

DOCKET NO. **151883**

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

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**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

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

**TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:**

**I. SUMMARY OF COMPLAINT AND REQUEST**

Luminant Energy Company LLC (Luminant) seeks emergency relief to prevent immediate and irreparable harm that will result from a decision by the Electric Reliability Council of Texas, Inc. (ERCOT) to rescind Luminant's existing verifiable cost fuel adders. Luminant requests that the Public Utility Commission of Texas (Commission) suspend that decision before (or quickly after) it takes effect on **March 10**, so that the status quo can be maintained while this dispute is decided. Luminant further seeks to reverse, following briefing on the legal issues presented in this complaint, that rescission decision, as well as ERCOT's decision to reject (for the same legal reason) Luminant's recent update to its verifiable cost fuel adders. This complaint and request for relief is made under 16 Tex. Admin. Code (TAC) §§ 22.251(c), (d)(2), (i), and (o)(1).

Luminant requests that the Commission retain jurisdiction of this matter and itself conduct the hearing under 16 TAC § 22.202(b), based on the briefing and, if desired by the Commission, the oral argument of the parties. The facts of this matter are not in dispute and this matter involves a pure question of law, namely the interpretation of certain provisions of ERCOT's Protocols and its Verifiable Cost Manual (the Manual). The Commission is vested with the authority to make decisions on legal issues within its jurisdiction.

Luminant faces immediate and irreparable harm caused by ERCOT's failure to follow its Protocols and its Manual. ERCOT has unlawfully rescinded its previous approval of a verifiable cost fuel adder representing Luminant's actual costs to obtain firm gas transportation service to

supply natural gas fuel to its affiliate's power plants (the Luminant Plants<sup>1</sup>) and has unlawfully rejected Luminant's recent update to those previously approved fuel adders. ERCOT's sole rationale for its rejection of Luminant's actual costs—both the costs that ERCOT had previously approved and the updates to those costs more recently submitted by Luminant—is that certain minimum monthly or annual cash payments that Luminant pays to pipelines to obtain firm transportation or storage service (referred to throughout this complaint as “demand charges”) are “fixed” costs and thus disallowed under certain Protocol language simply because the charge does not vary from month to month or by volume of the fuel transported or stored.

ERCOT is simply wrong in its interpretation of the Protocols. These costs are expressly allowed by the Protocols and Manual, for good reason—pipeline companies require shippers (like Luminant) to contractually agree to pay demand charges in order to obtain firm transportation rights. Firm transportation rights provide greater certainty to the customer that pipeline capacity will actually be available to transport gas when needed—like during a severe winter storm—than do interruptible rights. Accordingly, firm transportation rights are important tools for preserving system reliability.

ERCOT's decisions effectively require generators to contract only for interruptible transportation if they want recovery of actual fuel costs through a verifiable cost fuel adder. That threatens the reliability of the electric grid. ERCOT's decisions also impose the threat of significant, immediate, and irreparable financial harm on Luminant, because ERCOT's rescission of Luminant's previously-approved actual fuel costs and its rejection of Luminant's updated actual fuel costs means that only the lower generic fuel adders will be used.<sup>2</sup> Accordingly, Luminant seeks an order immediately suspending (for the duration of this complaint proceeding) the order

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<sup>1</sup> The Luminant Plants included within this complaint are DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad.

<sup>2</sup> See *infra*, Exhibit 7, p. 6. While ERCOT's February 26, 2021 rescission letter, Exhibit 5A, *infra*, p. 6, claimed that Luminant could have “accepted” ERCOT's recalculated adders (rather than rejecting them and being subjected to the generic adders) without waiving the right to appeal, Luminant sees no such provision in the Verifiable Cost Manual (the Manual) that allows that outcome and thus rejected the recalculated values to ensure that it could bring this appeal. In any event, even the recalculated adders would be drastically lower than Luminant's actual fuel costs, as reflected in its previously approved fuel adders that ERCOT has now rescinded. See Exhibit 5A, *infra*, p.6, to see the comparison of Luminant's existing adders to the recalculated adders.

to rescind Luminant's existing approved fuel adders so that the status quo can be maintained during this proceeding.<sup>3</sup> Luminant also seeks, ultimately, an order reversing both of ERCOT's decisions.

This complaint is appropriately submitted directly to the Commission under 16 TAC § 22.251(c)(2) because ERCOT has agreed to waive the alternative dispute resolution (ADR) process, which constitutes completion of the ADR process under the Protocols<sup>4</sup> and thus satisfies the requirement in 16 TAC § 22.251(c) to use ERCOT's ADR process before filing a complaint against ERCOT at the Commission. (ERCOT's agreement to waive ADR is attached to this complaint as Exhibit 1).

## II. PARTIES

Complainant Luminant is an ERCOT-approved qualified scheduling entity (QSE) that represents, in the ERCOT market, the generation facilities owned by its power generation company (PGC)/Resource Entity affiliate Luminant Generation Company LLC (Luminant Generation).

The authorized representatives of Luminant for filing and service of all pleadings and other documents in this docket are:

Stephanie Zapata Moore  
EVP and General Counsel, Vistra Corp.  
Daniel Jude Kelly  
SVP and Deputy General Counsel, Vistra Corp.  
6555 Sierra Drive  
Irving, Texas 75039  
(214) 875-8183 (phone)  
(214) 875-9478 (fax)  
[stephanie.moore@vistracorp.com](mailto:stephanie.moore@vistracorp.com)  
[dan.kelly@vistracorp.com](mailto:dan.kelly@vistracorp.com)

William A. Moore  
Mandy J. Kimbrough  
Paul C. Sarahan  
Enoch Kever PLLC  
7600 North Capital of Texas Hwy

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<sup>3</sup> Luminant's counsel has requested that ERCOT consider agreeing to the suspension request; as of the date of this filing, ERCOT has acknowledged the request and indicated that it will inform Luminant as soon as possible if ERCOT will agree to the request.

<sup>4</sup> See ERCOT Protocols § 20.5(7) ("The parties to the dispute may elect to waive ADR by written agreement, which will also complete the ADR proceeding.").

Building B, Suite 200  
Austin, Texas 78731  
(512) 615-1204 (phone)  
(512) 615-1198 (fax)  
[bmoore@enochkever.com](mailto:bmoore@enochkever.com)  
[mkimbrough@enochkever.com](mailto:mkimbrough@enochkever.com)  
[psarahan@enochkever.com](mailto:psarahan@enochkever.com)

ERCOT is the respondent. To Luminant's belief, ERCOT's authorized representatives are:

Chad V. Seely  
Vice President & General Counsel  
Erika Kane  
Sr. Corporate Counsel  
ERCOT  
7620 Metro Center Drive  
Austin, Texas 78744  
(512) 225-7000 (phone)  
(512) 225-7020 (fax)  
[erika.kane@ercot.com](mailto:erika.kane@ercot.com)  
[chad.seely@ercot.com](mailto:chad.seely@ercot.com)

### III. JURISDICTION

This complaint regarding ERCOT's conduct is filed under the authority of 16 TAC § 25.251, which authorizes any entity affected by an ERCOT decision to appeal to this Commission to address and resolve any conduct by ERCOT that violates any Protocol or procedure adopted by ERCOT pursuant to any law the Commission has jurisdiction to administer. That rule states:

Any affected entity may complain to the commission in writing, setting forth any conduct that is in violation or claimed violation of any law that the commission has jurisdiction to administer, of any order or rule of the commission, or of any protocol or procedure adopted by ERCOT pursuant to any law that the commission has jurisdiction to administer. For the purpose of this section, the term "conduct" includes a decision or an act done or omitted to be done. The scope of permitted complaints includes ERCOT's performance as an independent organization under the PURA including, but not limited to, ERCOT's promulgation and enforcement of procedures relating to reliability, transmission access, customer registration, and accounting for the production and delivery of electricity among generators and other market participants.

ERCOT has adopted Protocols, the Manual, and other binding documents pursuant to Public Utility Regulatory Act (PURA)<sup>5</sup> § 39.151, which is a law that the Commission has jurisdiction to administer. Section 39.151(d) gives this Commission power to delegate to ERCOT the authority to adopt its Protocols and confers upon the Commission the duty to oversee and review ERCOT's implementation of them:

The commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants, or may delegate to an independent organization responsibilities for establishing or enforcing such rules. Any such rules adopted by an independent organization and any enforcement actions taken by the organization are subject to commission oversight and review.

Accordingly, the Commission has jurisdiction over this complaint, which pertains to ERCOT's implementation of its own Protocols.

#### **IV. STATEMENT OF THE CASE**

##### **A. Underlying Proceeding**

Luminant submitted to ERCOT, in October 2019, updated actual fuel costs in conformity with the Manual, seeking ERCOT's approval of fuel adders for certain generating facilities.<sup>6</sup> ERCOT approved Luminant's October 2019 request on December 18, 2019. (See Confidential Exhibit 2A for the 2019 submission and approval). Luminant again submitted to ERCOT, in October 2020, updated actual fuel costs in conformity with the Manual, seeking ERCOT's approval of fuel adders for the same generating facilities.<sup>7</sup> (Luminant's October 2020 submittal is attached as Confidential Exhibit 2B).

ERCOT notified Luminant on February 3, 2021 that ERCOT was rejecting Luminant's October 2020 update to its actual costs incurred for firm gas transportation and storage service (collectively, the demand charges) because ERCOT determined those demand charges to be "fixed" and thus unallowable. (ERCOT's February 3, 2021 letter is attached as Exhibit 3). ERCOT

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<sup>5</sup> TEX. UTIL. CODE §§ 11.001-66.016.

<sup>6</sup> Specifically, for DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad (the Luminant Plants). Wharton also was included in the 2019 submission and approval, but it is not included within this appeal because it was retired on November 30, 2020. Lake Hubbard also was included in the 2019 submission and approval, but it also is not included in this appeal because its previously approved verifiable cost fuel adder is lower than the generic adder.

<sup>7</sup> Except for Wharton, which was retired during the submission process. Again, Lake Hubbard is also not included in this appeal for the reasons stated above. *Supra* note 6.

also informed Luminant on February 3, 2021 that it was unilaterally rescinding its December 18, 2019 approval of Luminant's current fuel adders for those same generating facilities, because ERCOT now asserted those fuel adders contain costs incurred for firm gas transportation or storage service (the demand charges) that ERCOT now determined to be "fixed" and thus unallowable. Examples of the demand charges previously allowed by ERCOT in approving Luminant's 2019 fuel adder submission and now improperly rescinded and rejected may be found in Confidential Exhibit 2A (pp. 363, 370, 374, 379, 384, 398-399, 404, 420, and 485), and Confidential Exhibit 2B (pp. 421, 426, 431).<sup>8</sup>

Luminant submitted to ERCOT on February 17, 2021 a request for ERCOT reconsideration of its decision to rescind the fuel adders approved in December 2019. Luminant's submittal (attached as Exhibit 4) contains a thorough discussion of why ERCOT's decision is inconsistent with the Protocols. ERCOT notified Luminant by letter on February 26, 2021 that it would not change its rescission decision. (ERCOT's February 26, 2021 letter is attached as Exhibit 5A and the attachments submitted by ERCOT with that letter are attached as Confidential Exhibit 5B). Luminant notified ERCOT on March 5, 2021 that it rejected and does not accept ERCOT's rescission decision. (Luminant's rejection notification is attached as Exhibit 6). On March 5, 2021, ERCOT confirmed its intent to use the generic fuel adder of \$0.50/MMBtu for the Luminant Plants beginning March 10, 2021. (ERCOT's March 5, 2021 correspondence is attached as Exhibit 7).

With ERCOT's actions, the existing adders that ERCOT approved in December 2019 will be rescinded absent emergency action by this Commission, and the updated adders (submitted in October 2020) that ERCOT rejected will never go into effect absent a reversal of ERCOT's decision by this Commission.<sup>9</sup> The generic costs, which will apply instead on a going forward basis starting March 10, 2021 (again, absent an emergency suspension by this Commission), do

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<sup>8</sup> See also Confidential Exhibit 5B, which contains a spreadsheet in which ERCOT identifies the charges that it is now deeming as "fixed" and not recoverable in the fuel adder.

<sup>9</sup> ERCOT Verifiable Cost Manual (Manual) §§ 10.2.1(1)(g), 11.1(4), a copy of which is attached as Exhibit 8.

not reflect Luminant's actual costs for obtaining firm gas transportation to deliver gas to its power plants, and their dollar value per MMBtu is significantly lower than Luminant's actual costs.<sup>10</sup>

Luminant seeks reversal of ERCOT's rejection and rescission decisions regarding the demand charges. Luminant also seeks immediate suspension of ERCOT's rescission decision, so that the fuel adders that are currently in effect for Luminant will remain in effect or be reinstated during the pendency of this complaint (ultimately to be replaced, upon a final decision from the Commission, by the updated October 2020 adders that ERCOT rejected) and thus Luminant's fuel adders will be closer to Luminant's actual costs to incur firm gas transportation and storage service while this complaint is being decided.

**B. Affected Entities**

Luminant and its PGC affiliates are directly and adversely affected by ERCOT's decisions.

Other PGCs who obtain firm gas transportation or storage service and seek ERCOT approval of a fuel adder that accounts for the cost of obtaining such firm gas transportation or storage service will be adversely affected by ERCOT's determination that such costs are "fixed" and thus not allowable.

All customers served by the ERCOT grid will be adversely affected if ERCOT's refusal to allow fuel adders to account for the actual costs of obtaining firm gas transportation or storage leads PGCs to not contract for gas storage and transportation service or to obtain only interruptible gas transportation service and the gas service to those PGCs is subsequently unavailable, causing them to be unable to obtain gas service when needed to run power plants and provide electricity to customers.

