

April 15, 2021

Delivered via Market Notice

To Whom It May Concern:

We have received formal requests to inspect or copy some of our files. A copy of these requests for information are enclosed. The requested files include records we received from you or from your company. The Office of the Attorney General is reviewing this matter, and they will issue a decision on whether Texas law requires us to release your records. Generally, the Public Information Act (the "Act") requires the release of requested information, but there are exceptions. As described below, you have the right to object to the release of your records by submitting written arguments to the attorney general that one or more exceptions apply to your records. You are not required to submit arguments to the attorney general, but if you decide not to submit arguments, the Office of the Attorney General will presume that you have no interest in withholding your records from disclosure. In other words, if you fail to take timely action, the attorney general will more than likely rule that your records must be released to the public. If you decide to submit arguments, **you must do so not later than the tenth business day after the date you receive this notice.**

If you submit arguments to the attorney general, you must:

- a) identify the legal exceptions that apply,
- b) identify the specific parts of each document that are covered by each exception, and
- c) explain why each exception applies.

Gov't Code § 552.305(d). A claim that an exception applies without further explanation will not suffice. Attorney General Opinion H-436 (1974). You may contact this office to review the information at issue in order to make your arguments. We will provide the attorney general with a copy of the request for information and a copy of the requested information, along with other material required by the Act. The attorney general is generally required to issue a decision within 45 business days.

Please send your written comments to the Office of the Attorney General at the following address:

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

If you wish to submit your written comments electronically, you may only do so via the Office of the Attorney General's eFiling System. An administrative convenience charge will be assessed for use of the eFiling System. No other method of electronic submission is available. Please visit the attorney general's website at <http://www.texasattorneygeneral.gov> for more information.

In addition, you are required to provide the requestor with a copy of your communication to the Office of the Attorney General. Gov't Code § 552.305(e). You may redact the requestor's copy of your communication to the extent it contains the substance of the requested information. Gov't Code § 552.305(e). You may provide a copy of your communication to the governmental body who received the request and sent the notice.

Commonly Raised Exceptions

In order for a governmental body to withhold requested information, specific tests or factors for the applicability of a claimed exception must be met. Failure to meet these tests may result in the release of requested information. We have listed the most commonly claimed exceptions in the Government Code concerning proprietary information and the leading cases or decisions discussing them. This listing is not intended to limit any exceptions or statutes you may raise.

Section 552.101: Information Made Confidential by Law

Open Records Decision No. 652 (1997).

Section 552.110: Confidentiality of Trade Secrets and Commercial or Financial Information

Trade Secrets

Commercial or Financial Information:

Birnbaum v. Alliance of Am. Insurers, 994 S.W.2d 766 (Tex. App.—Austin 1999, pet. filed) (construing previous version of section 552.110), *abrogated by In re Bass*, 113 S.W.3d 735 (Tex. 2003).

Open Records Decision No. 639 (1996).

Open Records Decision No. 661 (1999).

Section 552.1101: Confidentiality of Proprietary Information

Section 552.113: Confidentiality of Geological or Geophysical Information

Open Records Decision No. 627 (1994).

Section 552.131: Confidentiality of Certain Economic Development Negotiation Information

If you have questions about this notice or release of information under the Act, please refer to the *Public Information Handbook* published by the Office of the Attorney General, or contact the attorney general's Open Government Hotline at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX). To access the *Public Information Handbook* or Attorney General Opinions, including those listed above, please visit the attorney general's website at <http://www.texasattorneygeneral.gov>.

Sincerely,

Electric Reliability Council of Texas, Inc.

Enclosure: Copy of requests for information
Copy of request for OAG ruling

cc:
Requestors
(w/o enclosures)

Open Records Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)



HANCE SCARBOROUGH, LLP
ATTORNEYS AND COUNSELORS AT LAW

Jay B. Stewart
Managing Partner
jstewart@hslawmail.com

April 15, 2021

VIA ELECTRONIC FILING

Justin Gordon

Office of the Attorney General
Chief - Open Government Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Request for a Determination of Applicability of the Texas Public Information Act,
OAG Tracking ID: OR87850321

Dear Mr. Gordon,

On March 1, 2021, our office filed a request for a determination as to the applicability of the Texas Public Information Act to the Electric Reliability Council of Texas, Inc (OAG Tracking ID: OR87850321). Our office also filed our 15-Day brief on March 8, 2021. We have identified additional representative requests seeking information that could implicate the PIA. As such we have attached those additional requests. We hereby incorporate the March 1st and March 8th filings by reference in regards to these additional requests. We have provided a copy of the March 1st and 8th filings to the requestor, and the March 1st filings to third parties with the third party notice.

