

PUC DOCKET NO. 46416

**APPLICATION OF ENTERGY TEXAS,)
INC. FOR A CERTIFICATE OF) PUBLIC UTILITY COMMISSION OF
CONVENIENCE AND NECESSITY TO)
CONSTRUCT MONTGOMERY) TEXAS
COUNTY POWER STATION)**

**APPLICATION FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO
CONSTRUCT MONTGOMERY COUNTY POWER STATION**

Entergy Texas, Inc. (sometimes referred to as “Entergy Texas,” “ETI,” or the “Company”) files this Application seeking approval of a Certificate of Convenience and Necessity (“CCN”) to construct Montgomery County Power Station, a new gas-fired generation facility to be located near Willis, Texas. In support, Entergy Texas respectfully shows as follows:

**I.
STATEMENT OF JURISDICTION**

The Public Utility Commission of Texas (“Commission” or “PUC”) has exclusive original jurisdiction over this matter pursuant to sections 14.001, 37.051(a), 37.053, 37.056, 37.058(b), and 39.452(j) of the Public Utility Regulatory Act (“PURA”).

**II.
DESCRIPTION OF APPLICANT & AUTHORIZED REPRESENTATIVES**

Entergy Texas provides fully-bundled electric delivery service to approximately 434,000 customers across 27 counties in Southeast Texas. All of Entergy Texas’ retail customers are affected by this application. Entergy Texas’s business address is 350 Pine Street, Beaumont, Texas 77701; its telephone number is (409) 838-6631. Its authorized representatives in this proceeding are:

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Pleadings and other documents should be served on Ms. Nicholson at the above address.

III. OVERVIEW OF THE APPLICATION

Through this application, Entergy Texas seeks Commission approval to amend its CCN to allow construction of a new combined-cycle gas turbine (“CCGT”) facility with 993 MW of nameplate capacity in Montgomery County, Texas. Referred to as the Montgomery County Power Station (“MCPS” or the “Project”), this highly efficient and economical unit will provide critical generation capacity to meet the long-term needs of ETI’s customers. The current overall cost estimate of MCPS is \$937.3 million, which is inclusive of the estimated costs of transmission upgrades, contingency, an allowance for funds used during construction, and expenses related to obtaining Commission certification. MCPS will produce an expected \$1.7 billion in net benefits to Entergy Texas’ customers through supply cost savings over the unit’s life.

Entergy Texas has an obligation to provide adequate and reliable service to its customers at a reasonable cost. In order to fulfill that obligation, Entergy Texas forecasts its customers' future load, its controlled capacity, and expected market conditions in order to make prudent decisions regarding how to meet its customers' long-term needs. The result of these analyses indicates a clear and pressing need for additional generation in the area served by ETI. As discussed more fully in accompanying testimony, several factors demonstrate the need for MCPS. ETI is projecting capacity deficits of approximately 700 MW in the year 2021, growing to 1.2 GW in 2022 and 1.7 GW by 2026. These deficits are largely the result of expected load growth, purchased power agreement ("PPA") expirations, and deactivation of aging generation units. ETI's load is expected to grow 3.6% (or 127 MW) by 2021 and 7.5% (or 268 MW) by 2026. During that same time frame, ETI will see more than 600 MW of PPAs expire. Further, ETI deactivated over 200 MW from its gas-fired steam generation fleet in 2016 and is preparing for the additional deactivation of more than 500 MW of gas-fired steam generation over the next ten years—each of which will have over 55 years of service at the time of their expected deactivation.

In addition, the MISO South capacity market is expected to reach a supply/demand equilibrium by 2022, or sooner, which portends significant capacity price increases. Failing to invest in long-term resources now will unreasonably expose ETI's customers to high capacity prices as demand meets or exceeds available capacity. Building MCPS will help ensure that customers are protected from expected high prevailing capacity prices while also yielding energy benefits unattainable through transmission investment alone.

MCPS will provide a significant increase in necessary capacity resources while producing numerous additional benefits. MCPS will not only provide a hedge against expected

capacity shortages and price volatility in MISO, but will significantly reduce Entergy Texas' customers supply costs by approximately \$1.7 billion over the life of the facility on a net present value basis. MCPS is expected to yield roughly \$100 million in fuel cost savings in the first full year of operation alone. These expected benefits will accrue directly to ETI's customers and, together with other changes under current forecast assumptions, are expected to fully offset the estimated first-year generation revenue requirement for MCPS.