**C. Conduct Complained Of**

Luminant complains of ERCOT's February 3, 2021 and February 26, 2021 decisions to:

1. Reject Luminant's October 2020 verifiable fuel cost adder submission; and

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<sup>10</sup> Exhibit 9 compares Luminant's fuel adders as they existed before ERCOT's rescission with the generic fuel adders. *See also supra* note 2 with a discussion of the generic adders versus the recalculated adders and why Luminant felt compelled to reject the recalculated adders to pursue this appeal.

2. Rescind its own prior (Dec. 18, 2019) approval of Luminant's preceding fuel cost adder submission in October 2019.

**D. Applicable Law and Protocols**

The principally applicable ERCOT Protocols are:

- Section 5.1.6.1(1)(a): "The unit-specific **verifiable costs** for starting a Resource for each cold, intermediate, and hot start condition, as determined using the data submitted under Section 5.6.1, Verifiable Costs, and the Resource Parameters for the Resource **are**: (a) **Actual fuel consumption** rate per start (MMBtu/start) multiplied by a resource fuel price **plus** consideration of **a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**" Emphasis Added.
- Section 5.1.6.2(1)(a): "The unit-specific **verifiable minimum-energy costs** for a Resource **are**: (a) **Actual fuel cost** to operate the unit at its LSL **including a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**" Emphasis added.
- Section 5.1.6.2(2): "For gas-fired units, the **actual fuel costs must be calculated using the actual Seasonal heat rate** (which must be supplied to ERCOT with Seasonal heat-rate test data) **multiplied by the fuel price plus** consideration of **a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**" Emphasis added.

The Manual is also applicable, principally Sections 3.4(2), 3.5, 10.2.1, and 11.1.

Texas law requiring interpretation of rules and statutes in a way that achieves harmony, avoids an irreconcilable conflict, and produces a just and reasonable result is also applicable.

**E. Request for Suspension**

Part VI of this complaint provides Luminant's request for immediate suspension of ERCOT's decisions.

**F. Statement of Facts**

There are no disputed facts in this complaint, and the dispute is purely a legal one. Thus, the only pertinent facts (within the meaning of 16 TAC § 22.251(d)(1)(D)) are contained in the descriptions of the underlying proceeding (above) and ERCOT's decision (below).



## V. ARGUMENT FOR OVERTURNING ERCOT'S DECISIONS

### A. ERCOT's Decisions

ERCOT's notices state that its decisions to reject and rescind the fuel adders for the Luminant Plants are based on Protocol § 5.6.1(5)(a), which states that unit-specific verifiable costs "may not include fixed costs, which are any cost that is incurred regardless of whether the unit is deployed or not." ERCOT then states that because the charges it is disallowing (the demand charges) "are constant each month and do not appear to vary based on whether the unit is deployed or not," the demand charges are "fixed," and ERCOT is therefore rescinding or rejecting the fuel adders.

### B. Legal Framework

ERCOT Protocols are subject to the same rules of interpretation that apply to statutes and administrative rules.<sup>11</sup> One such bedrock rule requires that the Protocols be read together in a manner that harmonizes and gives effect to every provision if at all possible.<sup>12</sup> This rule of construction is based on the presumption that the entire set of rules (here, Protocols) is intended to be effective. In addition, the Protocols must be construed in a manner that presumes that "a just and reasonable result is intended."<sup>13</sup> Thus, in interpreting the Protocols that apply to fuel adders, ERCOT must strive to construe those Protocols in a manner that harmonizes and gives each of them effect, while also producing a just and reasonable result.

### C. ERCOT Erred: Firm Transportation and Storage Costs Are, In Fact, Allowed

ERCOT's rationale for proposing to reject and rescind the fuel adders due to the inclusion of demand charges is incomplete, in that it focuses on one provision of the Protocols in isolation, without harmonizing that provision with the remainder of the Protocols, as the rules of interpretation require. While it is true that Protocol § 5.6.1(5)(a) says that fixed costs may not be included in verifiable costs, that is not the only relevant Protocol, and that Section's definition of fixed costs must be interpreted and applied in light of the Protocols as a whole.

Most notably, three separate Protocol provisions each define verifiable costs to be actual fuel costs plus (or including) a fuel adder "that compensates for the transportation and purchasing

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<sup>11</sup> *E.g., Pub. Util. Comm'n v. Constellation Energy Commodities Group, Inc.*, 351 S.W.3d 588, 594–95 (Tex. App.—Austin 2011, pet. denied) (holding that the Protocols, which are subject to review and approval by the Public

of spot fuel as described in the Verifiable Cost Manual.”<sup>14</sup> Moreover, one such Protocol provision requires that “the actual fuel costs **must** be calculated” with consideration of a fuel adder that compensates for those transportation and purchasing costs.<sup>15</sup> Specifically:

- Section 5.1.6.1(1)(a): ‘The unit-specific **verifiable costs** for starting a Resource for each cold, intermediate, and hot start condition, as determined using the data submitted under Section 5.6.1, Verifiable Costs, and the Resource Parameters for the Resource **are**: (a) **Actual fuel consumption** rate per start (MMBtu/start) multiplied by a resource fuel price **plus** consideration of **a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**’ Emphasis Added.
- Section 5.1.6.2(1)(a): “The unit-specific **verifiable minimum-energy costs** for a Resource **are**: (a) **Actual fuel cost** to operate the unit at its LSL **including a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**” Emphasis added.
- Section 5.1.6.2(2): “For gas-fired units, the **actual fuel costs must be calculated using the actual Seasonal heat rate** (which must be supplied to ERCOT with Seasonal heat-rate test data) **multiplied by the fuel price plus** consideration of **a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**” Emphasis added.

Thus, the Protocols define verifiable costs as mandatorily including consideration of a fuel adder that compensates for transportation and purchasing costs as “described in the Verifiable Cost Manual”—meaning the fuel adder must compensate for the Resource’s transportation and

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Utility Commission of Texas, are administrative rules, which have the force and effect of statutes and thus are subject to the same rules of construction); *Complaint of Constellation Energy Commodities Group, Inc. Against the Electric Reliability Council of Texas*, PUC Docket No. 33500, Order at 13 (Jan. 25, 2008) (“Although ERCOT’s Protocols are not statutes, they are administrative rules adopted by the Commission and serve a similar function to the Commission’s Substantive Rules, which are interpreted and analyzed in the same manner as a statute.”), *aff’d by*, 351 S.W.3d 588 (Tex. App.—Austin 2011, pet. denied).

<sup>12</sup> *E.g., Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 494 (Tex. 2001) (“Additionally, we must always consider the statute as a whole rather than its isolated provisions. **We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone.** We must presume that the Legislature intends an entire statute to be effective and that a just and reasonable result is intended.”) (emphasis added) (citing TEX. GOV’T CODE § 311.021(2), (3)).

<sup>13</sup> *Id.*

<sup>14</sup> Protocols §§ 5.6.1.1(1)(a), 5.1.6.2(1)(a), 5.6.1.2(2).

<sup>15</sup> Protocols § 5.6.1.2(2) (emphasis added).

purchasing costs, and the fuel adder must do so consistent with the description of those costs in the Manual.

The Manual, in turn, expressly includes transportation, storage, injection, withdrawal, imbalance, and minimum requirements fees as verifiable costs that compensate for the transportation and purchasing of spot fuel and thus can be included in the fuel adder.<sup>16</sup> The minimum requirements fee *expressly described and included by the Manual* is quite conspicuous because, as it is defined in the Manual, it is clearly a flat, non-variable dollar amount that is charged by a pipeline if the shipper does not meet the minimum take requirement under the contract. Specifically, Section 3.5 of the Manual defines an allowable minimum requirements fee as:

- (1) A cost incurred by a Resource for transporting less fuel than the minimum required volume for the given time period, based on the contract terms.
- (2) Represents a portion of the total costs of the fuel adder.
- (3) Allocated to the total volume of fuel transported per the terms of the contract. The fee will be calculated as shown below:

$$\text{MRF (\$/MMBtu)} = \text{TMRFD (\$)} / \text{TF (MMBtu)}$$

Where:

MRF = Minimum Requirements Fee

TMRFD = Total Minimum Requirements Fee Dollars

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

In other words, the Manual defines the minimum requirements fee as a flat dollar amount and then provides an express statement of how to convert that flat dollar amount to a dollar per MMBtu amount. Thus, while one section of the Protocols directs that fixed costs are not to be included in verifiable costs, the Protocols also expressly say that a fuel adder *must* compensate for the Resource's transportation costs as described in the Manual, *and the Manual includes a non-*

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<sup>16</sup> Manual § 3.4(2) ("the *actual costs used to calculate the fuel adder may include, but are not limited to, the following categories: transportation, deliveries, storage, injection, withdrawal, imbalance, and minimum requirements fees*") (emphasis added).

*variable minimum requirements fee (much like the demand charges) as one of the allowable transportation costs.*

Reading the Protocols as a whole, including the applicable provisions of the Manual that the Protocols expressly incorporate by reference, leads to the conclusion that *transportation costs like the non-variable demand charges are not prohibited “fixed costs” under Section 5.6.1(5)(a).* Rather, the Protocol definition of “fixed costs,” which hinges on whether costs are incurred regardless of unit deployment, must be referring to costs that are incurred simply because the unit exists, like property taxes and financing costs, not to costs that are incurred for the very purpose of deploying the unit. Unlike taxes, financing costs, and the like, the demand charges are incurred precisely to enable and facilitate unit deployment—thus, it makes no sense to construe those costs as “fixed costs” that would be incurred regardless of unit deployment, when they are incurred only because of—to enable—unit deployment.

Whether the dollar amount for those costs varies by month, year, or pipeline throughput cannot be the relevant inquiry as to whether a verifiable cost is a prohibited fixed cost, or else the Protocols would irreconcilably conflict by expressly incorporating in the definition of recoverable transportation costs a cost that, by its terms, would be an impermissible “fixed” cost.

Under the bedrock principles of statutory construction quoted at the outset, which apply to the interpretation of Protocols, ERCOT must interpret the Protocols in a manner that harmonizes and gives effect to each provision of the Protocols when possible, rather than interpreting them in a manner that results in an irreconcilable conflict.

Moreover, such an interpretation is not only possible; it makes the most sense in this context and also furthers another bedrock principle of statutory/rule construction quoted above, i.e., that the interpretation should presume a just and reasonable result is intended. It is not possible in ERCOT to obtain firm transportation rights for shipment of natural gas to a power generating facility without agreeing contractually to pay the transporting pipeline a minimum monthly or annual cash payment, i.e., a non-variable charge or fee such as and including the demand charges. (See Affidavit of Eric Wurzbach attached as Exhibit 10).

Firm transportation rights help to ensure that generating facilities like the Luminant Plants will be available when needed by ERCOT for services like Reliability Unit Commitment (RUC),

by providing greater assurance that pipeline capacity will be available to transport gas to those generating facilities when needed. The alternative transportation arrangement would be for the Luminant Plants to contract for interruptible transportation rights, which, as the name implies, provide the pipeline with greater contractual discretion to decline to deliver gas when called upon by the shipper. As a result, the use of only interruptible service would make it less likely that the Luminant Plants would have the necessary gas to operate when needed by ERCOT for the very reliability services like RUC for which verifiable costs are recoverable.

To interpret the Protocols in a manner that would *require* Generation Resources like the Luminant Plants to either not contract at all, or to contract only for *interruptible* transportation rights in order to recover transportation costs when deployed for RUC would be an unjust and unreasonable result, in that it would create perverse incentives that would diminish reliability, contrary to the purpose of the services for which those costs are recoverable in the first place and in violation of ERCOT's general obligations under PURA to ensure reliability of the grid.<sup>17</sup>

In attempting to offer an alternative reading of the Protocols in a recently proposed revision to the Manual,<sup>18</sup> ERCOT suggests that the current Protocols and Manual are in conflict; that the Protocols allow, but do not require, ERCOT to approve a fuel adder including transportation costs in approving verifiable costs for a resource; and that those costs are not recoverable if they are "fixed," which ERCOT (now) interprets to exclude the minimum requirements fee in the Manual. It appears that ERCOT is interpreting the fuel adder to be optional based on the use of the modifier "consideration" in the Protocols. While it is true that two of the Protocols quoted above (Sections 5.6.1.1(1)(a) and 5.6.1.2(2)) require a "consideration" of a fuel adder, it is not reasonable to interpret that to mean that ERCOT may optionally decide to disallow transportation costs in that fuel adder that are expressly allowed by the current Manual. The plain language meaning of "consideration" in this context is "take into account," and in "taking into account" the calculation of a fuel adder to include in a Resource's verifiable costs, the Protocols also define that fuel adder as one that must compensate for transportation costs as defined in the Manual.

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<sup>17</sup> PURA § 39.151 (a)(2) ("A power region must establish one or more independent organizations to perform the following functions: ... (2) ensure the reliability and adequacy of the regional electrical network.").

<sup>18</sup> Verifiable Cost Manual Revision Request (VCMRR) 031 (filed Feb. 3, 2021), attached as Exhibit 11.

Thus, in considering what fuel adder to approve, ERCOT must do so in a way that compensates for the transportation costs as defined in the Manual, and those costs expressly include the demand charges at issue here. If ERCOT wishes to change the Manual (as it has proposed to do, contemporaneously with notifying Luminant of its intent to reject and rescind the fuel adders for the Luminant Plants<sup>19</sup>), then ERCOT must follow the applicable process in the Manual, which requires the stakeholders to vote on that proposed change.<sup>20</sup> Neither the Manual, nor the Protocols, allow ERCOT to unilaterally apply the Manual in any manner other than how the language actually reads now. In fact, ERCOT's proposal to change the Manual is indicative of the validity of Luminant's interpretation of the existing Protocols and Manual provisions.