Sincerely,

/s/ Jay B. Stewart

Jay B. Stewart

Enclosure: Additional Requests



March 1, 2021

VIA ELECTRONIC FILING

Justin Gordon

Office of the Attorney General
Chief - Open Government Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

RE: Determination of Applicability of Texas Public Information Act

Dear Mr. Gordon,

Following Winter Storm Uri, ERCOT has received numerous information requests through its online portal and other means. See <http://ercot.com/about/contact/inforequest>. Some of the requests cite the Texas Public Information Act, Tex. Gov't Code ch. 552, as a basis for the records request. Exhibit "A". The requests were received beginning on February 14, 2021.

The Public Utility Commission has implemented ERCOT-specific regulations that govern ERCOT's disclosure of public information. 16 Tex. Admin. Code § 25.362(e). The procedures ERCOT has adopted for handling record requests have similar deadlines and exceptions to disclosure that would be relevant to ERCOT under the PIA. ERCOT is concerned that if it is also subject to the PIA, its disclosure obligations under that statute would conflict with its PUC-implemented disclosure obligations. ERCOT is working expeditiously to respond to the information requests, and it intends to timely disclose as much information as its governing regulations permit. But because there is ambiguity about which disclosure scheme governs, ERCOT seeks a ruling from this office on whether it is subject to the PIA, while preserving its objections to the release of any information that is confidential by law. ERCOT submits this request within ten business days of the first request received. ERCOT has provided the requestors with a copy of this request and has notified each of those parties whose information is the subject of one or more of the information requests.

The PUC, which directly oversees ERCOT, has established specific information-disclosure regulations that take into account the unique nature of ERCOT's role and ERCOT's and the PUC's expertise. ERCOT, though organized as a nonprofit corporation, performs a critical governmental function while also being directly answerable to the PUC. As the "independent organization" certified by the PUC, ERCOT is responsible for "ensur[ing] the reliability and adequacy of the regional electrical network" and "ensur[ing] access to the transmission and distribution systems

for all buyers and sellers of electricity on nondiscriminatory terms.” Tex. Util. Code § 39.151(a). In short, ERCOT manages the State’s electric grid and wholesale electricity market. All of ERCOT’s operations are subject to the PUC’s plenary control. ERCOT is “directly responsible and accountable to the commission,” which in turn “has complete authority” over ERCOT. *Id.* § 39.151(d).

In its comprehensive statute creating and defining ERCOT’s role, the Legislature did not explicitly subject ERCOT to the PIA. However, recognizing that ERCOT performs a public function, the PUC has established a public-information regime that accounts for the unique nature of the information ERCOT holds. *See* 16 Tex. Admin. Code § 25.362(e). Under PUC Rule 25.362(e)(1), ERCOT must “adopt and comply with procedures that allow persons to request and obtain access to records” possessed by ERCOT. Responsive information must “normally be provided within ten business days.” *Id.* Importantly, “ERCOT’s procedures regarding access to records shall be consistent with this [rule] and commission orders.”

ERCOT must generally disclose information in its possession on request, but it must not disclose information “designated as Protected Information pursuant to ERCOT rules.” *Id.* § 25.362(e)(1)(A). ERCOT’s rules—known as protocols—are themselves binding legal rules enacted using rulemaking authority delegated from the PUC, which also has plenary authority to approve, reject, or modify them. *See* Tex. Util. Code § 39.151(d); *PUC v. Constellation Energy Commodities Grp.*, 351 S.W.3d 588, 595 (Tex. App.—Austin 2011, pet. denied) (ERCOT’s rules “have the force and effect of statutes”). Section 1.3.1.1 of ERCOT’s protocols thus defines, in granular detail, what records in its possession are protected and which are not. Records deemed protected by these PUC-approved rules include Critical Energy Infrastructure Information, the protection of which is vital to the system’s security, and enormous volumes of confidential business information that market participants must provide so that ERCOT can manage the State’s electricity market and grid.

