


<b>UNITED STATES BANKRUPTCY COURT District of Delaware</b>		<b>PROOF OF CLAIM</b>						
Name of Debtor: <b>Big Brown Power Company, LLC</b>	Case Number: <b>14-10988 (CSS)</b>	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>FILED / RECEIVED</b>   <b>OCT 27 2014</b>   <b>EPIQ BANKRUPTCY SOLUTIONS, LLC</b> </div> <p style="text-align: center;"><b>COURT USE ONLY</b></p> <input type="checkbox"/> Check this box if this claim amends a previously filed claim.  <b>Court Claim Number:</b> _____ <i>(If known)</i>  <b>Filed on:</b> _____						
NOTE: <i>Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.</i>								
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>United States of America on behalf of the U.S. Environmental Protection Agency</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.  Filed: USBC - District of Delaware Energy Future Holdings Corp., et al., Et Al. 14-10979 (CSS)      0000007904						
Name and address where notices should be sent: c/o Bradford T. McLane, U.S. Department of Justice, Environmental Enforcement Section Regular mail: PO Box 7611, Washington, DC 20044-7611 Overnight mail: 601 D Street N.W., Washington, DC 20004  Telephone number: (202) 305-0544    email: bradford.mclane@usdoj.gov								
Name and address where payment should be sent (if different from above): <b>Megan Fahey, Financial Litigation Unit, Office of the United States Attorney for the Northern District of Texas, 1100 Commerce Street, Suite 300, Dallas TX 75242</b>  Telephone number: _____    email: _____								
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>See Attached</u>  If all or part of the claim is secured, complete item 4.  If all or part of the claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.								
<b>2. Basis for Claim:</b> <u>See Attached</u> (See instruction #2)								
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____	<b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a)	<b>3b. Uniform Claim Identifier (optional):</b> _____ (See instruction #3b)						
<b>4. Secured Claim</b> (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.  <b>Nature of property or right of setoff:</b> <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b> _____  <b>Value of Property:</b> \$ _____  <b>Annual Interest Rate</b> _____ % <input type="checkbox"/> Fixed    or <input type="checkbox"/> Variable (when case was filed)		<b>Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any:</b> \$ _____  <b>Basis for perfection:</b> _____  <b>Amount of Secured Claim:</b> \$ _____  <b>Amount Unsecured:</b> \$ _____						
<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.</b>  <table style="width:100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).                 </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).                 </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).                 </td> </tr> <tr> <td style="vertical-align: top;"> <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).                 </td> <td style="vertical-align: top;"> <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).                 </td> <td style="vertical-align: top;"> <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).                 </td> </tr> </table> <p style="text-align: right;"><b>Amount entitled to priority:</b> \$ <u>See Attached</u></p>			<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).	<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5).						
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).						
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.								
<b>6. Credits.</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)								

**7. Documents:** Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

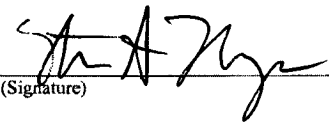
**8. Signature:** (See instruction #8)

Check the appropriate box.

- I am the creditor.     I am the creditor's authorized agent.     I am the trustee, or the debtor, or their authorized agent.     I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)  
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Steve Thompson, Acting for John Blevins  
Title: Division Director  
Company: U.S. EPA Region 6  
Address and telephone number (if different from notice address above):  
Compliance Assurance & Enforcement  
1445 Ross Avenue, Dallas TX 75202

 10/22/14  
(Signature) (Date)

Telephone number: (214) 665-2266 email: blevins.john@epa.gov

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

**Items to be completed in Proof of Claim form**

**Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**3b. Uniform Claim Identifier:**

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

**4. Secured Claim:**

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).**

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

**8. Date and Signature:**

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

**IN THE UNITED STATES BANRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
BIG BROWN POWER COMPANY, LLC	)	Case No. 14-10988 (CSS)
	)	
Debtor.	)	(Jointly Administered)
	)	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

1. This Proof of Claim is filed by the United States at the request of the United States Environmental Protection Agency (“EPA”). The Attorney General is authorized to file this Proof of Claim on behalf of the United States. This Proof of Claim is related to the liability of debtor Big Brown Power Company LLC (“Big Brown Power” or “Debtor”) for civil penalties under Section 113 of the Clean Air Act (“CAA”), 42 U.S.C. § 7413, for CAA violations at the Martin Lake and Big Brown Power Plants. In addition, this Proof of Claim is filed in a protective fashion with respect to equitable remedies that are not within the Bankruptcy Code’s definition of a “claim,” 11 U.S.C. § 101(5).

2. On August 16, 2013 the United States filed a Complaint under the CAA against Luminant and Big Brown Power Company LLC (collectively “Defendants”) in the United States District Court for the Northern District of Texas (“District Court”). *See United States v. Luminant Generation LLC et al*, Civil Action No. 3:13-cv-03236-K (N.D. Texas Aug. 16, 2013). Big Brown Power is liable in this District Court action as the owner of the Big Brown Power Plant.

3. Defendants assert claims of Confidential Business Information (“CBI”) over portions of the Complaint. As such, a redacted copy of the United States’ Complaint is filed as

exhibit A to this claim and incorporated by reference herein. (The U.S. EPA has rejected those claims of confidentiality, and Luminant has filed an action challenging EPA's CBI determination. *See Luminant Generation Co. LLC v. U.S. EPA*, 4:14-cv-172 (March 24, 2014, E.D. Texas).)

4. The Complaint seeks injunctive relief and civil penalties stemming from violations of three CAA provisions.

5. First, in Counts 1 to 6 the United States seeks injunctive relief and civil penalties stemming from ongoing violations at Martin Lake Units 1, 2 and 3 and Big Brown Unit 2 of the Prevention of Significant Deterioration (PSD) provisions of the CAA, 42 U.S.C. §§ 7470-92; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP. The gravamen of these Counts is that Defendants have violated and are continuing to violate the CAA's PSD requirements by owning and/or operating Electric Generating Units that do not have the requisite PSD permits and pollution controls to reduce emissions of sulfur dioxide and oxides of nitrogen from Martin Lake Units 1, 2 and 3 and sulfur dioxide emissions from Big Brown Unit 2.

6. Second, in Counts 7 and 8 the United States seeks injunctive relief and civil penalties stemming from related violations of the Title V operating permit program at Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a); 40 C.F.R. §§ 70.5 and 70.6; and the Texas Title V operating permit regulations at 30 Tex. Admin. Code Chapter 122. The gravamen of these Counts is that the PSD requirements that Defendants are violating are "applicable requirements" that Defendants were and are required to incorporate into their CAA Title V operating permits for the Martin Lake and Big Brown Power Plants.

7. Third, in Count 9 the United States seeks injunctive relief and civil penalties for violations of Clean Air Act Section 114, 42 U.S.C. § 7414, stemming from Luminant's improper withholding of documents in response to information requests under unsubstantiated privilege claims.

8. On January 10, 2014, the District Court stayed the United States' CAA enforcement action against Defendants to await a determination by the Fifth Circuit in a related lawsuit. *See United States v Luminant*, No. 3:13-cv-03236-K (N.D. Tex.), ECF Dkt. No. 41. After the Fifth Circuit ruled that it was without jurisdiction in that matter, the District Court reopened the docket on July 13, 2014. *See id.*, ECF Dkt. No. 43. Thereafter the District Court set the schedules for briefing of Defendants' Rule 12 motion to dismiss and for commencing discovery. Defendants filed their Motion to Dismiss on September 24, 2014. *See id.*, ECF Dkt. Nos. 47, 48, 49. Plaintiff filed its opposition brief on October 22, 2014. *See* ECF Dkt. No. 53.