In sum, because a harmonious reading of the Protocols is available, which applies both the restriction against inclusion of "fixed costs" in verifiable costs and the requirement for fuel adders to include transportation costs as defined in the Manual (i.e., which defines them to include costs with a non-variable monthly dollar amount like the demand charges), and because that reading of the Protocols is also the only one in this instance that produces a "just and reasonable" result, ERCOT is required to apply that interpretation and both (a) approve Luminant's fuel adders submitted in October 2020; and (b) reverse its decision to rescind its prior Dec. 18, 2019 approval of the previous fuel adders until the updated adders are implemented.

## **VI. REQUEST FOR SUSPENSION OF ERCOT'S RESCISSION DECISION**

Under 16 TAC § 22.251(i), Luminant urges the Commission to immediately suspend ERCOT's decision to rescind Luminant's existing fuel adders (initially decided on February 3, 2021 and finally decided on February 26, 2021) pending the Commission's resolution of Luminant's complaint. In the absence of an immediate suspension, ERCOT's rescission decision will become effective **March 10, 2021**. Therefore, Luminant requests that the Commission suspend the rescission decision before (or quickly after) that date. See Exhibit 7.

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<sup>19</sup> See Exhibit 11.

<sup>20</sup> See *El Paso Hosp. Dist. v. Texas Health & Human Serv. Comm'n*, 247 S.W.3d 709, 711, 713-15 (Tex. 2008) (addressing whether the commission there was able to modify, via an interpretation, its method for calculating Medicaid inpatient service rates, which was established through rulemaking, without going through a formal rulemaking process under the Texas Administrative Procedures Act, and holding that the commission's change, implemented without going through a formal rulemaking process, rendered the change invalid under Tex. Gov't Code § 2001.035(a)).

The Commission may immediately suspend enforcement of ERCOT's decisions upon a showing of good cause.<sup>21</sup> "The good cause determination required by this subsection shall be based on an assessment of the harm that is likely to result to the complainant if a suspension is not ordered, the harm that is likely to result to others if a suspension is ordered, the likelihood of the complainant's success on the merits of the complaint, and any other relevant factors as determined by the commission or the presiding officer."<sup>22</sup> The Commission has found good cause exists for an immediate suspension in past cases.<sup>23</sup> Because each of these factors support an emergency suspension of ERCOT's decisions, the Commission should do so again here.

**A. Luminant—and Potentially Electricity Consumers—Will Experience Irreparable Harm in the Absence of an Emergency Suspension.**

Luminant will experience immediate, irreparable harm if ERCOT's rescission decision is allowed to stand. That harm will begin *immediately* on March 10, 2021, the date the rescission decision goes into effect, in the absence of an emergency suspension.

Luminant was operating with ERCOT-approved fuel adders that account for actually incurred costs for firm transportation and storage rights (though those costs had not been updated since 2019 and thus still do not reflect the most up-to-date costs). Then, on February 3, 2021, ERCOT made a surprise about-face and rescinded its approval, over a year after granting that approval.<sup>24</sup> If that decision is allowed to stand, Luminant's fuel adders will suddenly not account

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<sup>21</sup> 16 TAC § 22.251(i).

<sup>22</sup> *Id.*

<sup>23</sup> See *In re Constellation NewEnergy, Inc.*, Order Suspending Enforcement of PRR 676, Docket No. 33416, 2007 WL 328750 (Feb. 2, 2007); *Appeal and Complaint by Iberdrola Renewables, Inc., et al. of ERCOT Decision to Approve PRR 830*, Order No. 6 Granting Appellants' Request and Partially Suspending Implementation of PRR 830, Docket No. 37817 (Jan. 19, 2010).

<sup>24</sup> By rejecting the recalculated adders that exclude the transportation costs that ERCOT has now decided are "fixed," Luminant is subject to the generic adders until and unless this Commission suspends and ultimately reverses ERCOT's decision. See Manual §§ 10.2.1(1)(g), 11.1(4).; see also Exhibit 7, *supra* p. 6. This is an unjust and unsettling result of the Manual's provisions—although ERCOT's rescission letter (Exhibit 5A) (which is signed by an ERCOT employee that is not part of ERCOT Legal) claims that Luminant could "accept" the recalculated amounts without waiving the right to appeal them, the Manual contains no such provisions, and the rescission letter cites to none. As Luminant reads the Manual, it requires Luminant to either accept (and not appeal) drastically reduced adders that do not account for the costs of firm transportation rights (and thus do not account for its actual fuel costs) or allow ERCOT to unilaterally revert to generic adders, which are even lower than the reduced adders, so that Luminant can pursue this appeal of ERCOT's decision. Even if Luminant could have "accepted" the recalculated adders and still have pursued this appeal, Luminant still would not be compensated for its actual costs absent an emergency suspension by this Commission that preserves (or reinstates) the status quo. See Exhibit 5A, *supra*, for a comparison of the existing adders to ERCOT's recalculated adders.

for its significant actual costs incurred for firm gas transportation and storage service. Luminant will be forced to operate with only generic fuel adders in effect, and thus when those adders are applied Luminant will not recover its actual costs incurred to obtain firm transportation and storage service.

Moreover, because ERCOT has also rejected Luminant's latest (Oct. 2020) submission with updated fuel cost data to the extent it includes "fixed costs" (in ERCOT's sole view), that means there is no opportunity, except for relief from this Commission, for Luminant to obtain any fuel adders that do, in fact, include its actually incurred costs for firm gas transportation and storage rights. Thus, there will be no means of obtaining the correct fuel adders. And there are no means of somehow obtaining after-the-fact compensation for ERCOT's decisions to inappropriately deny Luminant the opportunity to have fuel adders that actually account for its costs.

ERCOT's decision leaves Luminant with an impossible choice. It can continue entering firm fuel transportation and storage contracts and lose large, unrecoverable amounts of money, or it can attempt to purchase "delivered gas," which includes transportation as part of the total fuel cost, or it can enter into only interruptible fuel transportation contracts, any of which would impose the heightened risk of gas fuel supply being unavailable to its power generation facilities. Luminant will face severe financial harm any way it proceeds under ERCOT's existing decisions. If it executes firm contracts, it will not be able to recover its actual costs in circumstances (such as RUC and mitigated offers) where those costs should be, and Luminant asserts are, recoverable. If it does not enter firm transportation contracts, it will perhaps recover its actual costs—but it will face the headwinds of unreliable gas service that, as the recent winter storm emergency displayed, impose their own severe costs on generators and Texas consumers alike.

The result is significant, irreparable harm to Luminant (and potentially consumers) that cannot be remedied later. An injury is irreparable if the injured party cannot be adequately compensated in damages.<sup>25</sup> Luminant is not seeking damages or monetary compensation of any sort in this case, and the Commission does not have jurisdiction to award damages.<sup>26</sup> Luminant therefore has no way to recover amounts lost during this appeal in a claim against ERCOT or

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<sup>25</sup> See *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

<sup>26</sup> See, e.g., *Jenkins v. Entergy Corp.*, 187 S.W.3d 785, 800-801 (Tex. App.—Corpus Christi 2006, pet. denied).



otherwise. Luminant instead asks for ERCOT's rescission decision to be set aside immediately (and ultimately for the rejection decision to be set aside upon resolution of this challenge) so it can continue entering firm contracts for gas transportation and storage and continue recovering its actual costs in the process. Immediately suspending ERCOT's rescission decision will preserve the status quo in this case, ensure Luminant does not suffer immediate financial loss, and support the continued reliability of the electric grid while this case is pending.<sup>27</sup>

Luminant attaches, immediately following this complaint, the affidavit of Bryan Ross, Director of QSE Operations for Luminant. Mr. Ross's affidavit details more specifically the immediate impact ERCOT's decisions will have if they are allowed to go into effect March 10 and the harm that will follow.

- ERCOT's decision would prevent Luminant from recovering its true cost when receiving RUC instructions, when mitigated, when receiving Emergency Operation Payments on its Quick Start Generation Resources (QSGR), or when receiving Day-Ahead Market (DAM) make whole payments.
- ERCOT's decision would discourage Luminant from firming up supply and transportation for its gas steam plants that do not run frequently, because the costs of obtaining that firm service could not be recovered through fuel adders in the circumstances listed above. ERCOT's decisions would also discourage Luminant from obtaining gas storage for those plants, because gas storage also requires the payment of demand charges, which ERCOT has deemed not recoverable through fuel adders. Since Luminant could not recover firm transportation or storage costs when running the plants, Luminant would be more likely to buy delivered spot gas, which may not be available when needed. This would result in lower reliability and higher overall fuel costs to the market.
- Faced with an untenable choice of running at a loss or buying unreliable and potentially more expensive delivered spot gas, owners of affected plants would likely consider plant retirement in the short term, which would be detrimental to resource adequacy. If there is inadequate supply, both generators and electricity consumers suffer, as illustrated by the recent winter storm emergency.

In short, ERCOT's rescission decision will cause Luminant immediate, irreparable harm and could also impose great risk to consumers. The decision should be immediately suspended.

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<sup>27</sup> See *Butnaru*, 84 S.W.3d at 204.

**B. No Harm Will Result to Others if Suspension Is Ordered.**

Luminant is not aware of any harm that will result to others if immediate suspension is ordered by the Commission. The suspension will simply preserve the status quo while the Commission considers the merits of Luminant's complaint. Conversely, as outlined above, Luminant and, potentially, consumers will suffer great harm if the rescission decision is not immediately suspended.

**C. Luminant is Likely to Succeed on the Merits of Its Complaint.**

For all of the reasons outlined in Section V, Luminant is likely to succeed on the merits of its complaint. Both ERCOT decisions are contrary to its Protocols and Manual and are unjust and unreasonable. Both ERCOT decisions are flatly wrong and should not survive the Commission's scrutiny.

*In sum*, for all of the reasons outlined above and elsewhere in this complaint, Luminant seeks an order immediately suspending (for the duration of this complaint proceeding) ERCOT's rescission decision, to maintain the status quo during this complaint.

**VII. PRAYER**

For the reasons set forth in this Complaint and Request for Emergency Relief, including the Exhibits, Luminant prays that the Commission:

- (1) immediately suspend ERCOT's rescission decision, so that the status quo can be maintained while the Commission decides this dispute and so that Luminant will not suffer immediate irreparable injury (see Exhibit 12 for a Proposed Order providing this requested relief);
- (2) retain jurisdiction of this matter and itself conduct the hearing under 16 TAC § 22.202(b);
- (3) order a briefing schedule requiring that the Parties submit their respective briefs on the merits of Luminant's Complaint according to the following schedule (see Exhibit 13 for a Proposed Order providing this requested relief):

Luminant's Brief on the Merits: Due on March 31, 2021

ERCOT's Response Brief on the Merits: Due on April 22, 2021;

Luminant's Reply Brief: Due on May 6, 2021; and

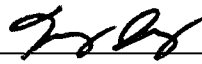
- (4) enter an order at the conclusion of this proceeding reversing ERCOT's decisions to reject and rescind Luminant's verifiable cost fuel adders based on their inclusion of firm transportation and storage costs.

**Respectfully submitted,**

LUMINANT  
Stephanie Zapata Moore  
EVP and General Counsel, Vistra Corp.  
State Bar No. 24008328  
Daniel Jude Kelly  
State Bar No. 24041229  
6555 Sierra Drive  
Irving, Texas 75039  
(214) 875-8183 (phone)  
(214) 875-9478 (fax)

ENOCH KEVER PLLC  
William A. Moore  
State Bar No. 00794330  
Mandy Kimbrough  
State Bar No. 24050613  
Paul C. Sarahan  
State Bar No. 17648200  
7600 N. Capital of Texas Hwy  
Building B, Suite 200  
Austin, Texas 78731  
(512) 615-1200 (phone)  
(512) 615-1198 (fax)

By: \_\_\_\_\_



Attorneys for Luminant

**CERTIFICATE OF SERVICE**

I certify that on March 9, 2021 a true copy of Luminant's Complaint and Request for Emergency Relief was served by first class mail on:

Chad V. Seely  
Vice President & General Counsel  
Erika Kane  
Sr. Corporate Counsel  
ERCOT  
7620 Metro Center Drive  
Austin, Texas 78744  
Phone: 512.225.7000  
Fax: 512.225.7020  
[erika.kane@ercot.com](mailto:erika.kane@ercot.com)  
[chad.seely@ercot.com](mailto:chad.seely@ercot.com)

  
\_\_\_\_\_  
Lynn Needles

STATE OF TEXAS           §  
   §  
COUNTY OF TRAVIS       §

**AFFIDAVIT OF BRYAN ROSS**

BEFORE ME, the undersigned authority appeared, being first duly sworn, deposed and stated:

1. “My name is Bryan Ross. I am over the age of twenty-one and am competent to make the following statements.
2. I am Director of QSE Operations for Luminant Energy Company LLC (“Luminant”) and Vistra Corp. (“Vistra”), having their principal place of business at 6555 Sierra Drive, Irving, Texas 75039.
3. I have been in this position for 7 years, and I have worked for Luminant for over 20 years in various roles including commercial trader, lead analyst of day-ahead operations, and director of cash month optimization. I have extensive experience with managing Luminant’s operations as a qualified scheduling entity (“QSE”) in the Electric Reliability Council of Texas, Inc. (“ERCOT”) market. I am familiar with the process for submitting verifiable cost fuel adder updates to ERCOT and am competent and have authority to make this affidavit on behalf of Luminant.
4. I have reviewed Luminant’s Complaint and Request for Emergency Relief Against ERCOT, including the Exhibits (hereafter, the “Complaint”), and the factual statements contained in the Complaint are true and correct to the best of my knowledge.
5. As described at length in the Complaint, if the Commission does not immediately suspend the rescission decision, I believe Luminant and potentially electricity consumers will suffer immediate, irreparable harm.
6. First, ERCOT’s decisions would prevent Luminant from recovering its true cost when receiving Reliability Unit Commitment (“RUC”) instructions, when mitigated, when receiving Emergency Operation Payments on the Quick Start Generation Resources (“QSGR”), or when receiving Day-Ahead Market (“DAM”) make whole payments.