MCPS will be located in Entergy Texas's Western Region, an area spanning just west of Woodville to a few miles west of College Station and from slightly south of The Woodlands to north of Huntsville. The Western Region is a "load pocket," *i.e.*, an area with a shortage of local generation capacity that makes it heavily reliant on transmission imports to serve customers. By adding regional generation, MCPS is expected to favorably impact locational marginal prices, address local voltage stability issues, support system reliability, allow greater flexibility in scheduling transmission maintenance, and support more rapid restoration of service to customers following major storm events such as hurricanes.

As a new, efficient CCGT facility, MCPS will enhance Entergy Texas's generation portfolio by adding economic base load and core load-following capacity, while replacing less efficient, aging resources. MCPS is expected to produce energy approximately 30% more efficiently than ETI's gas-fired steam units, and modern pollution controls will make MCPS one of the cleanest fossil fuel-fired resources in ETI's resource portfolio. Considering environmental regulations and current long-term forecasts for natural gas prices, CCGT generating resources such as MCPS are technologically and economically well-suited to provide the necessary supply at a reasonable cost.

The construction and operation of this highly efficient generating facility will not only benefit Entergy Texas' customers, but it will constitute a significant investment in the Southeast Texas economy, producing jobs and creating demand for additional goods and services. The project is expected to provide 25 new jobs while MCPS is in operation and 2500 new jobs during its construction, while adding hundreds of millions of dollars to the local economy above and beyond the amount invested to construct and operate MCPS.

Entergy Texas's application includes the written direct testimonies and exhibits of the following witnesses:

1. Sallie T. Rainer, President and Chief Executive Officer ("CEO") of Entergy Texas. Ms. Rainer explains (1) the operational benefits of MCPS, and the reasons why the Project is well-suited to meet ETI's long-term resource needs, (2) that the addition of MCPS to ETI's portfolio will produce savings for customers far in excess of the cost of the Project, and (3) how constructing and operating MCPS in Texas will produce a number of significant and long-term regional economic benefits for ETI's customers and Southeast Texas. Ms. Rainer also explains ETI's plan to terminate the Lewis Creek lease under which ETI's wholly owned subsidiary, GSG&T, currently owns Lewis Creek facilities, while ETI leases and operates those facilities.

2. Stuart Barrett, Director, Resource Planning and Market Operations for Entergy Texas. Mr. Barrett addresses ETI's long-term resource planning process, overall need for efficient and reliable capacity, the selection of MCPS as the lowest reasonable cost resource from the 2015 ETI RFP¹ and the proposed construction of MCPS at ETI's Lewis Creek site.

¹ The "2015 ETI RFP" is the 2015 Request for Proposals for Long-Term Combined-Cycle Gas Turbine Capacity and Energy Resources and Limited-Term Capacity and Energy Resources for Entergy Texas, Inc.

3. Charles W. Long, Director, Transmission Planning. Mr. Long addresses the transmission characteristics of ETI's Western Region and explains why new generation in the region is the optimal means of maintaining compliance with North American Electric Reliability Corporation and regional reliability planning standards. Mr. Long also discusses the costs and scopes of the various categories of transmission upgrades that may be required for MCPS, and the process by which identification of those upgrades will be finalized by MISO.

4. William C. John, Manager, Sales and Load Forecasting. Mr. John addresses the process used to develop ETI's load forecasts and presents the Company's recent load forecasts. Mr. John's testimony supports the reasonableness of the methodology utilized by ETI to forecast its future load, which is used in determining its long-term supply needs.

5. James Stevan Pilgrim, Director of Business and Economic Development for Entergy Texas. Mr. Pilgrim explains the Economic Development Pipeline, which is used to develop the large industrial component of ETI's sales forecast. Mr. Pilgrim also explains that MCPS will promote significant regional economic benefits in Southeast Texas both during construction and over the life of the unit.