If ERCOT declines, under these rules and protocols, to disclose protected information, the requestor may seek review from the PUC, which “may determine the validity of the asserted claim of confidentiality through a contested-case proceeding.” 16 Tex. Admin. Code § 25.362(e)(1)(C). The process is designed to answer “whether the information is subject to protection from disclosure under law.” *Id.* Rulings by the PUC in contested-case proceedings are subject to judicial review.

Subjecting ERCOT to the PIA would interfere with the PUC’s “direct[.]” and “complete” authority over ERCOT and would subject ERCOT to inconsistent regulatory regimes. ERCOT performs a public function. The system administration fee that funds ERCOT’s operations is collected pursuant to the State’s police power. *See* Tex. Util. Code § 39.151(e). Some requestors may therefore argue that ERCOT is a “governmental body” under the PIA because it “is supported in whole or in part by public funds.” Tex. Gov’t Code § 552.003(1)(A). However, this office need not contend with the PIA’s definition of “public funds,” *see id.* § 552.003(5), in order to determine that ERCOT is not subject to the PIA.

The problem is structural: subjecting ERCOT to the PIA would conflict with ERCOT’s enabling statute. *See City of Waco v. Lopez*, 259 S.W.3d 147, 153 (Tex. 2008) (holding “that a

specific statute will ordinarily prevail over a general statute when the two cannot be reconciled”). That statute gives the PUC “complete authority” over ERCOT, and pursuant to that “complete authority” the PUC has created a specialized public-information regime that accounts for ERCOT’s unique function and the PUC’s oversight role. Were the PIA to apply to ERCOT, the Office of the Texas Attorney General, rather than the PUC, would have authority to determine whether ERCOT holds are subject to disclosure. In that case, the PUC’s authority would no longer be complete—because the PUC’s authority over ERCOT’s records would be subordinate to the Attorney General’s. This would conflict not only with the language of ERCOT’s enabling act, but its purpose. The Legislature granted the PUC authority over ERCOT because it has expertise in the complicated subject matter for which ERCOT is responsible. This expertise is necessary to resolve disputes about whether records in ERCOT’s possession are confidential or should be disclosed. The Attorney General lacks the technical expertise the PUC enjoys.

For example, one category of “protected information” that ERCOT protocols prohibit ERCOT and its market participants from disclosing is “[r]esource-specific costs, design, and engineering data.” Protocols § 1.3.1.1.(1)(m). Determining what information falls within this category requires significant technical expertise and regulatory judgment in balancing the commercial sensitivity of information about individual generators with the needs of the broader market to have access to at least some basic generator parameter information for system modeling and generation development purposes. Similarly, recently approved protocols prohibit disclosure of ERCOT Critical Energy Infrastructure Information, which is defined as certain grid infrastructure information that “could foreseeably be useful to a person planning an attack on ERCOT System Infrastructure.” ERCOT Protocols §§ 1.3.2(1), 2.1 (eff. Apr. 1, 2021). Whether particular information satisfies this test requires expertise in the many possible ways in which this information could be used to compromise the many thousands of components of generators, control centers, transmission lines, and substations that make up the power grid. These interpretations are best overseen by the PUC.

ERCOT’s direct accountability to the PUC, Tex. Util. Code § 39.151(d), is likewise a barrier to the PIA’s application. The PUC has ordered ERCOT to disclose records “consistent with” the PUC’s rules. 16 Tex. Admin. Code § 25.362(e)(1). ERCOT could not comply with the PIA without violating an order from its direct overseer. *See Christus Health Gulf Coast v. Carswell*, 505 S.W.3d 528, 535–36 (Tex. 2016) (holding that “directly” “means ‘without the intervention of a medium or agent’ or ‘immediately’”).

Finally, a 2019 amendment to ERCOT’s enabling act confirms that ERCOT is not subject to the PIA. Because of its critical role, ERCOT must annually “conduct [an] internal cybersecurity risk assessment, vulnerability testing, and employee training” and report to the PUC regarding its compliance with “cybersecurity and information security laws.” Tex. Util. Code § 39.151(o). The Legislature specified that information reported *to the PUC* under this provision “is confidential and not subject to disclosure” under the PIA. *Id.* § 39.151(p). While the Legislature deemed this information confidential, it did not provide that the same information was not subject to disclosure when held by ERCOT, rather than “submitted in a report” to the PUC. This implies that the PIA does not apply to ERCOT.