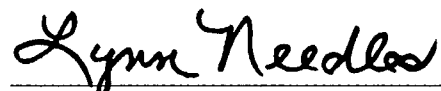
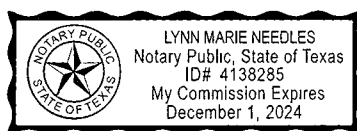
7. Second, ERCOT's decision would discourage Luminant from firming up supply and transportation for its gas steam plants that do not run frequently, because the costs of obtaining that firm service could not be recovered through fuel adders in the circumstances listed above in paragraph (6). ERCOT's decisions would also discourage Luminant from obtaining gas storage for those plants, because gas storage also requires the payment of demand charges, which ERCOT has deemed not recoverable through fuel adders. Since Luminant could not recover firm transportation or storage costs when running the plants, Luminant would be more likely to buy delivered spot gas, which may not be available when needed. I believe this would result in lower reliability and higher overall fuel costs to the market.
8. Third, faced with an untenable choice of running at a loss or buying unreliable and potentially more expensive delivered spot gas, I believe owners of affected plants would likely consider plant retirement in the short term, which would be detrimental to resource adequacy. If there is inadequate supply, both generators and electricity consumers suffer, as illustrated by the recent winter storm emergency.

The foregoing statements offered by me are true and correct to the best of my knowledge and belief."



Bryan Ross

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority, on the 8<sup>th</sup> day of March 2021. This notarial act was an online notarization.



Notary Public, State of Texas

**EXHIBIT 1:**  
**WRITTEN AGREEMENT TO WAIVE ALTERNATIVE DISPUTE  
RESOLUTION**

**From:** [Kane, Erika](#)  
**To:** [Haley, Ian](#); [ADR](#)  
**Cc:** [Siegel, Samuel](#); [Bigbee, Nathan](#); [Seely, Chad](#)  
**Subject:** Re: Request for ADR waiver  
**Date:** Sunday, March 07, 2021 5:04:54 PM

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**EXTERNAL EMAIL**

Dear Ian,

In accordance with ERCOT Protocol Section 20.5(7), ERCOT hereby provides this written agreement that ERCOT will waive Alternative Dispute Resolution with respect to the matters referenced in your email. Please let us know if you need any additional information.

Best regards,

Erika Kane  
Sr. Corporate Counsel, ERCOT

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**From:** Haley, Ian <[ian.haley@vistracorp.com](mailto:ian.haley@vistracorp.com)>  
**Sent:** Sunday, March 7, 2021 12:38 PM  
**To:** ADR <[ADR@ercot.com](mailto:ADR@ercot.com)>  
**Cc:** Kane, Erika <[Erika.Kane@ercot.com](mailto:Erika.Kane@ercot.com)>; Siegel, Samuel <[Samuel.Siegel@luminant.com](mailto:Samuel.Siegel@luminant.com)>  
**Subject:** Request for ADR waiver

**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***  
ERCOT,

In response to the attached email, Luminant Energy Company LLC (Luminant) hereby formally requests to waive any applicable alternative dispute resolution (ADR) proceeding at ERCOT related to ERCOT's attached February 3, 2021 and February 26, 2021 rejections and rescissions of Luminant's verifiable cost fuel adders for DeCordova, Graham, Lake Hubbard, Morgan Creek, Stryker, and Trinidad. Luminant intends to appeal those decisions directly to the Public Utility Commission of Texas. Please reply to this email with your formal agreement to waive ADR.

Thank you,  
Ian

Ian Haley  
ERCOT Regulatory Policy  
[Ian.Haley@vistracorp.com](mailto:Ian.Haley@vistracorp.com)  
[vistracorp.com](http://vistracorp.com)



Vistra | 1005 Congress Ave | Suite 750 | Austin, TX, 78701  
o 512.349.6407 | m 512.673.9655

**CONFIDENTIAL EXHIBIT 2A:**  
**LUMINANT'S 2019 VERIFIABLE COST FUEL ADDER SUBMISSION**  
**&**  
**CONFIDENTIAL EXHIBIT 2B:**  
**LUMINANT'S 2020 VERIFIABLE COST FUEL ADDER SUBMISSION**

*BOTH SUBMITTED UNDER SEAL AS HIGHLY SENSITIVE PROTECTED MATERIAL*

**EXHIBIT 3:**

**FEBRUARY 3, 2021 ERCOT REJECTION AND NOTICE TO RESCIND  
FUEL ADDERS FOR LUMINANT RESOURCES (REDACTED)**

***UNREDACTED VERSION IS SUBMITTED UNDER SEAL AS HIGHLY  
SENSITIVE PROTECTED MATERIAL***



February 3, 2021

Luminant Energy Company LLC (QSE)

Subject: Rejection and Notice of Intent to Rescind Approval of Verifiable Fuel Adders for DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad Resources.

Dear Ian Haley,

This letter is to inform you that ERCOT has reviewed the verifiable fuel cost data Luminant has submitted for the DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad Generation Resources and has concluded that certain fuel adder costs included in these submissions are not eligible to be included as verifiable costs under the Protocols.

Protocols Section 5.6.1 states in paragraph (5) that *"verifiable costs may not include. . . [f]ixed costs, which are any cost that is incurred regardless of whether the unit is deployed or not."* ERCOT has determined the costs listed below are fixed because they are constant each month and do not appear to vary based on whether the unit is deployed or not:

- Demand Fees included in the [REDACTED]
- Natural Gas Dispatch Service Fees included in the [REDACTED]
- Monthly Demand Charges included in the [REDACTED]
- Capacity Reservation Fees included in the [REDACTED]
- Monthly Reservation Charges included in the [REDACTED]

For this reason, ERCOT hereby rejects the fuel adders for the DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad Generation Resources proposed in Luminant's October 2020 submission pursuant to Sections 3.4 and 10.2.1 of the Verifiable Cost Manual. For the same reason, in accordance with paragraph (1) of Section 11.2 of the Verifiable Cost Manual, ERCOT also hereby provides notice of its intention to rescind its December 18, 2019 approval of Luminant's fuel adders for these Generation Resources to the extent those adders include costs in the above-described categories.

With respect to ERCOT's rejection of Luminant's proposed fuel adder costs, if Luminant wishes to dispute this determination, it may either appeal this determination within twenty Business Days pursuant to Section 12 of the Verifiable Cost Manual or submit a request for Alternative Dispute Resolution within 45 calendar days pursuant to paragraph (1)(b) of Protocols Section 20.2, Deadline for Initiating ADR Proceeding.

ERCOT's proposal to rescind its approval of Luminant's fuel adders is subject to the process described in Section 11.2 of the Verifiable Cost Manual. Under that process, Luminant has ten Business Days to provide ERCOT with any documents, justifications, and other information that supports inclusion of the costs in question. The deadline to provide this information is **February 17, 2021.**

If you have any questions about this letter, please do not hesitate to contact me.

Sincerely,

**/s/ Ino González**

Ino González  
Principal Market Acct. & Settlements  
ERCOT  
512-248-3954 W

**EXHIBIT 4:**  
**SECTION 11 APPEAL AND ADDITIONAL DOCUMENTATION**  
**(REDACTED)**

***UNREDACTED VERSION IS SUBMITTED UNDER SEAL AS HIGHLY  
SENSITIVE PROTECTED MATERIAL***

February 17, 2021

Ino González  
Principal Market Account & Settlements  
ERCOT  
7620 Metro Center Drive  
Austin, Texas 78744  
Via email to: [ino.gonzalez@ercot.comaff](mailto:ino.gonzalez@ercot.comaff)  
Copied to: [chad.seely@ercot.com](mailto:chad.seely@ercot.com)

Re: Section 11 Appeal and Additional Documentation in Support of Verifiable Cost Fuel Adders ("VCFAs") Previously Approved for DeCordova, Graham, Morgan Creek, Stryker, and Trinidad

Dear Mr. González:

Pursuant to Section 11 of the Verifiable Cost Manual ("VCM"), Luminant Energy Company LLC ("Luminant"), as Qualified Scheduling Entity for the above-named Generation Resources, timely<sup>1</sup> submits this appeal and additional documentation in response to ERCOT's February 3, 2021 notice of intent to rescind previously approved<sup>2</sup> VCFAs for DeCordova, Graham, Morgan Creek, Stryker, and Trinidad (hereafter, "Luminant Plants"). Specifically, ERCOT notified Luminant of its intent to rescind those VCFAs "to the extent those adders include costs in the [following]-described categories":

- Demand Fees included in the [REDACTED]
- Natural Gas Dispatch Service Fees included in the [REDACTED]
- Monthly Demand Charges included in the [REDACTED]
- Capacity Reservation Fees included in the [REDACTED]
- Monthly Reservation Charges included in the [REDACTED]

As discussed below, the above-described fees (hereafter, referred to collectively as "Demand Charges") are not only appropriately included, but are required to be included in the VCFAs, pursuant to applicable ERCOT Protocols and the VCM. In addition, the Demand Charges are not prohibited "fixed" costs within the meaning of the Protocols or VCM. Accordingly, Luminant requests that ERCOT reconsider its proposal to rescind the VCFAs for the Luminant Plants to the

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<sup>1</sup> Under Section 11.2(1)(b) of the Verifiable Cost Manual ("VCM"), Luminant's response is due ten business days from the date of ERCOT's notice, on February 3, 2021, of its intent to rescind the VCFAs. Ten business days from February 3, 2021 is February 17, 2021, as acknowledged in ERCOT's notice.

<sup>2</sup> As indicated in ERCOT's February 3, 2021 notice to Luminant, ERCOT previously approved the VCFAs at issue on December 18, 2019.

extent they include Demand Charges and instead leave those VCFAs in place as previously approved.

## I. DISCUSSION

### A. ERCOT's Proposed Decision

ERCOT's notice states that its proposal to rescind the VCFAs for the Luminant Plants (along with a proposed rejection of revised VCFAs submitted for the Luminant Plants in October 2020) is based on Protocol § 5.6.1(5)(a), which states that unit-specific verifiable costs "may not include fixed costs, which are any cost that is incurred regardless of whether the unit is deployed or not." ERCOT then states that because the Demand Charges "are constant each month and do not appear to vary based on whether the unit is deployed or not," the Demand Charges are "fixed," and ERCOT is therefore rescinding VCFAs for the Luminant Plants that ERCOT approved on December 18, 2019 (as well as rejecting the revised VCFAs<sup>3</sup>).

### B. Legal Framework

ERCOT Protocols are subject to the same rules of interpretation that apply to statutes and administrative rules.<sup>4</sup> One such bedrock rule requires that the Protocols be read together in a manner that harmonizes and gives effect to every provision if at all possible.<sup>5</sup> This rule of construction is based on the presumption that the entire set of rules (here, Protocols) is intended to be effective. In addition, the Protocols must be construed in a manner that presumes that "a just and reasonable result is intended."<sup>6</sup> Thus, in interpreting the Protocols that apply to VCFAs, ERCOT must strive to construe those Protocols in a manner that harmonizes and gives each of them effect, while also producing a just and reasonable result.

### C. Luminant's Position

ERCOT's rationale for proposing to rescind the VCFAs due to the inclusion of Demand Charges is incomplete, in that it focuses on one provision of the Protocols in isolation, without harmonizing that provision with the remainder of the Protocols, as the rules of interpretation require. While it is true that Protocol § 5.6.1(5)(a) says that fixed costs may not be included in verifiable costs, that is not the only relevant Protocol, and that Section's definition of fixed costs

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<sup>3</sup> This letter focuses on the rescission. Luminant intends to timely appeal the rejection separately.

<sup>4</sup> *E.g., Pub. Util. Comm'n v. Constellation Energy Commodities Group, Inc.*, 351 S.W.3d 588, 594–95 (Tex. App.—Austin 2011, pet. denied) (holding that the Protocols, which are subject to review and approval by the Public Utility Commission of Texas, are administrative rules, which have the force and effect of statutes and thus are subject to the same rules of construction); *Complaint of Constellation Energy Commodities Group, Inc. Against the Electric Reliability Council of Texas*, PUC Docket No. 33500, Order at 13 (Jan. 25, 2008) ("Although ERCOT's Protocols are not statutes, they are administrative rules adopted by the Commission and serve a similar function to the Commission's Substantive Rules, which are interpreted and analyzed in the same manner as a statute."), *aff'd by*, 351 S.W.3d 588 (Tex. App.—Austin 2011, pet. denied).

<sup>5</sup> *E.g., Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 494 (Tex. 2001) ("Additionally, we must always consider the statute as a whole rather than its isolated provisions. **We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone.** We must presume that the Legislature intends an entire statute to be effective and that a just and reasonable result is intended.") (emphasis added) (citing TEX. GOV'T CODE § 311.021(2), (3)).

<sup>6</sup> *Id.*



must be interpreted and applied in light of the Protocols as a whole. Most notably, three separate Protocol provisions each define verifiable costs to be actual fuel costs plus (or including) a fuel adder “that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.”<sup>7</sup> Moreover, one such Protocol provision requires that “the actual fuel costs **must** be calculated” with consideration of a fuel adder that compensates for those transportation and purchasing costs.<sup>8</sup> Specifically:

- Section 5.1.6.1(1)(a): “The unit-specific **verifiable costs** for starting a Resource for each cold, intermediate, and hot start condition, as determined using the data submitted under Section 5.6.1, Verifiable Costs, and the Resource Parameters for the Resource **are**: (a) **Actual fuel consumption** rate per start (MMBtu/start) multiplied by a resource fuel price **plus** consideration of a **fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**” Emphasis Added.
- Section 5.1.6.2(1)(a): “The unit-specific **verifiable minimum-energy costs** for a Resource **are**: (a) **Actual fuel cost** to operate the unit at its LSL **including a fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**” Emphasis added.
- Section 5.1.6.2(2): “For gas-fired units, the **actual fuel costs must be calculated using the actual Seasonal heat rate** (which must be supplied to ERCOT with Seasonal heat-rate test data) **multiplied by the fuel price plus** consideration of a **fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual.**” Emphasis added.