9. The claims against the Debtor in this Proof of Claim should be construed to conform to those alleged against Big Brown Power as set forth in the United States' Complaint, and as those claims are adjudicated by the District Court.

10. The District Court action falls within the police and regulatory exception to the Automatic Stay set forth at 11 U.S.C. § 362(b)(4).

#### **Civil Penalty Claims**

11. Big Brown Power is liable to the United States for violating the applicable requirements of the State Implementation Plan ("SIP") adopted by Texas and approved by the EPA pursuant to CAA Section 110, 42 U.S.C. § 7410, the Texas Title V regulations, and CAA Section 114, with respect to the Big Brown Power Plant as set forth above and in the Complaint. The amount of Debtor's liability for civil penalties will be determined by the District Court.

Debtor is liable for up to \$32,500 per day for each such violation occurring after March 15, 2004, and through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009.

**Protective Filing for Injunctive Relief Claims**

12. This Proof of Claim is also filed in a protective manner with respect to any and all compliance and injunctive obligations to comply with requirements arising under Orders of Courts, Administrative Orders, and other environmental regulatory requirements imposed by law that are not claims under 11 U.S.C. § 101(5). Big Brown Power and any reorganized Debtor or Debtors must comply with such mandatory requirements. The United States reserves the right to take future action to enforce any such obligations of Debtor. The United States files this protective claim in order to safeguard against the possibility that Debtor may contend that it does not need to comply with such obligations and requirements, or should this Court or any other court find that such obligations and requirements are dischargeable claims under 11 U.S.C. § 101(5), rather than obligations and requirements with which the Debtor and any reorganized debtors must comply. Nothing in this Proof of Claim constitutes a waiver of any rights by the United States or an election of remedies with respect to such rights and obligations.

13. Debtor must manage and operate its property in accordance with applicable non-bankruptcy law, including but not limited to the CAA. *See* 28 U.S.C. § 959(b). Compliance requirements include: (1) preparation of applications for new source review (NSR) permits under Parts C or D of Title I of the CAA, as appropriate, that conform with the permitting requirements in effect at the time of the permitting action, for each pollutant in violation of the NSR requirements of the CAA; (2) remediation of past and ongoing violations by, among other things, installing and operating the best available control technology or lowest achievable

emission rate, as appropriate, for each pollutant in violation of the NSR requirements of the CAA. This involves installing adequate controls for the NO<sub>x</sub>, SO<sub>2</sub>, and any other pollutants; (3) achieving, maintaining, and demonstrating compliance with the CAA and applicable requirements established thereunder, including the visible emissions provisions of the SIP; (4) conducting audits of operations to determine if any additional modifications have occurred at the plants that would require it to meet the requirements of PSD or Nonattainment NSR, and reporting the results of these audits to the United States.

#### **Debtor-Owned Sites**

14. Debtor has, or may in the future have, environmental liabilities for properties that are part of the bankruptcy estate and/or for the migration of hazardous substances from property of the bankruptcy estate. Pursuant to 28 U.S.C. § 959(b), Debtor is required to manage and operate estate property in accordance with non-bankruptcy law, including all applicable environmental statutes and regulations. Further, any reorganized debtor will be subject to liability under environmental law with respect to any property it owns or operates, including but not limited to liability for continuing violations of law.

15. The United States is not required to file a proof of claim relating to property of the estate other than for: (i) costs incurred before the petition date; and (2) civil penalties for days of violations occurring before the petition date. This Proof of Claim is only filed protectively with respect to post-petition liabilities and response costs relating to property of the estate.

16. The United States is entitled to administrative expense priority for, among other things, any costs it incurs or penalties owed with respect to property of the estate after the petition date. The United States reserves the right to file an application for administrative expenses and to take other appropriate action in the future with respect to property of the estate.

## **General Provisions**

17. This Proof of Claim reflects the known liabilities of Big Brown Power to the United States on behalf of EPA. The United States reserves the right to amend this Proof of Claim to assert subsequently discovered liabilities. This Proof of Claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to Debtor by this or any other federal agency.

18. No judgments against Debtor have been rendered on this Proof of Claim.

19. No payments have been made by Debtor on this Proof of Claim.

20. The United States has not perfected any security interest on its claim against Debtor.

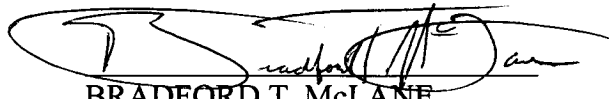
21. This Proof of Claim is filed as a general unsecured claim except to the extent of any right of setoff or to the extent any administrative expense priority exists relating to property of the estate, post-petition violations of law, or otherwise. The United States will file any application for administrative expense priority at the appropriate time. The United States' position with respect to injunctive, compliance, regulatory, and other obligations that are not claims under 11 U.S.C. § 101(5) is set forth above.

22. Additional documentation in support of this Proof of Claim is too voluminous to attach and is available upon request.

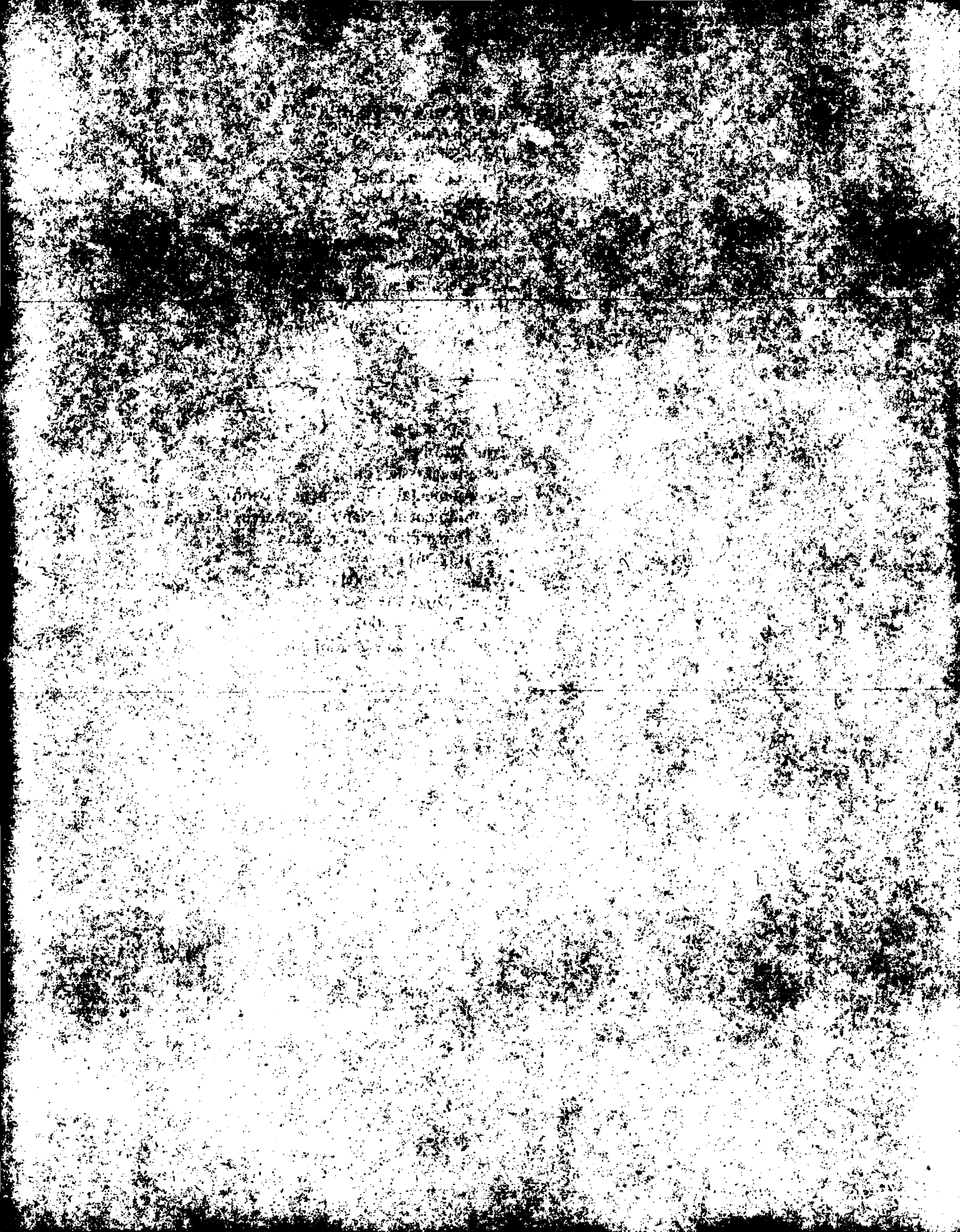


October 23, 2014

BENJAMIN W. FISHEROW  
Section Chief  
JAMES LOFTON  
Counsel to the Chief  
ALAN S. TENENBAUM  
Senior Counsel  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611