ERCOT asks this office to issue a ruling that ERCOT is not subject to the PIA. *See Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 362 (Tex. App.—Waco 1998, pet. denied) (observing that it is routine for this office to answer such questions). ERCOT emphasizes that it seeks this ruling only to avoid the impossibility of complying with dueling, inconstant disclosure obligations. The ruling will ensure the public's access to information that the PUC has deemed disclosable, but will guard information that could harm the system or the legally protectable interests of private parties. ERCOT intends to disclose as many records as the law permits. Any non-disclosure may be challenged before the PUC and, ultimately, reviewed in court.

In the event this office determines ERCOT is subject to the PIA, ERCOT objects to the disclosure of any records made confidential by its protocols or other law pursuant to Texas Government Code § 552.101, and further objects to the disclosure of any information otherwise exempted from disclosure under Texas Government Code §§ 552.101, 552.102, 552.103, 552.104, 552.107, 552.110, 552.1101, 552.133, and 552.139.

ERCOT has notified the Requestors that it is seeking a ruling from the Attorney General as to the applicability of the PIA to ERCOT, and if found to be subject to the PIA, a ruling of the Attorney General as to those items it claims should be excepted from disclosure. ERCOT has also notified third parties whose information is the subject of one or more of these requests.

Sincerely,



Jay B. Stewart

Exhibit "A" – Copies of Requests for Information

Exhibit "B" – Third Party Notice

From: [info](#)
To: [info](#)
Subject: Information Request from Ercot.com
Date: Thursday, April 1, 2021 4:20:45 PM

A visitor to the Ercot.com web site has requested information. The details of the request are below:

Name Bob Sechler

Company Austin American-Statesman

Address [REDACTED]
[REDACTED]

Email [REDACTED]

Phone [REDACTED]

Delivery Method Electronic

Request Under the Texas Public Information Act, I am requesting the following: Access to, or copies of, all of the winterization reports and/or plans submitted for generation units operating on the ERCOT grid for the winter 2020-2021 season.

From: [REDACTED]
To: [info](#)
Subject: Re: Request for Supporting Data in ERCOT Report
Date: Monday, April 12, 2021 1:58:32 PM
Attachments: [ERCOT Letter re Preliminary Report on Outage Causes P6 04 06 21.pdf](#)

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

April 12, 2021

Hello, ERCOT Information Request Services:

To clarify, the information that our organization is specifically seeking is the height of the green bars as a function of time on the attached graphic.

Those green bars reference a large set of natural-gas-fired generators at all times, thus the information does not refer to a specific generator.

While CGNP is able to magnify this graphic and make reasonable estimates of the heights of the green bars, we would prefer the actual data, which should be publicly available.

Sincerely,

/s/ Gene Nelson, Ph.D. CGNP Legal Assistant
Californians for Green Nuclear Power, Inc. (CGNP)

[REDACTED]

website

On 2021-04-12 18:36, info wrote:

> Dear Mr. Nelson,
>
> After reviewing the underlying electronic data used to prepare the
> "February 2021 Extreme Cold Weather Event: Preliminary Report on
> Causes of Generator Outages and Derates" report you inquired about,
> ERCOT has determined that the information can be used to derive
> information on specific generation resources that is protected under
> the ERCOT protocols and ERCOT's information request policy available
> at: <http://www.ercot.com/about/contact/inforequest> . Accordingly,
> ERCOT does not have public information that is responsive to your
> request.

>
> Let us know if we can be of further assistance.

>
> Sincerely,

>
>
> Information Request Services
> ERCOT Client Services
> 2705 West Lake Drive | Taylor, TX
> <http://www.ercot.com>

>
>
>
> -----Original Message-----

> From: [REDACTED]
> Sent: Thursday, April 8, 2021 9:24 AM
> To: Rickerson, Woody [REDACTED]
> Subject: Request for Supporting Data in ERCOT Report

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

>
> Woody Rickerson

> Vice President, Grid Planning and Operations Electric Reliability
> Council of Texas
> 7620 Metro Center Drive
> Austin, TX 78744

> [REDACTED]

> April 8, 2021

> RE: Request for Supporting Data in ERCOT Report

> Hello, Woody:

> Please see our attached letter addressed to you.