Thus, the Protocols define verifiable costs as mandatorily including consideration of a fuel adder that compensates for transportation and purchasing costs as “described in the Verifiable Cost Manual”—meaning the fuel adder must compensate for the Resource’s transportation and purchasing costs, and it must do so consistent with the description of those costs in the VCM.

The VCM, in turn, expressly includes transportation, storage, injection, withdrawal, imbalance, and minimum requirements fees as verifiable costs that compensate for the transportation and purchasing of spot fuel and thus that can be included in the fuel adder. The minimum requirements fee is quite conspicuous because, as it is defined in the VCM, it is clearly a flat, non-variable dollar amount that is charged by a pipeline if the shipper does not meet the minimum take requirement under the contract.<sup>9</sup> Thus, while one section of the Protocols directs that fixed costs are not to be included in verifiable costs, the Protocols also expressly say that a fuel adder must compensate for the Resource’s transportation costs as described in the VCM, and the VCM includes a non-variable minimum requirements fee (which is in the nature of the Demand Charges) as one of the allowable transportation costs.

Reading the Protocols as a whole, including the applicable provisions of the VCM that the Protocols expressly incorporate by reference, transportation costs like the non-variable Demand Charges are not prohibited “fixed costs” under Section 5.6.1(5)(a). Rather, the Protocol definition

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<sup>7</sup> Protocols §§ 5.6.1.1(1)(a), 5.1.6.2(1)(a), 5.6.1.2(2).

<sup>8</sup> Protocols § 5.6.1.2(2) (emphasis added).

<sup>9</sup> VCM § 3.5.

of “fixed costs,” which hinges on whether costs are incurred regardless of unit deployment, must be referring to costs that are incurred simply because the unit exists, like property taxes and financing costs, not to costs like fuel that are incurred for the very purpose of deploying the unit. Unlike taxes, financing costs, and the like, the Demand Charges are incurred precisely to enable and facilitate unit deployment—thus, it makes no sense to construe those costs as “fixed costs” that would be incurred regardless of unit deployment, when they are incurred only because of—to enable—unit deployment. Whether the dollar amount for those costs varies by month, year, or usage cannot be the relevant inquiry as to whether a verifiable cost is a prohibited fixed cost, or else the Protocols would irreconcilably conflict by expressly incorporating in the definition of recoverable transportation costs a cost that, by its terms, would be an impermissible “fixed” cost. Under the bedrock principles of statutory construction quoted at the outset, which apply to the interpretation of Protocols, ERCOT must interpret the Protocols in a manner that harmonizes and gives effect to each provision of the Protocols when possible, rather than interpreting them in a manner that results in an irreconcilable conflict.

Moreover, such an interpretation is not only possible; it makes the most sense in this context and also furthers another bedrock principle of statutory/rule construction quoted above, i.e., that the interpretation should presume a just and reasonable result is intended. It is not possible in ERCOT to obtain firm transportation rights for shipment of natural gas to a power generating facility without agreeing contractually to pay the transporting pipeline a minimum monthly or annual cash payment, i.e., a non-variable charge or fee such as and including the Demand Charges. Firm transportation rights help to ensure that generating facilities like the Luminant Plants will be available when needed by ERCOT for services like Reliability Unit Commitment (RUC) or scarcity events, by providing greater assurance that pipeline capacity will be available to transport gas to those generating facilities when needed. The alternative transportation arrangement would be for the Luminant Plants to contract for interruptible transportation rights, which, as the name implies, provide the pipeline with greater contractual discretion to decline to deliver gas when called upon by the shipper. As a result, the use of only interruptible service would make it less likely that the Luminant Plants would have the necessary gas to operate when needed by ERCOT for the very reliability services like RUC for which verifiable costs are recoverable. To interpret the Protocols in a manner that would require Generation Resources like the Luminant Plants to contract for interruptible transportation rights in order to recover transportation costs when deployed for RUC would be an unjust and unreasonable result, in that it would create perverse incentives that would diminish reliability, contrary to the purpose of the services for which those costs are recoverable in the first place and in violation of ERCOT’s general obligations under the Public Utility Regulatory Act to ensure reliability of the grid.<sup>10</sup>

In attempting to offer an alternative reading of the Protocols in a recently proposed revision to the VCM,<sup>11</sup> ERCOT suggests that the current Protocols and VCM are in conflict; that the Protocols allow, but do not require, ERCOT to approve a fuel adder including transportation costs in approving verifiable costs for a resource; and that those costs are not recoverable if they are fixed, which ERCOT interprets to exclude the minimum requirements fee in the VCM. It appears that ERCOT is interpreting the fuel adder to be optional based on the use of the modifier “consideration” in the Protocols. While it is true that two of the Protocols quoted above (Sections 5.6.1.1(1)(a) and

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<sup>10</sup> Tex. Util. Code § 39.151 (a)(2) (“A power region must establish one or more independent organizations to perform the following functions: ... (2) ensure the reliability and adequacy of the regional electrical network.”).

<sup>11</sup> VCM Revision Request (“VCMRR”) 031 (filed Feb. 3, 2021).

5.6.1.2(2)) require a “consideration” of a fuel adder, it is not reasonable to interpret that to mean that ERCOT may optionally decide to disallow transportation costs in that fuel adder that are expressly allowed by the current VCM. The plain language meaning of “consideration” in this context is “take into account,” and in “taking into account” the calculation of a fuel adder to include in a Resource’s verifiable costs, the Protocols also define that fuel adder as one that must compensate for transportation costs as defined in the VCM. Thus, in considering what fuel adder to approve, ERCOT must do so in a way that compensates for the transportation costs as defined in the VCM, and those costs expressly include the Demand Charges at issue here. If ERCOT wishes to change the VCM (as it has proposed to do, contemporaneously with notifying Luminant of its intent to rescind the VCFAs for the Luminant Plants), then ERCOT must follow the applicable process in the VCM, which requires the stakeholders to vote on that proposed change. Neither the VCM, nor the Protocols allow ERCOT to unilaterally apply the VCM in any manner other than how the language actually reads now.

In sum, because a harmonious reading of the Protocols is available, which applies both the restriction against inclusion of “fixed costs” in verifiable costs and the requirement for VCFAs to include transportation costs as defined in the VCM (i.e., which defines them to include costs with a non-variable monthly dollar amount like the Demand Charges), and because that reading of the Protocols is also the only one in this instance that produces a “just and reasonable” result, ERCOT is required to apply that interpretation and leave the previously-approved VCFAs in place.

II. CONCLUSION

For the reasons set forth above, Luminant requests that ERCOT reconsider its proposal to rescind the Luminant Plants' VCFAs for DeCordova, Graham, Morgan Creek, and Trinidad, and instead leave those VCFAs in place.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ian Haley', with a long horizontal stroke extending to the right.

Ian Haley

**EXHIBIT 5A:**

**ERCOT'S FEBRUARY 26, 2021 REJECTION AND RESCISSION OF FUEL  
ADDERS FOR LUMINANT RESOURCES (REDACTED)**

***UNREDACTED VERSION IS SUBMITTED UNDER SEAL AS HIGHLY  
SENSITIVE PROTECTED MATERIAL***

---

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**From:** "Gonzalez, Ino" <[Ino.Gonzalez@ercot.com](mailto:Ino.Gonzalez@ercot.com)>  
**Date:** February 26, 2021 at 1:47:02 PM CST  
**To:** "Haley, Ian" <[ian.haley@vistracorp.com](mailto:ian.haley@vistracorp.com)>  
**Cc:** "Frazier, Amanda" <[amanda.frazier@vistracorp.com](mailto:amanda.frazier@vistracorp.com)>, "Siegel, Samuel" <[Samuel.Siegel@luminant.com](mailto:Samuel.Siegel@luminant.com)>, "Ruane, Mark" <[Mark.Ruane@ercot.com](mailto:Mark.Ruane@ercot.com)>, "Rosel, Austin" <[Austin.Rosel@ercot.com](mailto:Austin.Rosel@ercot.com)>, "Magarinos, Marcelo" <[Marcelo.Magarinos@ercot.com](mailto:Marcelo.Magarinos@ercot.com)>, "McGuire, Joshua" <[Joshua.McGuire@ercot.com](mailto:Joshua.McGuire@ercot.com)>  
**Subject:** FW: ERCOT Rejection and Notice to Rescind Fuel Adders for Luminant Resources

EXTERNAL EMAIL

Hello Ian,

Attached please find ERCOT's response to Luminant's February 17, 2021 letter in regards to ERCOT's decision to rescind fixed costs as described in ERCOT's February 3, 2021 letter.

Please let us know if you have any questions.

Sincerely,

Ino González  
ERCOT  
512-632-7927  
[Ino.gonzalez@ercot.com](mailto:Ino.gonzalez@ercot.com)



February 26, 2021

Luminant Energy Company LLC (QSE)

Subject: Rescission and Recalculation of Verifiable Fuel Adders for DeCordova, Graham, Lake Hubbard, Morgan Creek, Stryker Creek, and Trinidad Resources.

Dear Ian Haley,

ERCOT has considered the information and documentation you submitted on February 17, 2021. Consistent with ERCOT's letter of February 3, 2021, ERCOT has determined that ERCOT's December 18, 2019, approval of the following costs in the fuel adder values for the DeCordova, Graham, Lake Hubbard, Morgan Creek, Stryker Creek, and Trinidad Resources should be rescinded because these costs are appropriately characterized as fixed:

- Demand Fees included in the [REDACTED]
- Natural Gas Dispatch Service Fees included in the [REDACTED]
- Monthly Demand Charges included in the [REDACTED]
- Capacity Reservation Fees included in the [REDACTED]
- Monthly Reservation Charges included in the [REDACTED]

Based on this determination, ERCOT has completed the recalculation of the December 18, 2019, approved fuel adders for these Resources in accordance with paragraph (1)(f) of Section 11.2 of the Verifiable Cost Manual. ERCOT has determined the recalculated fuel adder values listed in the table below appropriately reflect the removal of fixed costs.

Values in \$/MMBtu	Value Approved Dec 18, 2019	ERCOT Recalculation with Fixed Costs Removed
<b>Decordova</b>	<b>1.02</b>	<b>0.35</b>
<b>Graham</b>	<b>3.74</b>	<b>1.19</b>
<b>Lake Hubbard</b>	<b>0.39</b>	<b>0.03</b>
<b>Morgan Creek</b>	<b>2.98</b>	<b>1.54</b>
<b>Stryker Creek</b>	<b>3.91</b>	<b>0.88</b>
<b>Trinidad</b>	<b>5.28</b>	<b>0.72</b>

Attached to this letter, ERCOT is providing a spreadsheet with a detailed description of the amounts that were removed from the fuel adder calculations as well as other changes required for accurate recalculations. Also attached is a copy of the workbook Luminant originally provided to ERCOT with the fuel adder submission entitled, "Luminant\_VCFuelAdder\_Submission\_v20190930 NEW - Recalculated." In the workbook, ERCOT highlighted the costs that were completely removed in red and highlighted costs that were recalculated (e.g., taxes) in yellow.

In accordance with paragraph (1)(g) of Section 11.2 of the Verifiable Cost Manual, Luminant has five Business Days to accept or reject the recalculated values presented above for each of the Resources. Luminant may accept or reject the values on a Resource-by-Resource basis. The deadline to accept or reject ERCOT's recalculated values is **March 5, 2021**. Failure to accept or reject ERCOT's approvable amounts by this date will be deemed as acceptance. ERCOT will begin using the revised values three Business Days after acceptance or the generic fuel adder value of \$0.50/MMBtu after rejection. Acceptance of the fuel adders for purposes of Section 11.2, paragraph (1)(g), does not waive Luminant's right to appeal this determination as provided in the Verifiable Cost Manual.

If Luminant wishes to dispute this determination, it may either appeal this determination within 20 Business Days pursuant to Section 12 of the Verifiable Cost Manual or submit a request for Alternative Dispute Resolution within 45 calendar days, as provided in Section 12.1(1) of the Verifiable Cost Manual.

If you have any questions about this letter, please do not hesitate to contact me.

Sincerely,

**/s/ Ino González**

Ino González  
Principal Market Acct. & Settlements  
ERCOT  
512-632-7927

Enclosures:    1. ERCOT Description of Removed Cost from Lum FAs  
                     2. Luminant\_VCFuelAdder\_Submission\_v20190930 NEW - Recalculated



**EXHIBIT 5B:**  
**SPREADSHEET ATTACHMENTS TO ERCOT'S FEBRUARY 26, 2021**  
**DECISION**

***SUBMITTED UNDER SEAL AS HIGHLY SENSITIVE PROTECTED***  
***MATERIAL***

**EXHIBIT 6:**  
**MARCH 5, 2021 LUMINANT REJECTION OF ERCOT RESCISSION**  
**DECISION**

**From:** Haley, Ian <ian.haley@vistracorp.com>  
**Sent:** Friday, March 5, 2021 1:54 PM  
**To:** Gonzalez, Ino  
**Cc:** Frazier, Amanda; Siegel, Samuel; Ruane, Mark; Rosel, Austin; Magarinos, Marcelo; McGuire, Joshua  
**Subject:** RE: ERCOT Rejection and Notice to Rescind Fuel Adders for Luminant Resources

Ino,

Pursuant to Section 11.2(1)(g) of the Verifiable Cost Manual, Luminant hereby rejects ERCOT's rescission and recalculation of Luminant's previously-approved verifiable cost fuel adders for DeCordova, Graham, Lake Hubbard, Morgan Creek, Stryker Creek, and Trinidad.