6. Anthony P. Walz, Director of Planning Analysis for the System Planning and Operations ("SPO") organization. Mr. Walz provides an overview of the 2015 ETI RFP and the process by which MCPS was market-tested to establish that MCPS is the lowest reasonable cost resource alternative available to meet the needs of ETI's customers. Mr. Walz also summarizes the results of the 2015 ETI RFP, addressing the criteria used to evaluate the projects bid into the RFP and the rationale for the selection of MCPS, including the non-pricing assessments that contributed to that evaluation. Mr. Walz discusses the viability, deliverability, accounting, and credit assessments that were part of the overall evaluation of RFP proposals.

7. Thomas C. Kidd, Senior Staff Accountant in Accounting Policy. Mr. Kidd discusses the lease accounting standards that apply in the evaluation of proposals submitted into the ETI 2015 RFP, including the recently adopted Financial Accounting Standards Board (“FASB”) accounting standard applicable to contracts that are or contain a lease. Mr. Kidd also explains the accounting assessment performed to evaluate proposals submitted into the 2015 ETI RFP and uncertainty regarding the accounting impact of Purchased Power Agreements (“PPA”) resulting from recent changes in lease accounting. Finally, Mr. Kidd explains ETI’s termination of the Lewis Creek lease and dissolution of its wholly owned subsidiary, GSG&T, will not impact ETI’s accounting for Lewis Creek or MCPS-related costs.

8. Ellen Lapson, founder and lead consultant of Lapson Advisory, a division of Trade Resources Analytics LLC. Ms. Lapson advised the 2015 ETI RFP’s economic evaluation team, and her testimony discusses the financial risks, and appropriate modeling of the financial costs created by the debt equivalence of PPAs and tolling agreements in the context of the RFP evaluation.

9. Phong D. Nguyen, Manager, Financial Analysis for SPO. Mr. Nguyen describes the economic evaluation of proposals received in the 2015 ETI RFP and that MCPS ranked as the best long-term option in the RFP across numerous metrics. Mr. Nguyen supports the calculation of the \$1.7 billion in net benefits to ETI’s customers of constructing MCPS.

10. Charles E. DeGeorge, Manager, Generation Planning and Models for SPO. Mr. DeGeorge addresses the use of the AURORAxmp production cost model to provide key inputs used in the economic evaluation of the 2015 ETI RFP, specifically the variable supply cost of each conforming proposal. Mr. DeGeorge attests to the reasonableness of the AURORA modeling and its results.

11. Jonathan E. Long, Vice President, Project Management. Mr. Long provides a detailed overview of the MCPS Project, including the current cost estimate and schedule to construct MCPS, the management approach that the Company intends to employ during construction of the Project, the selection of Chicago Bridge & Iron, Inc. (“CB&I”)² for Engineering, Procurement and Construction services for MCPS, risk mitigation measures put in place to control Project risk, and the status of the air permits for MCPS given its location in a non-attainment zone.

12. Myra Glover, Director of Fossil Environmental, Health and Safety. Ms. Glover explains that MCPS will have a manageable and reasonable effect on environmental integrity and discusses key environmental impacts of MCPS construction on the local community. Her testimony addresses Public Utility Regulatory Act section 37.056(c)(4) factors and discusses the environmental assessment regarding the site and any necessary permits or approvals for MCPS other than the air permits discussed by Mr. Jon Long.

13. Abigail B. Weaver, Director, Jurisdictional Finance for Entergy Texas. Ms. Weaver describes the estimated investment to build MCPS and its associated transmission improvements, and describes the manner in which those costs are expected to be financed. Ms. Weaver also addresses the estimated financial impact of the construction on ETI during the course of the Project until the time the costs are included in ETI’s retail rates. Ms. Weaver explains the significance of the MCPS investment from the perspective of ETI and its customers and the benefits of full and timely cost recovery of the capital investment and operating expenses associated with MCPS.

² CB&I, is a large American engineering, procurement and construction company that specializes in projects for oil and gas companies. CB&I’s administrative headquarters are located in The Woodlands, Texas.

14. Shauna Lovorn-Marriage, Director, Regulatory Filings, discusses expected revenue requirement and rate impacts of MCPS and confirms that the dissolution of GSG&T will not affect ETI's rates.