> /s/ Gene Nelson, Ph.D. CGNP Legal Assistant Californians for Green
> Nuclear Power, Inc. (CGNP)

> [REDACTED]

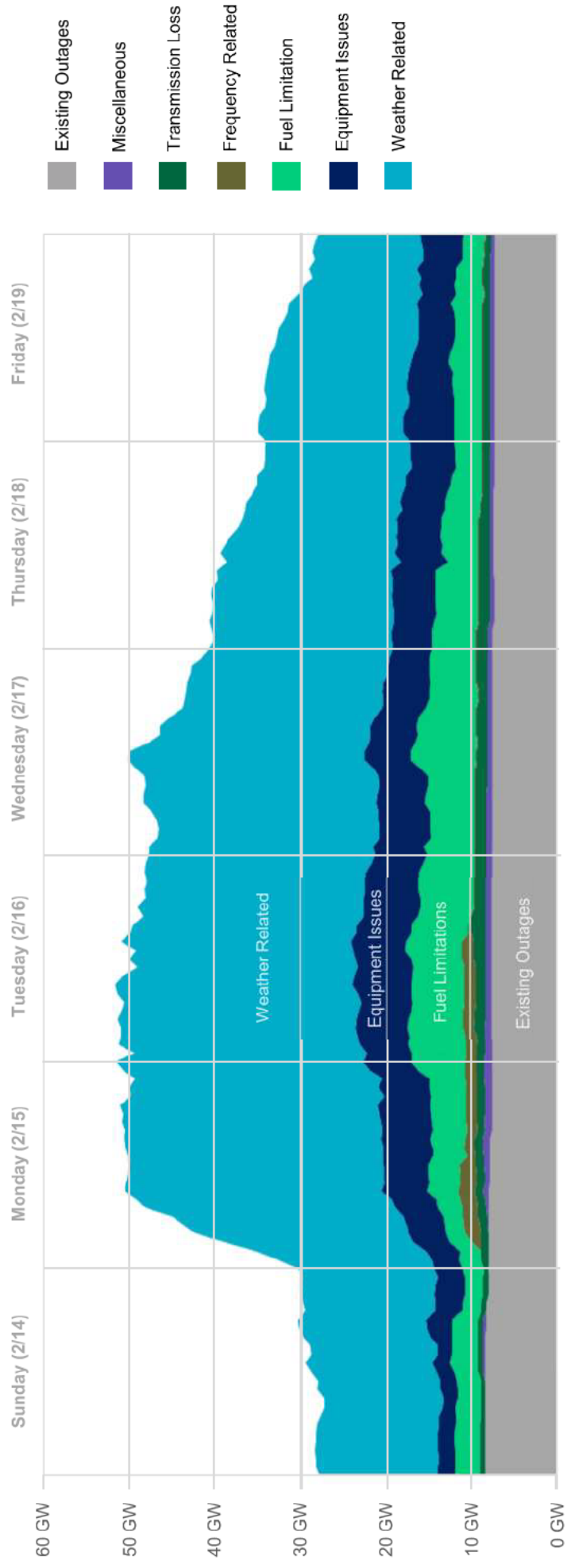
> cell
> email

> [REDACTED]

> website

Net Generator Outages and Derates by Cause (MW)

February 14 – 19, 2021



Version Date: 4/1/2021

Net generator outages at the beginning of each hour on February 14-19, 2021, by cause category.



From: [info](#)
To: [info](#)
Subject: Information Request from Ercot.com
Date: Thursday, April 1, 2021 2:08:14 PM

A visitor to the Ercot.com web site has requested information. The details of the request are below:

Name Deborah Strauss

Company KPRC-TV/NBC Houston

Address [REDACTED]
[REDACTED]

Email [REDACTED]

Phone [REDACTED]

Delivery Method Electronic

Request Copies of computer logs and/or audio and video recordings from ERCOT's control room on Monday, Jan. 15, 2021 from 12:01 a.m. to 5 a.m. Central time. To expedite this request you may redact: -Protected Information, including operational and pricing data. -CEII -Competitively-sensitive commercial/financial information - Trade secrets

From: [info](#)
To: [info](#)
Subject: Information Request from Ercot.com
Date: Tuesday, April 6, 2021 10:52:10 PM

A visitor to the Ercot.com web site has requested information. The details of the request are below:

Name John Ryan Hormell

Company Law Student

Address [REDACTED]
[REDACTED]

Email [REDACTED]

Phone [REDACTED]

Fax [REDACTED]

Delivery Method Electronic

Request All text messages concerning the winter storm and power outages in Texas from the following dates : February 10th - February 25th, 2021 from any and all of the 16 members of ERCOT's board of directors at the time.