A handwritten signature in black ink, appearing to read "Bradford T. McLane", is written over a horizontal line. The signature is stylized and somewhat cursive.

BRADFORD T. McLANE  
Trial Attorney  
(as to legal issues only)  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, DC 20044-7611  
Phone: (202) 305-0544  
Fax: (202) 514-0097  
Bradford.McLane@usdoj.gov



**IN THE UNITED STATES BANRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
BIG BROWN POWER COMPANY,	)	Case No. 14-10988 (CSS)
LLC	)	
	)	(Jointly Administered)
Debtor.	)	
	)	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

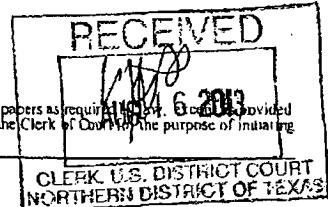
**EXHIBIT A: REDACTED COMPLAINT**

COPY

CIVIL COVER SHEET

JS 44 (Rev. 09/11)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)



I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bradford T. McLane, United States Department of Justice, ENRD, EES 601 D Street NW, Washington DC 20004 Phone: (202) 305-0544

DEFENDANTS

Luminant Generation Company, LLC, and Big Brown Power Company LLC

County of Residence of First Listed Defendant Dallas County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (Firm Name) 8-13CV-3236K

Stephanie Zapata Moore, Esq, General Counsel C. Grady Moore III, Esq., Balch & Bingham, Birmingham, AL

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business in This State
Incorporated and Principal Place of Business in Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity.) Clean Air Act, 42 U.S.C. §§ 7401 et seq.

Brief description of cause: Ongoing Clean Air Act violations at Martin Lake Units 1, 2 and 3 and Big Brown Unit 2

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) PENDING OR CLOSED:

(See instructions): JUDGE Panels Not Selected DOCKET NUMBER 12-60694, 13-60538 5th Cir.

DATE 08/14/2013 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

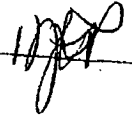
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CLERK US DISTRICT COURT  
NORTHERN DIST. OF TX  
FILED

2013 AUG 16 AM 11:29

DEPUTY CLERK



**SEALED**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUMINANT GENERATION COMPANY,  
LLC, and BIG BROWN POWER  
COMPANY, LLC,

Defendants.

**3 - 13 CV - 3236 K**

**COMPLAINT**

The United States of America ("United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

**NATURE OF ACTION**

1. This is a civil action brought against Luminant Generation Company, LLC, ("Luminant") and Big Brown Power Company, LLC, ("Big Brown Power") pursuant to the Clean Air Act ("CAA" or "the Act"), as amended, 42 U.S.C. §§ 7401 *et seq.*, to obtain injunctive relief and civil penalties for violations of the New Source Review, Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-7492; the federally-approved PSD regulations of the Texas State Implementation Plan ("SIP"), 30 Tex. Admin. Code §§ 116.110, 116.111, 116.160 (2001), 40 C.F.R. §

52.21 (1996); Title V of the Act, 42 U.S.C. §§ 7661-7661f; and the federally-approved Texas Title V program, 30 Tex. Admin. Code Chapter 122, §§ 122.10-122.606.

2. As alleged herein, Luminant engaged in major modifications of coal-fired electric generating Units 1, 2, and 3 at the Martin Lake Power Plant, and continued to operate the units thereafter without the required permits or permit revisions and without installing and operating the Best Available Control Technology ("BACT") to control emissions of sulfur dioxide ("SO<sub>2</sub>") and/or oxides of nitrogen ("NO<sub>x</sub>") as required by the Act.

3. As alleged herein, Luminant and Big Brown Power engaged in a major modification of coal-fired electric generating Unit 2 at the Big Brown Power Plant. Luminant continued to operate the unit thereafter, and Big Brown Power continued to own the unit thereafter, without the required permits or permit revisions and without installing and operating BACT to control emissions of SO<sub>2</sub> as required by the Act.

4. As a result of Luminant's operation of these electric generating units following the unlawful major modifications without the required pollution controls and permits, significant amounts of SO<sub>2</sub> and NO<sub>x</sub> pollution have been and will continue to be released into the atmosphere.

5. SO<sub>2</sub> and NO<sub>x</sub> cause adverse impacts to human health and the environment. These pollutants also interact and combine with sunlight and other elements in the air to form additional, harmful pollutants. SO<sub>2</sub> and NO<sub>x</sub> interact in the atmosphere to form particulate matter smaller than 2.5 microns ("PM<sub>2.5</sub>"). NO<sub>x</sub> reacts in the atmosphere in the presence of sunlight to form ground level ozone ("ozone").

6. The harms caused by SO<sub>2</sub>, PM<sub>2.5</sub>, NO<sub>x</sub> and ozone include decreased lung function, respiratory disease, asthma attacks and premature death.

7. Based on 2012 emissions data that is publicly available on EPA's web site, the Martin Lake and Big Brown Power Plants are the two largest sources of SO<sub>2</sub> air pollution in the State of Texas, emitting many thousands of tons of SO<sub>2</sub> each year.

8. Based on 2012 emissions data that is publicly available on EPA's web site, the Martin Lake Power Plant is the largest source of NO<sub>x</sub> air pollution in the State of Texas, emitting many thousands of tons of NO<sub>x</sub> each year.

9. Luminant has also improperly withheld information requested by EPA under Section 114(a) of the Act, 42 U.S.C. § 7414(a). EPA issued CAA Section 114 information requests to Luminant, including on June 6, 2008, August 11, 2011, and April 20, 2012, seeking information respecting Clean Air Act compliance or non-compliance at the Big Brown, Martin Lake, and Monticello Power Plants. In response to these requests, Luminant has withheld information under improper, unsubstantiated, and/or inadequately substantiated claims of attorney client privilege or attorney work product.

#### NOTICES

10. Pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), EPA issued a Notice and Finding of Violation(s) ("NOV") on July 13, 2012 to Defendant Luminant Generation Company, LLC and to its parent company Energy Future Holdings Corporation, providing notice of violations at the Big Brown and Martin Lake Power Plants. The NOV includes an appendix that describes the physical changes to and/or changes in the method of operation of the electric generating units that form the genesis of the noticed CAA violations. Luminant claims information contained in the appendix

as Confidential Business Information (“CBI”). EPA provided a copy of the body of the NOV to the State of Texas on July 13, 2012.

11. EPA issued an Amended Superseding Notice of Violation (“Amended NOV”) to Defendants Luminant and Big Brown Power on July 11, 2013. The Amended NOV includes an appendix that describes the physical changes to and/or changes in the method of operation of the electric generating units that form the genesis of the noticed CAA violations. Luminant claims information contained in the appendix as CBI. EPA provided a copy of the body of the Amended NOV to the State of Texas on July 11, 2013.