Thank you,  
Ian

Ian Haley  
ERCOT Regulatory Policy  
ian.haley@vistracorp.com  
vistracorp.com  
Vistra | 1005 Congress Ave | Suite 750 | Austin, TX, 78701  
o 512.349.6407 | m 512.673.9655

**From:** Gonzalez, Ino <Ino.Gonzalez@ercot.com>  
**Sent:** Friday, February 26, 2021 1:47 PM  
**To:** Haley, Ian <ian.haley@vistracorp.com>  
**Cc:** Frazier, Amanda <amanda.frazier@vistracorp.com>; Siegel, Samuel <Samuel.Siegel@luminant.com>; Ruane, Mark <Mark.Ruane@ercot.com>; Rosel, Austin <Austin.Rosel@ercot.com>; Magarinos, Marcelo <Marcelo.Magarinos@ercot.com>; McGuire, Joshua <Joshua.McGuire@ercot.com>  
**Subject:** FW: ERCOT Rejection and Notice to Rescind Fuel Adders for Luminant Resources

EXTERNAL EMAIL

Hello Ian,

Attached please find ERCOT's response to Luminant's February 17, 2021 letter in regards to ERCOT's decision to rescind fixed costs as described in ERCOT's February 3, 2021 letter.

Please let us know if you have any questions.

Sincerely,

Ino González  
ERCOT  
512-632-7927  
ino.gonzalez@ercot.com

**EXHIBIT 7:**  
**MARCH 5, 2021 ERCOT CONFIRMATION OF INTENT TO USE  
GENERIC FUEL ADDER**

**From:** Gonzalez, Ino <Ino.Gonzalez@ercot.com>  
**Sent:** Friday, March 5, 2021 2:37 PM  
**To:** Haley, Ian  
**Cc:** Frazier, Amanda; Siegel, Samuel; Ruane, Mark; Rosel, Austin; Magarinos, Marcelo; McGuire, Joshua  
**Subject:** RE: ERCOT Rejection and Notice to Rescind Fuel Adders for Luminant Resources

EXTERNAL EMAIL

Hi Ian,

Thank you for your respond. ERCOT received Luminant's rejection to the recalculated fuel adders for all the resources. Therefore, ERCOT will start utilizing the generic fuel adder of \$0.50/MMBtu for the DeCordova, Graham, Lake Hubbard, Morgan Creek, Stryker Creek, and Trinidad units effective March 10, 2021.

Thank you

Ino Gonzalez  
ERCOT

**From:** Haley, Ian [mailto:ian.haley@vistracorp.com]  
**Sent:** Friday, March 5, 2021 1:54 PM  
**To:** Gonzalez, Ino <Ino.Gonzalez@ercot.com>  
**Cc:** Frazier, Amanda <amanda.frazier@vistracorp.com>; Siegel, Samuel <Samuel.Siegel@luminant.com>; Ruane, Mark <Mark.Ruane@ercot.com>; Rosel, Austin <Austin.Rosel@ercot.com>; Magarinos, Marcelo <Marcelo.Magarinos@ercot.com>; McGuire, Joshua <Joshua.McGuire@ercot.com>  
**Subject:** RE: ERCOT Rejection and Notice to Rescind Fuel Adders for Luminant Resources

**\*\*\*\*\* EXTERNAL email. Please be cautious and evaluate before you click on links, open attachments, or provide credentials. \*\*\*\*\***

Ino,

Pursuant to Section 11.2(1)(g) of the Verifiable Cost Manual, Luminant hereby rejects ERCOT's rescission and recalculation of Luminant's previously-approved verifiable cost fuel adders for DeCordova, Graham, Lake Hubbard, Morgan Creek, Stryker Creek, and Trinidad.

Thank you,  
Ian

Ian Haley  
ERCOT Regulatory Policy  
[Ian.Haley@vistracorp.com](mailto:Ian.Haley@vistracorp.com)  
vistracorp.com  
Vistra | 1005 Congress Ave | Suite 750 | Austin, TX, 78701  
o 512.349.6407 | m 512.673.9655

**From:** Gonzalez, Ino <[Ino.Gonzalez@ercot.com](mailto:Ino.Gonzalez@ercot.com)>

**Sent:** Friday, February 26, 2021 1:47 PM

**To:** Haley, Ian <[ian.haley@vistracorp.com](mailto:ian.haley@vistracorp.com)>

**Cc:** Frazier, Amanda <[amanda.frazier@vistracorp.com](mailto:amanda.frazier@vistracorp.com)>; Siegel, Samuel <[Samuel.Siegel@luminant.com](mailto:Samuel.Siegel@luminant.com)>; Ruane, Mark <[Mark.Ruane@ercot.com](mailto:Mark.Ruane@ercot.com)>; Rosel, Austin <[Austin.Rosel@ercot.com](mailto:Austin.Rosel@ercot.com)>; Magarinos, Marcelo <[Marcelo.Magarinos@ercot.com](mailto:Marcelo.Magarinos@ercot.com)>; McGuire, Joshua <[Joshua.McGuire@ercot.com](mailto:Joshua.McGuire@ercot.com)>

**Subject:** FW: ERCOT Rejection and Notice to Rescind Fuel Adders for Luminant Resources

EXTERNAL EMAIL

Hello Ian,

Attached please find ERCOT's response to Luminant's February 17, 2021 letter in regards to ERCOT's decision to rescind fixed costs as described in ERCOT's February 3, 2021 letter.

Please let us know if you have any questions.

Sincerely,

Ino González  
ERCOT  
512-632-7927  
[Ino.gonzalez@ercot.com](mailto:Ino.gonzalez@ercot.com)

**EXHIBIT 8:**  
**ERCOT VERIFIABLE COST MANUAL (RELEVANT EXCERPTS)**

# **ERCOT Verifiable Cost Manual**

**January 1, 2021**

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consumed per start for each start type. This typical per-start fuel consumption is to be determined in accordance with the following rules:

- (a) When possible, startup fuel consumption rates are to be based on the amount of fuel a Resource has historically consumed per start.
- (b) For a Filing Entity that does not submit seasonal data, submitted historical usage data should, for each start type, include fuel consumption rates for the lesser of the last 10 starts or every start within the past three (3) years. For a Filing Entity that submits seasonal data, submitted historical usage data should, for each start type, include fuel consumption rates for the lesser of the last three (3) starts or every start within the past three years for each season. For each start type, the Filing Entity shall submit the historical fuel consumption data, an average amount of historical fuel consumption, and the fuel consumption rate that the Resource believes represents the current startup fuel consumption rate.
- (c) If a Resource does not have the historical fuel consumption rates for each start described above, the Filing Entity must submit the aforementioned data that it does possess and may also include per-start fuel consumption rates based on manufacturer suggested values or tests which are ERCOT approved.
- (d) If a Filing Entity submits historical startup fuel consumption data on a per hour basis (MMBtu/hour), it must also provide proof of the average number of hours it requires to reach LSL for each startup type.
- (e) In its sole discretion, however, ERCOT may choose not to accept the Filing Entity's submitted per-start fuel consumption rates if ERCOT determines that they do not represent a Resource's true startup fuel consumption or that they have not been proven in sufficient detail.
- (f) Historical fuel consumption rates must be based on documented metered reads when available.

### **3.4 Additional Rules for Submitting Fuel Costs**

- (1) Filing Entities that have been approved for verifiable costs will receive a default fuel adder of \$0.50/MMBtu, unless the Filing Entity elects to submit an actual fuel adder (\$/MMBtu) for each Resource for verification and approval by ERCOT. For a coal-fired or lignite-fired Resource, the default fuel adder will be set quarterly to the maximum of \$0.50/MMBtu or the Coal Fuel Adder (CF)(\$/MMBtu), where CF is determined by ERCOT quarterly as described in Section 14, Appendices, Appendix 11, Procedure for Determining the Fuel Adder for Coal and Lignite Resources with Approved Verifiable Costs. The default fuel adder will remain the default amount specified above until the Filing Entity establishes an actual fuel adder in those verifiable costs and the Filing Entity must continue to provide actual fuel costs as prescribed in paragraph (2) below. The fuel adder is included in the value of X for the Resource (VOXR) as described in Section 14, Appendix 6, Calculation and Application of Proxy Heat Rate and the Value of X for the Resource.

- (2) Any Filing Entity that submits an actual fuel adder must provide documentation that establishes the historical costs for fuel, including transportation, spot fuel, and any additional verifiable cost associated with fuel contracts that can be easily differentiated from the standard commodity cost of fuel and clearly attributable to the Resource for the period. The fuel adder for a rolling 12-month period is the difference between the Filing Entity's average fuel price paid (including all fees) during the period and the fuel price utilized by ERCOT for the corresponding Resource. The Filing Entity shall provide rolling 12-month supporting data to verify total fuel price for all purchased volumes to support the actual Resource fuel consumption. Data to support these costs should include, but are not limited to, accounting ledger entries, invoices, and copies of fuel contracts. In addition, the actual costs used to calculate the fuel adder may include, but are not limited to, the following categories: transportation, deliveries, storage, injection, withdrawal, imbalance, and minimum requirements fees. Other costs not described herein may be included and approved by ERCOT.
- (3) Review and approval of fuel costs follows the same timeline as verifiable costs; however, ERCOT may require additional time to verify the fuel costs based on the complexity of the submission. In such case, ERCOT will notify the Filing Entity within 15 Business Days of submission if additional time is needed. For clarification on the submission timeline for the fuel adder, please see the table below. The fuel adder will be implemented the first day of the month after fuel costs have been approved.

Submission Months	Submission Period	Review and Approval Period
March of previous year to February of current year	April	May-June
September of previous year to August of current year	October	November-December

### 3.5 Minimum Requirements Fee

- (1) A cost incurred by a Resource for transporting less fuel than the minimum required volume for the given time period, based on the contract terms.
- (2) Represents a portion of the total costs of the fuel adder.
- (3) Allocated to the total volume of fuel transported per the terms of the contract. The fee will be calculated as shown below:

$$\text{MRF } (\$/\text{MMBtu}) = \text{TMRFD } (\$) / \text{TF } (\text{MMBtu})$$

Where:

MRF = Minimum Requirements Fee

TMRFD = Total Minimum Requirements Fee Dollars

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

### **3.6 Fuel Type Percentages**

- (1) For each start type, the Filing Entity must provide documentation establishing the respective ratios of gas, oil, and solid fuel consumed during the startup through LSL sequence. Historical and/or manufacturer suggested ratios are to be submitted as percentages and in accordance with the manner of submitting startup fuel consumption data, detailed above. For each start type, the Filing Entity must calculate and submit:
  - (a) Total fuel consumption per-start (MMBtu/start); and
  - (b) The ratio of each type of fuel consumed to the total amount of fuel consumed per startup.
- (2) Filing Entities with approved fuel consumption ratios for the associated Resource are to submit updated data to ERCOT if they subsequently use a different fuel type during startup and if they also anticipate doing so for any substantial period of time, whether due to fuel market conditions or otherwise.

### **3.7 Non-Fuel Startup Costs**

- (1) Verifiable Non-Fuel Startup Costs represent a proxy for all non-fuel costs that a Resource incurs during the startup through Low Sustained Limit (LSL) and from breaker open to shutdown sequence. The costs that ERCOT considers in calculating this proxy include incremental operation and maintenance costs (Verifiable Operations & Maintenance (O&M)) that can reasonably be said to result from the Resource starting up. Verifiable O&M Costs include incremental emission costs applicable to net generation between BC and LSL. For more information see Section 2, General Rules of Verifiable Costs.
- (2) To be included as a Verifiable O&M Cost of Startup, O&M costs must be submitted in accordance with Section 9, Operating and Maintenance Cost Guidelines. ERCOT will not approve submitted O&M startup costs if the amounts or the methods used to calculate them do not coincide with other O&M costs a Filing Entity has submitted, unless there is a reasonable, documented reason for doing so. For example, startup operating costs might be different because there are greater chemical, water or emissions costs during the startup sequence. Also, it might be reasonable to multiply an hours-based maintenance cost by the amount of time it takes to complete a startup to LSL sequence. Additionally, if maintenance costs are allocated on a per-start basis, it might be reasonable for the maintenance component of verifiable startup costs to differ per start type.

### **3.8 Start Type Descriptions**

- (1) The following is a general description of startup costs per start type:

## **10 TIMELINES APPLICABLE TO THE SUBMISSION AND REVIEW OF VERIFIABLE COSTS**

- (1) This is the section of ERCOT's Verifiable Cost Manual that details the processes and procedures that apply to the submission and approval of Verifiable Costs.

### **10.1 Submission and Approval of Verifiable Cost Data**

- (1) A Filing Entity initiates the Verifiable Cost Process either via a Service Request with a category of "Verifiable Cost-Nodal" on the Market Information System (MIS) Certified Area or sending their costs via email to ERCOT. Verifiable Costs take effect no sooner than three Business Days after they are approved by ERCOT. Verifiable Costs will only be used prospectively.
- (2) A separate process applies to the submission of Event Specific Verifiable Costs, which must be submitted in accordance with the dispute process outlined in Protocol Section 9.14, Settlement and Billing Dispute Process. Event Specific Verifiable Costs take effect upon approval. They will be applied retroactively and will be used to resettle the Operating Day on which the costs were incurred. Furthermore, Event Specific Verifiable Costs are only valid for the specific event for which they are initially submitted; they will not be reused for any similar, subsequently occurring events.
- (3) When a Filing Entity initiates an iteration of the Verifiable Cost Process, the following must be submitted to ERCOT:
  - (a) The Verifiable Cost Template with all relevant fields completed;
  - (b) Electronic copies of supporting documentation and any required affidavits and signatures;
  - (c) A list of any physical supporting documentation that is being sent to ERCOT; and
  - (d) Any other relevant materials that this document requires to be submitted.
- (4) The timeline within this section pertains to Verifiable Costs, but not to Event Specific Verifiable Costs.