From: [info](#)
To: [info](#)
Subject: Information Request from Ercot.com
Date: Friday, April 9, 2021 9:49:08 AM

A visitor to the Ercot.com web site has requested information. The details of the request are below:

Name Matthew Rodgers

Company Halliwell Engineering Associates

Address [REDACTED]
[REDACTED]

Email [REDACTED]

Phone [REDACTED]

Delivery Method Electronic

Request Halliwell Engineering Associates, Inc. is a forensic engineering firm that is assisting Zurich, NA to adjust claims of business interruption due to off-premises [electrical] service interruption in several locations in Texas. As part of our investigation, we are researching the reduction of power plant capacity generation capacity which contributed to the ERCOT demand that transmission companies shed load in February 2021. In the course of our research, we reviewed the ERCOT-issued report "Generation Resource and Energy Storage Resource Outages and Derates for February 10-19, 2021". For our reporting on these claims, we are looking for information regarding the specific cause of the reduction in generation capacity at the referenced plants, especially the nuclear, natural gas, and coal-fired locations, which we have extracted, sorted by owner and listed below: Barney Davis LLC Barney Davis B_DAVIG2, B_DAVIG3, and B_DAVIG4 Bastrop Energy Partners LP Bastrop Energy Center GTG1100, GTG2100, and ST0100 Brazos Electric Power Co-Op INC.: Jack County CT1, CT2, and STG Tenaska (Brazos) CT1, and STG Calpine Corp.: Brazos Valley Energy Units 1, 2, and 3; Corpus Christi Energy Center GT1, GT2, and ST1; Deer Park Energy Center GT6; Freestone Energy Center GT5, and ST6; PASGEN PSG_GT2, PSG_GT2, and PSG_ST2 City Of Austin DbA Austin Energy (Re) Decker Power Plant DPG2 Colorado Bend II Power LLC: Colorado Bend II CT7, CT8, and STG9 CPS Energy Braunig AVR1_CT2, and AVR1_ST; Calaveras OWS2 CPS Energy, NRG South Texas LP, City Of Austin DbA Austin Energy: South Texas Project –

STP_G1 EIF Channelview Cogeneration LLC Channelview COGEN CVC_G3
Formosa Utility Venture Ltd (Re) Formosa FORMOSG10, FORMOSG14,
FORMOSG15, and FORMOSG7 Golden Spread Electric Cooperative INC:
Antelope Elk Energy Center ELK_1, ELK_2, and ELK_3 Laredo LLC: Laredo Energy
Center G4, and G5 Lower Colorado River Authority, Sandy Creek Energy
Associates LP, Brazos Sandy Creek Electric Cooperative INC, and Sandy Creek
Energy Associates LP Two: Sandy Creek Energy Station Unit 1 Mountain Creek
Power LLC: Mountain Creek SES Unit 7 and Unit 8 NRG Texas Power LLC
Limestone Plant LEG_G2; TH Wharton THWST_4; WA Parish WAP_G5 and
WAP_G7 Nueces Bay LLC Nueces Bay NUECESG7, and NUECESG8 Oxy Vinyls LP:
Diamond Shamrock Battleground DIB_G1, DIB_G3, and DIB_G4 Shell Oil
Company (Re) Shell SL_G2 South Houston Green Power LLC: Amoco Oil CoGen
AMOCO_1, AMOCO_2, AMOCO_G1, AMOCO_G2, AMOCO_G3, and AMOCO_S1
Sweeny Cogeneration LLC: Sweeny COGEN SCLPC_4 Tenaska Frontier Partners
LTD: Frontier FTR_G1 The Dow Chemical Co Dow DOW_GT96 Wolf Hollow I
Power LLC: Wolf Hollow Gen CT2, and STG Wolf Hollow II Power LLC: Wolf
Hollow II CT4, CT5, and STG6