12. The 30-day period required by Section 113 of the Act, 42 U.S.C. § 7413, between issuance of an NOV and commencement of a civil action has lapsed.

13. The United States is providing actual notice of the commencement of this action to the State of Texas as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

#### **JURISDICTION AND VENUE**

14. Jurisdiction is vested in this Court pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

15. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391 and 1395, because the Defendants’ principal place of business is located in this District and because Defendants reside in this District.

#### **AUTHORITY**

16. Authority to bring this action is vested in the Attorney General of the United States pursuant to Section 305 of the Act, 42 U.S.C. § 7605, and pursuant to 28 U.S.C. §§ 516 and 519.



## DEFENDANTS

17. Defendant Luminant Generation Company, LLC is a Dallas-based limited liability company created under the laws of the State of Texas. Prior to 2007 and extending back to 1999, Luminant operated under the name of TXU Energy Corporation.

18. At all times relevant to this action, Luminant has been and continues to be the owner and operator of the Martin Lake Power Plant (also called the Martin Lake Generating Station), including Units 1, 2, and 3, within the meaning of 40 C.F.R. §§ 60.2 and 52.01 and CAA Section 111(a)(5), 42 U.S.C. § 7411(a)(5).

19. At all times relevant to this action, Luminant has been and continues to be the operator of the Big Brown Power Plant (also called the Big Brown Generating Station), including Units 1 and 2, within the meaning of 40 C.F.R. §§ 60.2 and 52.01 and CAA Section 111(a)(5), 42 U.S.C. § 7411(a)(5).

20. Defendant Big Brown Power Company, LLC is a Dallas-based, limited liability company created under the laws of the State of Texas, and is a wholly-owned subsidiary of Luminant. Since 2002 Big Brown Power has been and remains the owner of the Big Brown Power Plant within the meaning of 40 C.F.R. §§ 60.2 and 52.01 and CAA Section 111(a)(5), 42 U.S.C. § 7411(a)(5). Prior to October 1, 2007, and extending back to 2002, Big Brown Power operated under the name of TXU Big Brown Company, LP.

21. As corporate entities, each Defendant is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

## STATUTORY AND REGULATORY BACKGROUND

22. The Clean Air Act is designed “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

### The National Ambient Air Quality Standards

23. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards (“NAAQS” or “air quality standards”) for those air pollutants for which air quality criteria have been issued (“criteria pollutants”).

24. Pursuant to CAA Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified SO<sub>2</sub> and NO<sub>x</sub> as criteria pollutants and has promulgated NAAQS for these pollutants. 40 C.F.R. §§ 50.4, 50.5, 50.11.

25. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an “attainment” area. An area that does not meet the NAAQS is a “nonattainment” area. An area that cannot be classified due to insufficient data is “unclassifiable.”

### The Clean Air Act’s Prevention of Significant Deterioration Requirements

26. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the Prevention of Significant Deterioration of air quality in those areas

designated as either attainment or unclassifiable for purposes of meeting the air quality standards. These provisions are referred to herein as the "PSD program."

27. The Martin Lake Power Plant is located in Rusk County near Tatum, Texas. The Big Brown Power Plant is located in Freestone County near Fairfield, Texas. Freestone and Rusk Counties are, and at all times relevant to this Complaint have been, designated as "in attainment" with the NAAQS or "unclassifiable" for SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>2.5</sub> and ozone. 40 C.F.R. § 81.344.

28. The PSD requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470.

29. Section 165(a) of the Act, 42 U.S.C. § 7475(a), among other things, prohibits the "construction" of a "major emitting facility" in an area designated as attainment or unclassifiable for the applicable air quality standards without first obtaining a PSD permit, which would include continuous emission limitations based on application of BACT. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" as including "modification." "Modification" is defined in CAA Section 111(a), 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

30. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per

hour heat input, which emit or have the potential to emit one hundred tons per year or more of any pollutant, to be "major emitting facilities."

31. Section 169(3) of the Act, 42 U.S.C. § 7479(3), defines BACT, in pertinent part, as "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility . . . . In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 . . . of this title."

32. Pursuant to CAA Section 110(j), 42 U.S.C. § 7410(j), governing permits issued under Title I of the Act, "the owner or operator of each . . . modified stationary source which is required to obtain such a permit must show . . . that the technological system of continuous emission reduction which is to be used will enable such source to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter." CAA Section 165(a)(3), 42 U.S.C. § 7475(a)(3), allows issuance of a PSD permit only if "the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility" will not compromise compliance with applicable air quality standards.

33. Pursuant to CAA Section 110, 42 U.S.C. § 7410, each State must adopt and submit to EPA for approval a State Implementation Plan ("SIP") that includes,

among other things, regulations to prevent the significant deterioration of air quality under CAA Sections 161-165, 42 U.S.C. §§ 7471-7475. Section 161 of the Act, 42 U.S.C. § 7471, requires that each applicable SIP contain a PSD program.

34. Pursuant to CAA Section 302(q), 42 U.S.C. § 7602(q), an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved by EPA pursuant to CAA Section 110, 42 U.S.C. § 7410, or promulgated by EPA pursuant to CAA Section 110(c), 42 U.S.C. § 7410(c), and which implements the relevant requirements of the Act. Upon EPA approval, SIP requirements are federally enforceable under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. § 52.23.

#### **Regulatory Framework for the PSD Program**

35. A state may comply with CAA Section 161, 42 U.S.C. § 7471, by having its own PSD regulations approved by EPA as part of its SIP, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166. If a state does not have a PSD program that has been approved by EPA and incorporated into the SIP, then the EPA federal PSD regulations set forth at 40 C.F.R. § 52.21 shall be incorporated by reference into the SIP. 40 C.F.R. § 52.21(a).

36. On August 7, 1980, EPA determined that the Texas SIP lacked approvable PSD provisions, and incorporated by reference the provisions of 40 C.F.R. §§ 52.21(b) through (w) into the Texas SIP at 40 C.F.R. § 52.2303 (1980). 45 Fed. Reg. 52,676, 52,741 (Aug. 7, 1980).

37. On June 24, 1992, EPA approved Texas's PSD program. 57 Fed. Reg. 28,093 (1992) and 40 C.F.R. §§ 52.2270(c), 52.2299(c), and 52.2303. Pursuant to its

PSD program, and subject to EPA oversight, the State of Texas issues permits governing the construction, modification, and operation of regulated facilities.

38. In 2001 Texas revised its PSD program to incorporate certain sections of the 1996 federal PSD rules. EPA approved these revisions in 2004. 69 Fed. Reg. 43,752 (July 22, 2004) and 30 Tex. Admin. Code § 116.160(a) (2001). This version of the Texas SIP PSD regulations governs the alleged modifications in this case. With certain exceptions, and as approved by EPA, 30 Tex. Admin. Code § 116.160 incorporates by reference the 1996 version of EPA's PSD regulations codified at 40 C.F.R. § 52.21. These applicable PSD regulations have at all relevant times prohibited construction and operation of a major modification at a major stationary source without, among other things, obtaining a PSD permit, undergoing a BACT determination, and applying BACT pursuant to such determination for each relevant pollutant.

39. The definitions in the applicable PSD regulations have at all relevant times defined the term "major stationary source" to include fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input which emit or have the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a) (1996) and 30 Tex. Admin. Code § 116.160 (2001) (incorporating the federal PSD definition of "major stationary source").

40. The term "major modification" is defined as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i) (1996); 30 Tex. Admin. Code § 116.160 (2001) (incorporating the federal PSD definition of "major modification").