### **10.2 Timelines Applicable to the Submission and Approval of Verifiable Costs**

#### ***10.2.1 Timeline for Verifiable Cost Submissions***

- (1) With the exception of Verifiable Cost submissions for Resources that are required to update their Verifiable Costs, as described in paragraph (10) of Protocol Section 5.6.1, Verifiable Costs, Verifiable Costs submitted to ERCOT will be reviewed based on the following timeline:



- (a) Once a Resource's Verifiable Cost data is submitted, ERCOT will review the data for completeness and accuracy and to ensure the submission has met all of the requirements described within the guidelines of ERCOT's Verifiable Cost Manual.
- (b) Within 15 Business Days from the date on which the data is submitted, ERCOT will inform the submitting Filing Entity that:
  - (i) The review is complete and the amounts that ERCOT is able to approve are provided to the Filing Entity;
  - (ii) The review is complete and the submission was rejected;
  - (iii) The submission was incomplete; or
  - (iv) Additional supporting documentation must be submitted.
- (c) A Filing Entity must submit any additional information ERCOT requests no later than 30 Business Days after ERCOT first requests it. Multiple submissions of data are permissible, but a complete submission, which includes all information requested, must be made within 30 Business Days of ERCOT's request.
- (d) Upon receiving additional documentation, ERCOT will acknowledge receipt and review it for completeness within ten Business Days. If ERCOT receives all requested information, ERCOT will make a decision to approve or reject Verifiable Costs within the same ten Business Days.
- (e) At any time during the review and approval process, ERCOT may request up to an additional ten Business Days, if needed, to complete the review of the Filing Entities Verifiable Cost Submission.
- (f) At any time during the approval process, ERCOT may request additional information from a Filing Entity. All requests must be fulfilled within 30 Business Days.
- (g) From the time that ERCOT's final decision is provided, the Filing Entity has three Business Days to either accept or reject any amounts approved by ERCOT. If the Filing Entity rejects the amounts calculated by ERCOT, generic costs and caps will be used for Resources that currently do not have approved verifiable costs on file. Otherwise, the Resource's current verifiable costs will remain in effect until ERCOT and the Filing Entity agree on the updated Verifiable Cost amounts. Failure to accept or reject ERCOT's approvable amounts within these three Business Days will be deemed as rejected.
- (h) If ERCOT does not approve a Resource's Verifiable Costs, the Filing Entity may file an appeal in accordance with the procedure described in Section 12, Appealing Rejected Verifiable Costs.

- (i) ERCOT's deadline for reviewing Verifiable Costs submissions, as described above, applies from the date ERCOT receives a submission. ERCOT will not postpone review until a Filing Entity's submission deadline has passed.

#### ***10.2.2 Timeline for Periodic Review of Updated Verifiable Costs***

- (1) ERCOT's timeline for reviewing the Verifiable Cost submissions for Resources that are required to update their Verifiable Costs, as described in paragraph (10) of Protocol Section 5.6.1, Verifiable Costs, shall be no more than 90 days from the date ERCOT receives the submission.

## **11 TIMELINE FOR RESCINDING APPROVAL OF VERIFIABLE COSTS**

### **11.1 Policy for Rescinding Previously Approved Verifiable Costs**

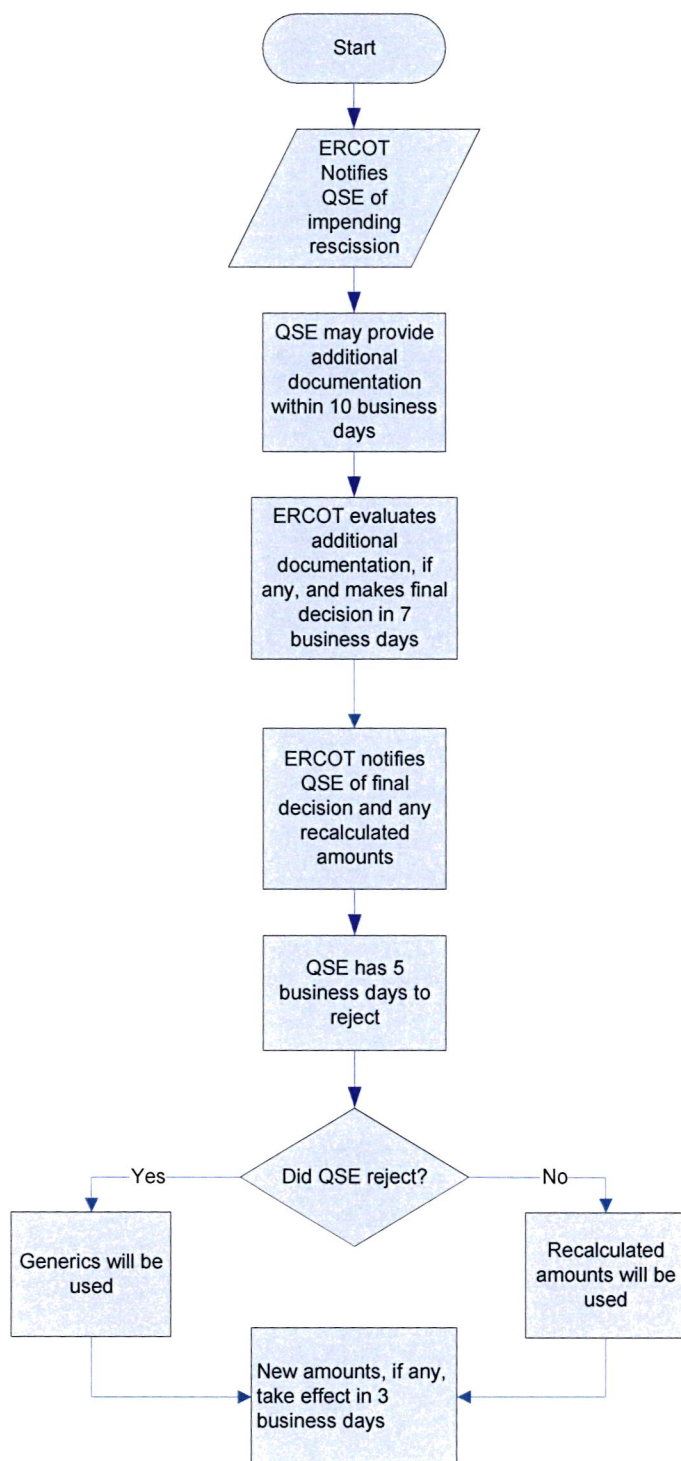
- (1) ERCOT has authority to, at any time, review and reject the Verifiable Costs that it has previously approved. ERCOT must, however, be judicious and impartial when rescinding its approval. Furthermore, ERCOT must not rescind Verifiable Costs unless there is a material, factual basis that justifies rescission. For example, rescission would be justified upon ERCOT determining: the submitted data was inaccurate based on public filings or comparisons with substantially similar generators; a type of O&M cost submitted was a fixed cost (or a portion thereof); changed Nodal Market policies disallow or limit certain costs, accounting practices, or calculation methodologies; etc. ERCOT must approach these types of situations with the aim of rescinding approval only to the extent necessary to eliminate all inaccurate cost data.
- (2) Rescission of approval does not affect the timing of Verifiable Cost updates mandated under Protocol Section 5.6.1, Verifiable Costs.
- (3) If the entire verifiable cost of a Resource (Fuel and O&M) is rescinded, then the payment to the QSE will be based on the Resource Category Generic Caps.
- (4) If ERCOT only rescinds approval for a specific type of costs (or reduces the approved amount), ERCOT will recalculate the Resource's Verifiable Costs using the corrected data, other unchanged amounts, and the previous calculation methodology. The Filing Entity has the option to reject ERCOT's recalculated amount. Generic costs will apply to Resources that reject the amounts recalculated by ERCOT.
- (5) Finally, a decision by ERCOT to rescind approval does not immediately take effect. ERCOT must first provide an affected Filing Entity with notice and then permit that entity a chance to respond. During this interim period, the unaltered Verifiable Costs will still be in use.

### **11.2 Timeline Applicable to Rescinding Approval of Verifiable Costs**

- (1) The process of rescinding Verifiable Costs proceeds according to the following timeline:
  - (a) Once ERCOT decides to initiate rescinding a Resource's Verifiable Costs, ERCOT must provide the Filing Entity with notice of:
    - (i) The impending rescission;
    - (ii) The amounts and or categories that will no longer be approved;
    - (iii) The specific reason(s) for rescission;
    - (iv) The date on which notice is being provided; and

- (v) The last date a Resource may submit explanatory information.
- (b) A Filing Entity has ten (10) Business Days after the day on which they receive notice to provide ERCOT with any documents, justifications, and other information that supports inclusion of the cost in question. Not submitting supporting information or making untimely submission is deemed as acquiescence.
- (c) After the passing of the last day a Filing Entity can submit explanatory information, ERCOT has seven (7) Business Days to review all submissions and to reach a decision.
- (d) ERCOT will inform Filing Entities whether or not it will be rescinding its prior approval within one (1) Business Day of reaching its decision.
- (e) If ERCOT is sufficiently persuaded by a Filing Entity's supplementary information and determines that no costs had been improperly included, ERCOT will not update the stored Verifiable Costs.
- (f) If a Filing Entity did not submit any information, if a Filing Entity submitted information that was unpersuasive, or if a Filing Entity submitted information that only persuaded ERCOT to approve a portion of the costs in question, ERCOT must recalculate and update the Resource's Verifiable Costs. These recalculated amounts will be communicated to the Filing Entity at the same time that ERCOT informs the Filing Entity of its decision.
- (g) Once ERCOT's final decision and recalculated amounts are available, Filing Entities have five (5) Business Days to accept or reject any amounts approved by ERCOT. If a Filing Entity rejects the amounts recalculated by ERCOT, generic costs will be used. Failure to accept or reject ERCOT's approvable amounts within these five Business Days will be deemed as acceptance.
  - (i) Rejection of ERCOT's recalculated amounts will not affect the timing of Verifiable Cost updates mandated under Protocol Section 5.6.1, Verifiable Costs.
  - (j) Any changes to a Resource's Verifiable Costs—whether due to recalculation or replacement with generics—take effect three (3) Business Days after a Filing Entity accepts them.
- (2) Any Filing Entity wishing to appeal a rescission of their Verifiable Costs must follow the procedures provided in Section 12, Appealing Rejected Verifiable Costs.

Chart 5: Timeline Applicable to Rescinding Approval of Verifiable Costs  
References to “QSE” in the following Timeline should be read to be “Filing Entity”



**EXHIBIT 9:**  
**COMPARISON OF LUMINANT FUEL ADDERS BEFORE ERCOT**  
**RESCISSION TO GENERIC ADDERS**

## Exhibit 9

### Comparison of Luminant's Fuel Adder Before ERCOT Rescission to Generic Adders

Plants	Values Approved Dec. 18, 2019 (\$/MMBtu)	Generic Adders VCM <sup>1</sup> § 3.4 (\$/MMBtu)
Decordova	1.02	0.50
Graham	3.74	0.50
Morgan Creek	2.98	0.50
Stryker Creek	3.91	0.50
Trinidad	5.28	0.50

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<sup>1</sup> Verifiable Cost Manual.

**EXHIBIT 10:**  
**AFFIDAVIT OF ERIC WURZBACH**



STATE OF TEXAS           §  
                                     §  
COUNTY OF   Dallas   §

**AFFIDAVIT OF ERIC WURZBACH**

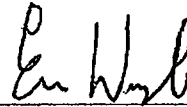
BEFORE ME, the undersigned authority appeared, being first duly sworn, deposed and stated:

1. "My name is Eric Wurzbach. I am over the age of twenty-one and am competent to make the following statements.
2. I am Senior Director of Natural Gas for Luminant Energy Company LLC ("Luminant") and Vistra Corp. ("Vistra"), having their principal place of business at 6555 Sierra Drive, Irving, Texas 75039.
3. I have been responsible, in various positions at several companies, for purchasing natural gas and obtaining storage and transportation of that natural gas to natural-gas-fired power generation facilities. I have over two decades of experience in this industry and 14 years of experience negotiating and implementing these gas contracts. I have had overall responsibility for Luminant in this gas procurement function since 2018.
4. In my experience, it is not possible to obtain firm transportation rights for shipment of natural gas to a power generation facility in ERCOT without agreeing contractually to pay the transporting pipeline a minimum monthly or annual cash payment. This minimum payment is often described in the contract using terms like "demand fee," "demand charge," "minimum take fee," "minimum requirements fee," "reservation fee," "reservation charge," "dispatch service," or similar terms. I will generically refer to all of these using one term: "demand charge." The distinguishing feature of such a demand charge is that it provides the transporting pipeline with certainty that it will receive a certain minimum amount of cash payment from the shipper, regardless of the volume of gas transported.
5. In my experience, if a shipper seeking transportation of natural gas fuel to a power generation facility in ERCOT does not agree to pay such a demand charge, the shipper will

not be able to obtain firm transportation rights, and thus will obtain only interruptible transportation rights.

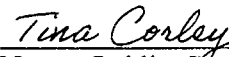
6. Firm transportation rights give the shipper greater confidence that pipeline capacity will be available to transport gas to the shipper's delivery point than do interruptible transportation rights. That is because the pipeline has greater contractual discretion, when providing interruptible transportation service, to decline to deliver gas called upon by the shipper than the pipeline does when providing firm transportation service. Accordingly, contracting for firm transportation service promotes greater certainty and reliability in power generation facility operations.

