on April 2, 2014 in the *Henderson Daily News* and in Spanish on April 2, 2014 in *La Opinion*. Pursuant to 30 Tex. Admin. Code § 55.152(a)(2); § 39.419(e)(1); § 39.420(e)(3); and 39.411(e)(11)(A)(iii), hearing requests must be received within 15 days of the last date of publication or April 17, 2014.

II. THE MARTIN LAKE FACILITY AND LUMINANT ARE HIGH PERFORMERS AND, THEREFORE, A CONTESTED CASE IS NOT AVAILABLE IN THIS PERMIT RENEWAL

According to the Texas Clean Air Act § 382.056(g), the commission may not hold a contested case hearing in the case of a renewal application where there is no change in the allowable emissions rates or in the emission of any new contaminant, unless, as allowed by § 382.056(o), the renewal application involves a facility for which the applicant’s compliance history is classified as

² 30 Tex. Admin. Code § 55.205.

“unsatisfactory” pursuant to the applicable rules in 30 Tex. Admin. Code Chapter 60. The Martin Lake Steam Electric Station compliance history ranking is not only above the “unsatisfactory” ranking, Martin Lake rates the highest compliance history ranking available under TCEQ rules, namely “high performer,” as does Luminant. Therefore, even if the requests for hearing were otherwise valid – which they are not – the commission may not order this matter to a contested case.

As noted in the RTC, Response 6, the requested changes to the permit relating to emission rates or the types emissions are either mandated by federal requirements, result from a change in the method employed in calculating emissions and are not “new” or increases in emissions; or represent the incorporation of another authorization, namely Standard Permit Registration No. 85302. Therefore, the Commission may not refer this matter to a contested case hearing under the express provision of the Texas Clean Air Act.

III.
EIP IS NOT A MEMBERSHIP ORGANIZATION AND CANNOT QUALIFY UNDER
TCEQ RULES AS A GROUP OR ASSOCIATION THAT MAY REQUEST A
CONTESTED CASE HEARING

Pursuant to applicable TCEQ rules, groups and associations may request a contested case hearing only if: “(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.” 30 Tex. Admin. Code § 55.205(a) *See also S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 308 (Tex. 2007); *Tex. Ass'n of Bus. V. Texas Air Control Bd.*, 852 S.W.2d 440, 447–48 (Tex. 1993).

EIP, according to its own published descriptions, is not a membership organization and (unlike Sierra Club and, presumably, CLI) does not itself have members from the general public. EIP, therefore, cannot rely on any person’s membership to meet the affected person requirement.

Furthermore, the original comments do not support any contention that the unnamed EIP employees, which are described in the comments only as “staff” working at EIP “in Texas,” are affected by the issuance of the renewal in a manner different from the general public. In short, EIP does not qualify as a group or association under the applicable law and cannot independently pursue a contested case hearing.

EIP is not the sort of entity that can assert associational standing and any EIP claim to the contrary based to the federal Clean Air Act is defeated by case precedent. *See American Legal Foundation v. FCC*, 808 F.2d 84 (D.C. Cir. 1987) (holding watchdog group with no members lacked standing); *Health Research Group v. Kennedy*, 82 F.R.D. 21 (D.D.C. 1979) (holding non-member plaintiff organization could not rely on “contributors” or “supporters” to establish its standing). Nor can EIP establish associational standing based on the interests of its employees. *See Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 810 n.15 (11th Cir. 1993) (holding that employers lacked standing to assert the rights of their employees to environmental enjoyment). As a consequence, EIP cannot satisfy TCEQ rules for associational standing and there is no support in federal Clean Air Act precedent regarding associational standing for any different conclusion, even if the federal law were applicable to public participation in contested case hearings in a State Implementation Plan approved State such as Texas, which it is not.

IV.

NEITHER SIERRA CLUB NOR CLI HAVE ADEQUATELY IDENTIFIED A MEMBER THAT QUALIFIES AS AN AFFECTED PERSON OR OTHERWISE QUALIFIED AS AN AFFECTED PERSON IN THEIR OWN RIGHT

If a contested case were available here – and it is not – both Sierra Club’s and CLI’s hearing requests must, among other things, substantially comply with the following requirement:

“identify the person’s personal justiciable interest affected by the application, including a

brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public" 30 Tex. Admin. Code § 55.201(d)(2).

In short, neither Sierra Club's nor CLI's contested case hearing requests substantially comply with this requirement.

For its part, CLI's request appears to seek qualification as an affected person in its own right. Citing property ownership on Caddo Lake some 40 miles away from the Martin Lake facility, CLI cites general interests that are common to the general public and are unsupported to the extent that the stated concerns relate to the Martin Lake facility specifically. Therefore, Luminant maintains that CLI does not qualify as an affected person and, in the alternative, failed to satisfy the requirements for a proper request for a contested case hearing under TCEQ rules.

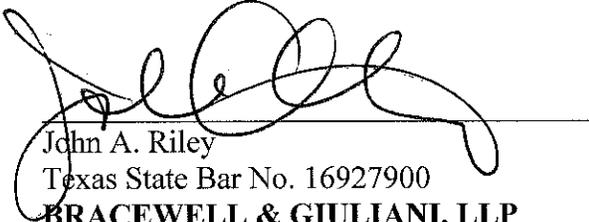
Only slightly more compliant with the requirements is Sierra Club's request for a contested case hearing. After describing generalized concerns related to "sensitive populations," Sierra Club purports to have a member, Eddie Gomez, that "resides" near Lake Cherokee in Henderson, TX. However, Sierra Club's request fails to particularize Mr. Gomez's personal issue with the permit renewal and, therefore, the request is deficient.

V.
**LUMINANT ADOPTS THE ED'S RTC WITH RESPECT TO THE ISSUES
RAISED BY THE COMMENTS**

With respect to the issues raised in the comments, Luminant adopts the response of the ED. To the extent that the Commission considers the issues raised for a contested case hearing, as opposed to the legislative prohibition on sending this matter to a contested case hearing on a renewal application and the substantive deficiencies of the requests themselves, Luminant requests that the Commission decline to send any issue to a contested case hearing. The issues raised are requests for information that are satisfied by the RTC.

WHEREFORE, for the reasons stated above and otherwise expressed in the ED's RTC, Luminant requests the Commissioners deny the requests for contested case hearing and issue the permit renewal.

Respectfully submitted,



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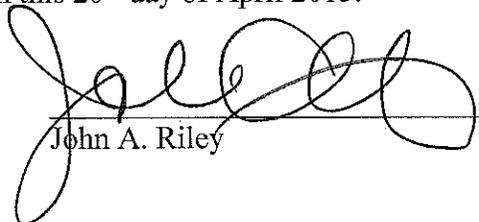
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**ATTORNEY FOR LUMINANT
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the persons listed below, by the method indicated, on this 20th day of April 2015.



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