41. A “significant” net emissions increase means an increase that would equal or exceed a rate of 40 tons per year of SO<sub>2</sub> or NO<sub>x</sub>. 40 C.F.R. § 52.21(b)(23)(i) (1996) and 30 Tex. Admin. Code § 116.160 (2001) (incorporating the federal PSD definition of “significant”).

42. Effective July 15, 2008, SO<sub>2</sub> is also regulated as a precursor to PM<sub>2.5</sub>. 73 Fed. Reg. 28,321, 28,327-28 (May 16, 2008).

43. The owner or operator of the major stationary source proposing a major modification must, among other things, demonstrate that “the proposed facility will utilize the best available control technology [BACT] . . . .” 30 Tex. Admin. Code § 116.111(a)(2)(C) (2005); 54 Fed. Reg. 52,823 (Dec. 22, 1989), 57 Fed. Reg. 28,093 (June 24, 1992), 75 Fed. Reg. 55,978 (Sept. 15, 2010).

44. Pursuant to the Texas SIP, before any actual work is begun on a major modification of a major stationary source, the source owner or operator is required to obtain a New Source Review permit. 30 Tex. Admin. Code §§ 116.110(a)(1), 116.111, 116.160 and 40 C.F.R. § 52.21 (1996).

45. Under the Texas SIP and the applicable, federal PSD regulations, the term “net emissions increase” means “the amount by which the sum of the following exceeds zero: (a) Any increase in actual emissions from a particular physical change or change in the method of operation at a source; and (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.” 40 C.F.R. § 52.21(b)(3)(i) (1996) and 30 Tex. Admin. Code § 116.160(a) (2001) (incorporating the federal PSD definition of “net emissions increase”).

46. The term "actual emissions" is defined at 40 C.F.R. § 52.21(b)(21) (1996) and 30 Tex. Admin. Code § 116.160(a) (2001) (incorporating the federal PSD definition of "actual emissions"). The definition provides for comparison of baseline actual emission before a project to a projection of actual emissions after the project to determine whether a physical change or change in the method of operations should be expected to cause a significant net increase of air emissions of a given pollutant.

47. For purposes of calculating baseline actual emissions, "actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation." 40 C.F.R. § 52.21(b)(21)(ii) (1996).

48. For purposes of calculating projected actual emissions, for an "electric utility steam generating unit . . . actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the Administrator on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase." 40 C.F.R. § 52.21(b)(21)(v) (1996); 57 Fed. Reg. 32,314, 32,325 (July 21, 1992).

49. A "major modification" also occurs where actual emissions data after a physical change or change in the method of operation shows a significant net emissions increase as a result of the physical change or change in the method of operation. 57 Fed. Reg. 32,325.



### Title V Requirements

50. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources" and any source required to have a PSD permit. 42 U.S.C. § 7661a(a).

51. A "major source" for purposes of Title V is defined, among other things, as a source with a potential to emit greater than 100 tons per year of any criteria pollutant. 42 U.S.C. §§ 7661(2), 7602.

52. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and the Texas Title V permit requirements at 30 Tex. Admin. Code Chapter 122, approved by EPA, provide that no major source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act.

53. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32,295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See* 61 Fed. Reg. 34,202; 40 C.F.R. Part 71.

54. EPA granted full approval of the Texas Title V program on November 30, 2001. *See* 66 Fed. Reg. 63,318; 40 C.F.R. Part 70, Appendix A.

55. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), 40 C.F.R. § 70.6(a), and the Texas Title V regulations at 30 Tex. Admin. Code Chapter 122, require all operating permits issued under Title V to include enforceable emission limitations and such other conditions as are necessary to assure compliance with "applicable requirements" of the Act and the requirements of the applicable SIP.

56. "Applicable requirement" is defined to include any applicable PSD requirements. 30 Tex. Admin. Code § 122.10(2)(H); 40 C.F.R. § 70.2.

57. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), federal regulations at 40 C.F.R. § 70.5, and the Texas Title V regulations at 30 Tex. Admin. Code §§ 122.130 to 122.140, require any owner or operator of a source subject to the Title V program to submit a timely and complete permit application that: contains information sufficient to determine all applicable requirements (including any requirement to meet BACT pursuant to PSD); certifies compliance with all applicable requirements; provides information that may be necessary to determine the applicability of requirements of the Act; and contains a compliance plan for all applicable requirements for which the source is not in compliance.

58. Federal regulations at 40 C.F.R. § 70.5(b), and the Texas Title V regulations at 30 Tex. Admin. Code § 122.136, require any applicant who fails to submit any relevant fact or who has submitted incorrect information in a permit application to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

59. The Texas Title V regulations at 30 Tex. Admin. Code § 122.210 entitled "General Requirements for Revisions" further provide that the "permit holder shall submit an application to the executive director for a revision to a permit for those activities at a site which change, add or remove one or more permit terms or conditions."

60. The Texas Title V regulations, at 30 Tex. Admin. Code §§ 122.219 to 122.221, further require the permit holder to secure significant permit revisions for

certain plant modifications, including modifications that trigger New Source Review PSD requirements of Title I of the Act.

61. At all times relevant to this Complaint, Luminant has held Title V Permits for the Martin Lake and Big Brown Power Plants, which have at all times failed to list PSD or BACT as an applicable requirement governing emissions of SO<sub>2</sub> and NO<sub>x</sub> from the boilers for Martin Lake Units 1, 2, or 3, and emissions of SO<sub>2</sub> from the boiler for Big Brown Unit 2. See Martin Lake Title V Operating Permit Number 053 and Big Brown Title V Operating Permit Number 065.

62. At all times relevant to this Complaint, Luminant's Martin Lake and Big Brown Title V Permits required the permit holder to comply with 30 TAC Chapter 116 by obtaining a New Source Review authorization prior to new construction or modification of emission units located in the area covered by the permit. See Martin Lake Title V Operating Permit Number 053 and Big Brown Title V Operating Permit Number 065.

#### **Federal Enforcement Provisions**

63. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act whenever, on the basis of any information available, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, among other things, (1) the Prevention of Significant Deterioration requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); (2) Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or (3) a state SIP or any permit issued thereunder.

64. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$32,500 for each such violation occurring after March 15, 2004, through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, against any person whenever such person has violated, or is in violation of, among other things, the requirements or prohibitions described in the preceding paragraph.

65. Section 167 of the Act, 42 U.S.C. § 7477, authorizes EPA to initiate an action for injunctive relief as necessary to prevent the construction, modification, or operation of a major emitting facility which does not conform to the PSD requirements in Part C of Title I of the Act.

66. 40 C.F.R. § 52.23 provides, *inter alia*, that any failure by a person to comply with any provision of 40 C.F.R. Part 52, or with any approved regulatory provision of a SIP, shall render such person in violation of the applicable SIP, and subject such person to an enforcement action pursuant to Section 113 of the Act, 42 U.S.C. § 7413.

#### GENERAL ALLEGATIONS

67. The Martin Lake Power Plant has three coal-fired electric generating units, Martin Lake Units 1, 2, and 3, which began operation in 1977, 1978 and 1979, respectively. During the relevant time periods, each unit has had a capacity of approximately 750 Megawatts ("MWs") or more.

68. The Big Brown Power Plant consists of two coal-fired electric generating units, Big Brown Units 1 and 2, which began operating in 1971 and 1972 respectively. During the relevant time periods, each unit has had a capacity of approximately 575 MWs or more.

69. At all times relevant to this Complaint, both the Martin Lake and Big Brown Power Plants have had the potential to emit more than 100 tons per year of pollutants subject to regulation under the Act, including, but not limited to, NO<sub>x</sub> and SO<sub>2</sub>.