The foregoing statements offered by me are true and correct to the best of my knowledge and belief."



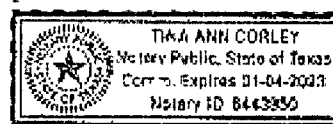
Eric Wurzbach

SWORN TO AND SUBSCRIBED TO BEFORE ME, the undersigned authority, on the  
4 day of March 2021.



Notary Public, State of Texas

Dallas County



**EXHIBIT 11:**  
**ERCOT VERIFIABLE COST MANUAL REVISION REQUEST 031**

## Verifiable Cost Manual Revision Request

<b>VCMRR Number</b>	<b><u>031</u></b>	<b>VCMRR Title</b>	<b>Clarification Related to Variable Costs in Fuel Adders</b>
<b>Date Posted</b>	February 3, 2021		

<b>Requested Resolution</b>	Normal
<b>Verifiable Cost Manual Sections Requiring Revision</b>	1.4, Global Definitions 3.4, Additional Rules for Submitting Fuel Costs 3.5, Minimum Requirements Fee (delete)
<b>Related Documents Requiring Revision/Related Revision Requests</b>	None
<b>Revision Description</b>	<p>This Verifiable Cost Manual Revision Request (VCMRR):</p> <ul style="list-style-type: none"> <li>• Defines variable costs and clarifies that all cost components used to calculate a Filing Entity's fuel adder should also be based on variable costs;</li> <li>• Removes the minimum requirements fee cost category from the examples of cost categories that may be included in the fuel adder; and</li> <li>• Changes the review timeline detailed in paragraph (3) of Section 3.4 to give ERCOT the ability to review and follow up on more complex cost submissions.</li> </ul>
<b>Reason for Revision</b>	<p><input checked="" type="checkbox"/> Addresses current operational issues.</p> <p><input type="checkbox"/> Meets Strategic goals (tied to the <u>ERCOT Strategic Plan</u> or directed by the ERCOT Board).</p> <p><input checked="" type="checkbox"/> Market efficiencies or enhancements</p> <p><input type="checkbox"/> Administrative</p> <p><input type="checkbox"/> Regulatory requirements</p> <p><input type="checkbox"/> Other: (explain) (please select all that apply)</p>
<b>Business Case</b>	ERCOT has determined that a conflict exists between the Protocols and the Verifiable Cost Manual to the extent the Verifiable Cost Manual allows fixed costs to be used when calculating fuel adders.

## Verifiable Cost Manual Revision Request

	<p>Paragraph (5)(a) of Protocol Section 5.6.1, Verifiable Costs, states that unit-specific verifiable costs may not include fixed costs, which are defined in that provision as “any cost that is incurred regardless of whether the unit is deployed or not.” Sections 3.4 and 3.5 of the Verifiable Cost Manual purport to allow minimum requirements fees to be included in the fuel adder. A minimum requirements fee is a fee charged for a certain guaranteed minimum amount of pipeline capacity. The fee is charged whether or not the total pipeline capacity is used and is therefore a fixed cost. Additionally, Section 3.4 of the Verifiable Cost Manual includes a list of cost categories used in calculating the actual fuel adder such as storage and transportation fees, but does not clearly state that all costs submitted in those categories must be variable. This VCMRR aligns the Verifiable Cost Manual with the Protocols by removing references to a minimum requirements fee and by clarifying that all costs used to calculate fuel adders must be variable.</p> <p>Although Protocol Section 5.6.1.1, Verifiable Startup Costs, and Section 5.6.1.2, Verifiable Minimum-Energy Costs, both contemplate that verifiable startup and minimum energy costs may include a “fuel adder that compensates for the transportation and purchasing of spot fuel as described in the Verifiable Cost Manual,” that language does not affect the application of the requirement in Section 5.6.1 that those costs cannot be fixed. ERCOT therefore reads Section 5.6.1.1 and 5.6.1.2 to provide that a fuel adder is permitted, but only if it is limited to recovery of variable costs.</p>
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Sponsor	
<b>Name</b>	Mark Ruane and Nathan Bigbee
<b>E-mail Address</b>	<a href="mailto:mark.ruane@ercot.com">mark.ruane@ercot.com</a> ; <a href="mailto:nathan.bigbee@ercot.com">nathan.bigbee@ercot.com</a>
<b>Company</b>	ERCOT
<b>Phone Number</b>	512.248.6534; 512.248.7093
<b>Cell Number</b>	512.578.5840; 512.695.9984
<b>Market Segment</b>	Not Applicable

Market Rules Staff Contact	
<b>Name</b>	Brittney Albracht
<b>E-Mail Address</b>	<a href="mailto:Brittney.Albracht@ercot.com">Brittney.Albracht@ercot.com</a>
<b>Phone Number</b>	512-225-7027

# Verifiable Cost Manual Revision Request

## Proposed Verifiable Cost Manual Language Revision

### 1.4 Global Definitions

- (1) Where this Manual uses the generic phrase “Verifiable Costs,” it is intended to refer to the sum of any applicable, Verified Operating and Maintenance Costs and any appropriate, Verified Fuel Costs. ERCOT itself calculates Fuel Costs, but does so using Fuel Consumption data that have been submitted and verified. Thus, the Fuel Cost component implied by the term “Verifiable Costs” should be interpreted to mean whichever of the following is contextually appropriate:
  - (a) Fuel Consumption per-start (MMBtu/start)
  - (b) Fuel Consumption per-hour at LSL (MMBtu/hr)
  - (c) Fuel Consumption as determined from submitted heat rate (a measure of generator efficiency) data
- (2) The following are several abbreviations that are used throughout this Manual and the intended meaning of each:
  - (a) “AHR Curve” denotes Average Heat Rate Curve
  - (b) “CCP” denotes Combined Cycle Plant
  - (c) “FIP” denotes Fuel Index Price
  - (d) “FOP” denotes Fuel Oil Price
  - (e) “IHR Curve” denotes Incremental Heat Rate Curve.
  - (f) “I/O Curve” denotes Input-Output Curve
  - (g) “LSL” denotes Low Sustained Limit
  - (h) “HSL” denotes High Sustained Limit
  - (i) “Manual” refers to this document, ERCOT’s Verifiable Cost Manual
  - (j) “MMBtu” denotes one-million British Thermal Units
  - (k) “O&M costs” denotes Operations and Maintenance costs.
  - (l) “QSE” denotes Qualifying Scheduling Entity
  - (m) “RUC” denotes the Reliability Unit Commitment
  - (n) “SGR” denotes Split Generation Resource
  - (o) “VOM” denotes Variable O&M
  - (p) “VCMS” denotes Verifiable Cost Management System
  - (q) “lb” denotes Pounds-Mass
  - (r) “WMS” Wholesale Market Subcommittee
  - (s) “LEL” denotes Low Emergency Limit

## Verifiable Cost Manual Revision Request

- (t) “HEL” denotes High Emergency Limit
- (u) “PPA” denotes Power Purchase and Tolling Agreements
- (v) “Filing Entity” denotes the Entity which files Verifiable Cost data with ERCOT, whether a Qualified Scheduling Entity or a Resource Entity.
- (w) “BC” denotes breaker close
- (x) “VC” denotes Verifiable Costs
- (y) “Shutdown Costs” denotes those fuel costs (Including auxiliary boiler fuel and auxiliary-equipment fuel or electrical power requirements but excluding normal plant heating) which are incurred within three hours after Breaker Open.
- (z) “Variable costs” are costs that are not fixed costs as defined in paragraph (5) of Protocol Section 5.6, RUC Cost Eligibility.

### 3.4 Additional Rules for Submitting Fuel Costs

- (1) Filing Entities that have been approved for verifiable costs will receive a default fuel adder of \$0.50/MMBtu, unless the Filing Entity elects to submit an actual fuel adder (\$/MMBtu) for each Resource for verification and approval by ERCOT. For a coal-fired or lignite-fired Resource, the default fuel adder will be set quarterly to the maximum of \$0.50/MMBtu or the Coal Fuel Adder (CF)(\$/MMBtu), where CF is determined by ERCOT quarterly as described in Section 14, Appendices, Appendix 11, Procedure for Determining the Fuel Adder for Coal and Lignite Resources with Approved Verifiable Costs. The default fuel adder will remain the default amount specified above until the Filing Entity establishes an actual fuel adder in those verifiable costs and the Filing Entity must continue to provide actual fuel costs as prescribed in paragraph (2) below. The fuel adder is included in the value of X for the Resource (VOXR) as described in Section 14, Appendix 6, Calculation and Application of Proxy Heat Rate and the Value of X for the Resource.
- (2) Any Filing Entity that submits an actual fuel adder must provide documentation that establishes the historical variable costs for fuel, ~~including~~ transportation, spot fuel, storage, and any additional verifiable cost associated with fuel contracts that can be easily differentiated from the standard commodity cost of fuel and clearly attributable to the Resource for the period. The fuel adder for a rolling 12-month period is the difference between the Filing Entity’s average fuel price paid (including ~~all~~ only variable fees) during the period and the fuel price utilized by ERCOT for the corresponding Resource. The Filing Entity shall provide rolling 12-month supporting data to verify total fuel price for all purchased volumes to support the actual Resource fuel consumption. Data to support these costs should include, but are not limited to, accounting ledger entries, invoices, and copies of fuel contracts. In addition, the actual costs used to calculate the fuel adder may include variable costs associated with, but ~~are~~ not limited to, the following categories: transportation, commodity, deliveries, storage, injection, withdrawal, and imbalance, ~~and minimum requirements fees~~. Other variable costs not described herein may be included ~~and~~ if approved by ERCOT.

## Verifiable Cost Manual Revision Request

- (3) Review and approval of fuel costs follows the same timeline as verifiable costs; however, ERCOT may require additional time to verify the fuel costs based on the complexity of the submission. In such case, ERCOT will notify the Filing Entity ~~within 15 Business Days of submission~~ if additional time is needed. For clarification on the submission timeline for the fuel adder, please see the table below. The fuel adder will be implemented the first day of the month after fuel costs have been approved.

Submission Months	Submission Period	<u>ERCOT Review and Approval Period</u> <sup>1</sup>
March of previous year to February of current year	April	May-June
September of previous year to August of current year	October	November-December

### ~~3.5 — Minimum Requirements Fee~~

- (1) ~~A cost incurred by a Resource for transporting less fuel than the minimum required volume for the given time period, based on the contract terms.~~
- (2) ~~Represents a portion of the total costs of the fuel adder.~~
- (3) ~~Allocated to the total volume of fuel transported per the terms of the contract. The fee will be calculated as shown below:~~

$$\text{MRF } (\$/\text{MMBtu}) = \text{TMRFD } (\$) / \text{TF } (\text{MMBtu})$$

~~Where:~~

~~MRF = Minimum Requirements Fee~~

~~TMRFD = Total Minimum Requirements Fee Dollars~~

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

<sup>1</sup> ERCOT will approve fuel adders during the Review Period unless it determines additional time is needed.



**EXHIBIT 12:**  
**PROPOSED ORDER SUSPENDING ERCOT'S RESCISSION DECISION**

DOCKET NO. \_\_\_\_\_

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

**ORDER SUSPENDING THE ELECTRIC RELIABILITY COUNCIL OF TEXAS, INC.'S  
DECISION TO RESCIND ITS DECEMBER 18, 2019 APPROVAL OF LUMINANT  
ENERGY COMPANY LLC'S FUEL ADDERS FOR THE DECORDOVA, GRAHAM,  
MORGAN CREEK, STRYKER CREEK, AND TRINIDAD PLANTS**

The Commission has considered the Complaint and Request for Emergency Relief by Luminant Energy Company LLC (Luminant) against the Electric Reliability Council of Texas, Inc. (ERCOT) (hereafter, Complaint). Having reviewed the Complaint and its associated Exhibits, the Commission finds:

- (1) The Commission has jurisdiction over the dispute between the Parties;
- (2) The Commission has authority to suspend enforcement of ERCOT's decision on a showing of good cause;
- (3) Luminant has shown good cause for suspension of ERCOT's decision to rescind its December 18, 2019 approval of Luminant's fuel adders for the DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad Plants by showing:
  - a. Luminant, and potentially electricity consumers, will suffer immediate and irreparable harm if ERCOT's recission decision is allowed to stand, because Luminant will suffer immediate and irreparable financial loss and the reliability of the electric grid will be jeopardized;
  - b. No harm will result to others if the suspension is ordered; and

c. Luminant is likely to succeed on the merits of its complaint.

Based on these findings, the Commission hereby suspends ERCOT's decision to rescind its December 18, 2019 approval of Luminant's fuel adders for the DeCordova, Graham, Morgan Creek, Stryker Creek, and Trinidad Plants during the pendency of the complaint proceeding while the Commission considers the merits of Luminant's complaint.

Signed at Austin, Texas the \_\_\_\_ day of March 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

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ARTHUR C. D'ANDREA, CHAIRMAN

**EXHIBIT 13:**  
**PROPOSED ORDER SETTING BRIEFING SCHEDULE**

DOCKET NO. \_\_\_\_\_

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

**ORDER ESTABLISHING A BRIEFING SCHEDULE**

The Commission orders that the Parties comply with the following briefing schedule in the presentation of their respective arguments to the Commission regarding the issues raised in Luminant's Complaint:

Luminant's Brief on the Merits: Due on March 31, 2021

ERCOT's Response Brief on the Merits: Due on April 22, 2021;

Luminant's Reply Brief: Due on May 6, 2021

Signed at Austin, Texas the \_\_\_\_ day of March 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

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ARTHUR C. D'ANDREA, CHAIRMAN