70. At all times relevant to this Complaint, both the Martin Lake and Big Brown Power Plants were and are fossil-fuel-fired steam electric plants of more than 250 million British thermal units ("BTUs") per hour heat input.

71. At all times relevant to this Complaint, both the Martin Lake and Big Brown Power Plants, and each of the modified units individually, were a "major emitting facility" and a "major stationary source" within the meaning of the Act and the Texas SIP for NO<sub>x</sub> and SO<sub>2</sub>.

72. Martin Lake Units 1, 2, and 3, and Big Brown Unit 2 have boilers that burn coal to generate heat that converts water into steam. These boilers have windboxes that move pulverized coal and air into the boiler where combustion occurs. Heat from burning coal is transferred to water and steam contained in components of tubes in the boilers, which serve different heat transfer functions in the process of heating water into high-pressured steam. The high pressure steam generated by the boiler is then used to turn turbines that spin a generator to produce electricity.

73. When a boiler component breaks down, it requires the unit to be taken offline for repairs, either in an "unplanned outage" (also called a "forced outage") or in a

“planned outage” (also called a “maintenance outage” or “scheduled outage”).

Sometimes a deteriorated or failing component requires the unit to be run at lower power levels (called a “derating”). When a unit is in an outage, it burns no coal and creates no emissions. When a unit is derated, it generally burns less coal and creates less emissions.

74. Oxides of Nitrogen (“NO<sub>x</sub>”) form when nitrogen and oxygen gases in the air combine during combustion. The chemistry of NO<sub>x</sub> formation in a coal-fired boiler is influenced by a variety of factors, including, but not limited to, the amount of combustion air and fuel-to-air ratios. Changes in the method of operation of a boiler can increase the emissions rate of NO<sub>x</sub> from the boiler.

**First Claim for Relief**  
**(Martin Lake Unit 1 2006 SO<sub>2</sub> PSD Claim)**

75. Paragraphs 1 through 74 are re-alleged and incorporated by reference.

76. Luminant began actual construction and/or operation of one or more “major modifications” at Martin Lake Unit 1, as defined in the Clean Air Act, EPA regulations, and the Texas SIP, in approximately March 2006. Major capital projects were performed during a scheduled outage beginning on or about March 4, 2006, and ending on or about April 13, 2006. [REDACTED]

[REDACTED]

[REDACTED]

77. These physical changes and/or changes in the method of operation should have been expected to improve the overall availability and reliability of Martin Lake Unit 1, including by reducing outages and derates. As a result of the improved availability and reliability of Martin Lake Unit 1, it should have been expected that Unit 1

would operate more on an annual basis following the physical changes and/or changes in the method of operation.

78. As a result of the increased operation of Martin Lake Unit 1, these physical changes and/or changes in the method of operation resulted in, or should have been expected to result in, a significant net increase in emissions of SO<sub>2</sub> from Unit 1 as defined by the applicable federal PSD regulations and the Texas SIP.

79. Luminant did not apply for or obtain a PSD permit authorizing the Martin Lake Unit 1 2006 physical changes and/or changes in the method of operation.

80. In failing to obtain a PSD permit for the Unit 1 2006 physical changes and/or changes in the method of operation, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

81. Because the Martin Lake Unit 1 2006 physical changes and/or changes in the method of operation constituted a "major modification" or "major modifications", Luminant was required to, among other things: (1) obtain a PSD permit; (2) undertake a BACT determination in connection with the major modification; (3) install and operate BACT for control of SO<sub>2</sub> emissions; (4) continuously meet emission rates based on BACT; and (5) demonstrate that emissions from the major modification would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

82. In failing to install and operate BACT for control of SO<sub>2</sub> emissions, and failing to continuously meet the required BACT emission rates applicable to the

modified Martin Lake Unit 1, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

83. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Luminant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Second Claim for Relief**  
**(Martin Lake Unit 2 2007 SO<sub>2</sub> and NO<sub>x</sub> PSD Claim)**

84. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

85. Luminant began actual construction and/or operation of one or more “major modifications” at Martin Lake Unit 2, as defined in the Clean Air Act, EPA regulations, and the Texas SIP, in approximately February 2007. Major capital projects were performed during a scheduled outage beginning on or about February 16, 2007, and ending on or about April 5, 2007. [REDACTED]

[REDACTED]

[REDACTED]



86. These physical changes and/or changes in the method of operation should have been expected to improve the overall availability and reliability of Martin Lake Unit 2, including by reducing outages and derates. As a result of the improved availability and reliability of Martin Lake Unit 2, it should have been expected that Unit 2 would operate more on an annual basis following the physical changes and/or changes in the method of operation.

87. As a result of the increased operation of Martin Lake Unit 2, these physical changes and/or changes in the method of operation resulted in, or should have been expected to result in, a significant net increase in emissions of SO<sub>2</sub> and NO<sub>x</sub> from Unit 2 as defined by the applicable federal PSD regulations and the Texas SIP.

88. Luminant did not apply for or obtain a PSD permit authorizing the Martin Lake Unit 2 2007 physical changes and/or changes in the method of operation.

89. In failing to obtain a PSD permit for the Unit 2 2007 physical changes and/or changes in the method of operation, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

90. Because the Martin Lake Unit 2 2007 physical changes and/or changes in the method of operation constituted a "major modification" or "major modifications," Luminant was required to, among other things: (1) obtain a PSD permit; (2) undertake a BACT determination in connection with the major modification; (3) install and operate BACT for control of SO<sub>2</sub> and NO<sub>x</sub> emissions; (4) continuously meet emission rates based on BACT; and (5) demonstrate that emissions from the major modification would not

cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

91. In failing to install and operate BACT for control of SO<sub>2</sub> and NO<sub>x</sub> emissions, and failing to continuously meet the required BACT emission rates applicable to the modified Martin Lake Unit 2, Luminant violated and continues to violate 30 Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

92. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Third Claim for Relief**  
**(Martin Lake Unit 3 2005 SO<sub>2</sub> PSD Claim)**

93. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

94. Luminant began actual construction and/or operation of one or more “major modifications” at Martin Lake Unit 3, as defined in the Clean Air Act, EPA regulations, and the Texas SIP, in approximately February 2005. One or more major capital projects were performed during a scheduled outage beginning on or about

February 26, 2005 and ending on or about April 2, 2005. [REDACTED]

[REDACTED]

[REDACTED]

95. These physical changes and/or changes in the method of operation should have been expected to improve the overall availability and reliability of Martin Lake Unit 3, including by reducing outages and derates. As a result of the improved availability and reliability of Martin Lake Unit 3, it should have expected that Unit 3 would operate more on an annual basis following the physical changes and/or changes in the method of operation.

96. As a result of the increased operation of Martin Lake Unit 3, these physical changes and/or changes in the method of operation resulted in, or should have been expected to result in, a significant net increase in emissions of SO<sub>2</sub> from Unit 3 as defined by the applicable federal PSD regulations and the Texas SIP.

97. Luminant did not apply for or obtain a PSD permit authorizing the Unit 3 2005 physical changes and/or changes in the method of operation.

98. In failing to obtain a PSD permit for the Unit 3 2005 physical changes and/or changes in the method of operation, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

99. Because the Martin Lake Unit 3 2005 physical changes and/or changes in the method of operation constituted a "major modification" or "major modifications" Luminant was required to, among other things: (1) obtain a PSD permit; (2) undertake a

BACT determination in connection with the major modification; (3) install and operate BACT for control of SO<sub>2</sub> emissions; (4) continuously meet emission rates based on BACT; and (5) demonstrate that emissions from the major modification would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

100. In failing to install and operate BACT for control of SO<sub>2</sub> emissions, and failing to continuously meet the required BACT emission rates applicable to the modified Martin Lake Unit 3, Luminant violated and continues to violate 30 Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

101. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Fourth Claim for Relief**  
**(Martin Lake Unit 1 2009 NO<sub>x</sub> PSD Claim)**

102. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

103. Luminant began actual construction and/or operation of one or more “major modifications” at Martin Lake Unit 1, as defined in the Clean Air Act, EPA

regulations, and the Texas SIP, in approximately March 2009. Major capital projects were performed during a scheduled outage beginning on or about, March 1, 2009 and ending on or about April 1, 2009. [REDACTED]

104. These physical changes and/or changes in the method of operation should have been expected to improve the overall availability and reliability of Martin Lake Unit 1, including by reducing outages and derates. At or near the same time that these capital projects were performed, Luminant changed the method of operation of the boiler, [REDACTED] in a manner that increased the NO<sub>x</sub> emissions rate from the boiler. These physical changes and/or changes in the method of operation should have been expected to cause Unit 1 to operate more on an annual basis and/or to increase the NO<sub>x</sub> emissions rate from the boiler.

105. As a result of the increased operation of Martin Lake Unit 1 and/or the increase in the NO<sub>x</sub> emissions rate from the boiler, these physical changes and/or changes in the method of operation resulted in, or should have been expected to result in, a significant net increase in emissions of NO<sub>x</sub> from Unit 1 as defined by the applicable federal PSD regulations and the Texas SIP.

106. Luminant did not apply for or obtain a PSD permit authorizing the Unit 1 2009 physical changes and/or changes in the method of operation.

107. In failing to obtain a PSD permit for the Unit 1 2009 physical changes and/or changes in the method of operation, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40

C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

108. Because the Martin Lake Unit 1 2009 physical changes and/or changes in the method of operation constituted a “major modification” or “major modifications,” Luminant was required to, among other things: (1) obtain a PSD permit; (2) undertake a BACT determination in connection with the major modification; (3) install and operate BACT for control of NO<sub>x</sub> emissions; (4) continuously meet emission rates based on BACT; and (5) demonstrate that emissions from the major modification would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

109. In failing to install and operate BACT for control of NO<sub>x</sub> emissions, and failing to continuously meet the required BACT emission rates applicable to the modified Martin Lake Unit 1, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

110. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant

to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Fifth Claim for Relief**  
**(Martin Lake Unit 3 2008 NO<sub>x</sub> PSD Claim)**

111. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

112. Luminant began actual construction and/or operation of one or more “major modifications” at Martin Lake Unit 3, as defined in the Clean Air Act, EPA regulations, and the Texas SIP, in approximately February 2008. Major capital projects were performed during a scheduled outage beginning on or about February 10, 2008 and ending on or about April 5, 2008. [REDACTED]

[REDACTED]

[REDACTED]

113. These physical changes and/or changes in the method of operation should have been expected to improve the overall availability and reliability of Martin Lake Unit 3, including by reducing outages and derates. At or near the same time that these capital projects were performed, and/or within about a year thereafter, Luminant changed the method of operation of the boiler, [REDACTED]

[REDACTED] in a manner that increased the NO<sub>x</sub> emissions rate from the boiler. These physical changes and/or changes in the method of operation should have been expected to cause Unit 3 to operate more on an annual basis and/or to increase the NO<sub>x</sub> emissions rate from the boiler.

114. As a result of the increased operation of Martin Lake Unit 3 and/or the increased NO<sub>x</sub> emissions rate, these physical changes and/or changes in the method of

operation resulted in, or should have been expected to result in, a significant net increase in emissions of NO<sub>x</sub> from Unit 3 as defined by the applicable federal PSD regulations and the Texas SIP.

115. Luminant did not apply for or obtain a PSD permit authorizing the Unit 3 2008 physical changes and/or changes in the method of operation.

116. In failing to obtain a PSD permit for the Unit 3 2008 physical changes and/or changes in the method of operation, Luminant violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

117. Because the Martin Lake Unit 3 2008 physical changes and/or changes in the method of operation constituted a "major modification" or "major modifications" Luminant was required to, among other things: (1) obtain a PSD permit; (2) undertake a BACT determination in connection with the major modification; (3) install and operate BACT for control of NO<sub>x</sub> emissions; (4) continuously meet emission rates based on BACT; and (5) demonstrate that emissions from the major modification would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

118. In failing to install and operate BACT for control of NO<sub>x</sub> emissions, and failing to continuously meet the required BACT emission rates applicable to the modified Martin Lake Unit 3, Luminant violated and continue to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21,



as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

119. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Sixth Claim for Relief**  
**(Big Brown Unit 2 2005 SO<sub>2</sub> PSD Claim)**

120. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

121. Defendants began actual construction and/or operation of one or more “major modifications” at Big Brown Unit 2, as defined in the Clean Air Act, EPA regulations and the Texas SIP, in approximately October 2005. One or more major capital projects were performed during a scheduled outage beginning on or about October 15, 2005 and ending on or about November 13, 2005. [REDACTED]

122. These physical changes and/or changes in the method of operation should have been expected to improve the overall availability and reliability of Big Brown Unit 2, including by reducing outages and derates. As a result of the improved availability and reliability of Big Brown Unit 2, it should have been expected that Unit 2

would operate more on an annual basis following the physical changes and/or changes in the method of operation.

123. As a result of the increased operation of Big Brown Unit 2, these physical changes and/or changes in the method of operation resulted in, or should have been expected to result in, a significant net increase in emissions of SO<sub>2</sub> from Unit 2 as defined by the applicable federal PSD regulations and the Texas SIP.

124. Defendants did not apply for or obtain a PSD permit authorizing the Big Brown Unit 2 2005 physical changes and/or changes in the method of operation.

125. In failing to obtain a PSD permit for the Big Brown Unit 2 2005 physical changes and/or changes in the method of operation, Defendants violated and continue to violate Section 165 of the Act, 42 U.S.C. § 7475; Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. § 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

126. Because the Big Brown Unit 2 physical changes and/or changes in the method of operation constituted a "major modification" or "major modifications", Defendants were required to, among other things: (1) obtain a PSD permit; (2) undertake a BACT determination in connection with the major modification; (3) install and operate BACT for control of SO<sub>2</sub> emissions; (4) continuously meet emission rates based on BACT; and (5) demonstrate that emissions from the major modification would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

127. In failing to install and operate BACT for control of SO<sub>2</sub> emissions, and failing to continuously meet the required BACT emission rates applicable to the

modified Big Brown Unit 2, Defendants violated and continue to violate 30 Tex. Admin. Code §§ 116.110 & 116.111; 40 C.F.R. 52.21, as incorporated by 30 Tex. Admin. Code § 116.160; and the PSD regulations contained in the federally enforceable Texas SIP.

128. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Seventh Claim for Relief**  
**(Title V Violations at the Martin Lake Plant)**

129. Paragraphs 1 through 119 are re-alleged and incorporated herein by reference.

130. As set forth above, Luminant commenced major modifications of Martin Lake Unit 1 in 2006 and 2009; of Martin Lake Unit 2 in 2007; and of Martin Lake Unit 3 in 2005 and 2008. As a result, these major modifications triggered the requirements to, among other things, obtain a PSD permit establishing emissions limitations that meet BACT and operate in compliance with BACT. Luminant failed to meet these requirements.

131. Subsequently, Luminant failed to secure significant amendments to its Title V permit for the Martin Lake Plant; failed to submit an accurate and complete Title V permit application for the Martin Lake Plant that identifies all applicable requirements;

failed to accurately certify compliance with such requirements; failed to include a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to utilize BACT based on a BACT determination under PSD); and failed to include other specific information necessary to implement and enforce the applicable requirements of the Act or to determine the applicability of such requirements.

132. Luminant failed to obtain a proper or adequate Title V operating permit for the Martin Lake Plant that contained emissions limitations for SO<sub>2</sub> and NO<sub>x</sub> that meet the required BACT emission rates. Luminant thereafter has operated Martin Lake Units 1, 2, and 3 without meeting such limitations and without having an adequate Title V operating permit that requires compliance with such limitations or contains a compliance plan for all applicable requirements for which the source is not in compliance.

133. Luminant has therefore violated and continues to violate Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a); 40 C.F.R. §§ 70.5 and 70.6; and the Texas Title V operating permit regulations at 30 Tex. Admin. Code Chapter 122.

134. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Luminant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal

Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Eighth Claim for Relief**  
**(Title V Violations at the Big Brown Plant)**

135. Paragraphs 1 through 74, and paragraphs 120 to 128, are re-alleged and incorporated herein by reference.

136. As set forth above, Defendants commenced a major modification of Big Brown Unit 2 in 2005. As a result, this major modification triggered the requirement to, among other things, obtain a PSD permit establishing emissions limitations that meet BACT and operate in compliance with BACT. Defendants failed to meet these requirements.

137. Subsequently, Defendants failed to secure significant amendments to the Title V permit for the Big Brown Power Plant; failed to submit an accurate and complete Title V permit application for the Big Brown Power Plant that identifies all applicable requirements; failed to accurately certify compliance with such requirements; failed to include a compliance plan for all applicable requirements for which the source was not in compliance (including the requirement to utilize BACT based on a BACT determination under PSD); and failed to include other specific information necessary to implement and enforce the applicable requirements of the Act or to determine the applicability of such requirements.

138. Defendants thus failed to obtain a proper or adequate Title V operating permit for Big Brown Power Plant that contained emissions limitations for SO<sub>2</sub> based on a BACT determination. Defendant Luminant has thereafter operated Big Brown Unit 2, and Big Brown Power has thereafter owned Big Brown Unit 2, without meeting such

limitations and without having an adequate Title V operating permit for the Big Brown Power Plant that requires compliance with such limitations or contains a compliance plan for all applicable requirements for which the source is not in compliance.

139. Defendants have therefore violated and continue to violate Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a); 40 C.F.R. §§ 70.5 and 70.6; and the Texas Title V operating permit regulations at 30 Tex. Admin. Code Chapter 122.

140. Unless restrained by an order of this Court, these violations will continue. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Luminant to injunctive relief and/or a civil penalty of up to up to \$32,500 per day for each such violation occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4.

**Ninth Claim for Relief**  
**(Violations of Section 114 of the Clean Air Act)**

141. Paragraphs 1 through 74 are re-alleged and incorporated herein by reference.

142. EPA issued Section 114 information requests to Luminant, including on June 6, 2008, August 11, 2011, and April 20, 2012. EPA issued these Section 114 information requests pursuant to its lawful, statutory authority under the Clean Air Act, including Section 114, 42 U.S.C. § 7414.

143. The Requests were issued for lawful purposes of carrying out EPA's responsibilities for enforcing the PSD preconstruction and Title V requirements of the Act.

144. The Requests seek relevant and reasonable information for such lawful purposes under the PSD and Title V programs of the Act.

145. In response to these CAA Section 114 information requests, Luminant improperly withheld certain information, including producing certain documents in redacted form, claiming that the information withheld was subject to the attorney-client privilege or attorney work product protection.

146. EPA asked Luminant to provide information to justify the assertion of the attorney-client privilege over withheld documents, including in letters of July 3, 2012 and July 2, 2013.

147. Luminant refused to provide any privilege log or other adequate justification of its assertion of privilege over the redacted information.

148. Luminant has failed to meet its burden to justify its assertion of attorney-client privilege over the withheld information and documents.

149. The documents, or portions of documents, that Luminant is withholding were prepared for the business purposes of determining whether or not to perform the capital projects at issue, and/or for the environmental regulatory purpose of determining whether the projects gave rise to the very obligations alleged herein. Therefore, this information was compiled for business and/or environmental regulatory purposes and Luminant may not withhold this information under the attorney-client privilege or under the protection afforded to attorney work product.

150. Luminant is strictly liable under Section 114(a) for refusing to provide EPA, in whole or part, the requested information and documents.

151. Luminant's failure to respond to the Section 114 requests fully and completely subjects Luminant to injunctive relief and a civil penalty of up to \$37,500 per day for each violation pursuant to Section 113(b) of the CAA and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701.

#### **PRAYER FOR RELIEF**

WHEREFORE, based upon all the allegations set forth above, the United States requests that this Court:

1. Permanently enjoin Defendants from operating Martin Lake Units 1, 2, and 3 and Big Brown Unit 2 except in accordance with the Clean Air Act and any applicable regulatory requirements;
2. Order Defendants to remedy their violations by, among other things, installing and operating BACT at Martin Lake Units 1, 2, and 3 to control SO<sub>2</sub> and NO<sub>x</sub> emissions, and installing and operating BACT at Big Brown Unit 2 to control SO<sub>2</sub> emissions;
3. Order Defendants to apply for and comply with New Source Review permits under Parts C and/or D of Title I of the Clean Air Act, as appropriate, in conformity with the permitting requirements of the Texas SIP and the PSD requirements of the Clean Air Act at the time of the permitting action;



4. Order Defendants to secure amendments to the Title V Permits for the Big Brown and Martin Lake Power Plants incorporating the operating requirements of the New Source Review Permits as applicable requirements;

5. Order Defendants to surrender emission allowances or credits to offset and mitigate their illegal emissions;

6. Order Defendants to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the CAA alleged above;

7. Order Defendants to conduct audits of their operations to determine if additional modifications have occurred which would require Defendants to meet the Prevention of Significant Deterioration, New Source Review and Title V requirements and report the results of these audits to the United States;

8. Order Defendant Luminant to produce all information improperly withheld in response to EPA's CAA Section 114 requests;

9. Assess a civil penalty against Defendants of up to \$32,500 per day for each such violation occurring after March 15, 2004, and through January 12, 2009; and up to \$37,500 per day for each such violation occurring after January 12, 2009;

10. Award Plaintiff its costs of this action; and,

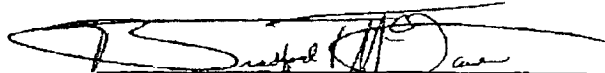
11. Grant such other relief as the Court deems just and proper.

DATED this 12<sup>th</sup> of August, 2013

Respectfully submitted,



Robert G. Dreher  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
United States Department of Justice



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**Via Federal Express**

October 24, 2014

Energy Future Holdings Corp. Claims Processing Center  
c/o Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, 3<sup>rd</sup> Floor  
New York, New York 10017

Re: Proof of Claim against Debtor Big Brown Power Company, LLC 14-10988 (CSS)

To Whom It May Concern:

Enclosed please find an original proof of claim filed by the United States of America on behalf of the U.S. EPA against Debtor Big Brown Power Company, LLC stemming from claims in *United States v. Luminant Generation Company et al.*, 3:13-cv-03236-K (N.D. Tex.).

Sincerely,

Bradford T. McLane  
Trial Attorney

Cc (by electronic mail):

Leonard Schilling, Esq. U.S. EPA Region 6  
Seema Kakade, Esq., U.S. EPA Office of Enforcement and Compliance Assurance

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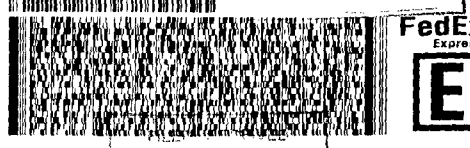
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City: Washington State DC ZIP: 204

2 Your Internal Billing Reference

3 To  
Recipient's Name:  
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Address: c/o Epig Bankruptcy Solutions  
Address: 757 Third Avenue, 3rd Floor  
City: New York State NY ZIP: 10017

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