In addition to the Company witnesses listed above, Wayne J. Oliver, Consultant with Merrimack Energy Group, Inc. also prepared direct testimony in this docket. Mr. Oliver was the Independent Monitor for the 2015 ETI RFP, and provides a description of the competitive solicitation process for the 2015 ETI RFP and the independent oversight that he provided during that process. Mr. Oliver discusses why the results of the RFP process support the selection of MCPS.

IV. CERTIFICATION CRITERIA

Pursuant to PURA § 37.056(a), "The commission may approve an application and grant a certificate only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public." According to PURA § 37.056(c),

The commission shall grant each certificate on a nondiscriminatory basis after considering:

- (1) the adequacy of existing service;
- (2) the need for additional service;
- (3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
- (4) other factors, such as:
 - (A) community values;
 - (B) recreational and park areas;
 - (C) historical and aesthetic values;
 - (D) environmental integrity;
 - (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
 - (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) of this title.

With respect to PURA § 37.056(c)(1)–(3) (the adequacy of existing service, the need for additional service, and the effect of granting the certificate on ETI), the Company’s Application demonstrates that in order to maintain reliable and affordable service to its customers, ETI must procure long-term capacity, energy, and voltage support, especially in the Western Region of its service area. As noted above, load growth, expiring PPAs, and aging infrastructure are expected to create a capacity shortfall of roughly 700 MW in 2021, increasing to 1,200 MW in 2022, and growing each year thereafter. Based on this load and capability forecast,³ it is clear that even with the addition of MCPS in 2021, the Company expects to face a capacity deficit the very next year. The RFP evaluation process discussed below demonstrates that MCPS is the single alternative that best matches the Company’s identified supply objectives at the lowest reasonable cost.

With respect to PURA § 37.056(c)(4)(A)–(D), the testimony of Company witness Ms. Myra Glover explains that MCPS, which is to be located on an existing brownfield site adjacent to ETI’s Lewis Creek facility, will have only a minimal effect on community values, recreational and park areas, historical and aesthetic values of the surrounding area. As described in the Environmental Assessment sponsored by Ms. Glover, after the implementation of mitigation measures, the potential environmental consequences of constructing MCPS are considered to be manageable and reasonable.

Finally, with respect to PURA § 37.056(c)(4)(E) (the improvement of service or lowering of costs to customers), MCPS will result in significant supply cost savings for ETI customers. As discussed by Messrs. Walz, Nguyen, and DeGeorge, among the proposals evaluated, the Project offers the best overall economics, with projected net benefits approaching \$1.7 billion,

³ See Direct Testimony of Stuart Barrett at Exhibit SB-5.

reflecting a favorable effect on locational marginal prices. The direct testimony of Ms. Lovorn-Marriage demonstrates that, together with other changes under current forecast assumptions, the expected fuel cost savings associated with MCPS will more than offset the Project's estimated first-year generation revenue requirement. Moreover, as noted above, Mr. Charles Long explains that MCPS will support reliable service and local area planning objectives in the Western Region load pocket through reduced reliance on transmission imports (and associated line losses) and benefits related to voltage support, reactive power support, flexible outage scheduling, and storm restoration.⁴

Accordingly, consideration of the statutory factors in PURA § 37.056 supports the conclusion that certification of MCPS should be granted as necessary for the service, accommodation, and convenience of the public.

V. 2015 ETI RFP

Based on the resource needs discussed above, ETI President and CEO Ms. Sallie Rainer directed SPO to design and administer the 2015 ETI RFP on the Company's behalf and determined that the RFP should be conducted under the direction of an independent monitor. The primary objective of the 2015 ETI RFP process was to solicit competitive proposals for generating resources to meet customers' needs in both the limited- and long-term planning horizons, and to identify the alternative(s) that met those needs at the lowest reasonable cost.⁵

⁴ With respect to PURA § 37.056(c)(4)(F), granting the Company's Application will have no effect on the ability of this state to meet the goal established by PURA § 39.904(a). P.U.C. SUBST. R. 25.173(d) describes the renewable energy credits ("REC") trading program designed to achieve the goals of PURA § 39.904 and specifies that "[t]he program administrator shall apportion [a Renewable Portfolio Standard] requirement among all retail entities as a percentage of the retail sales of each retail entity...." The addition of new generation will not affect ETI's retail sales or corresponding REC obligation.

⁵ The portion of the 2015 ETI RFP soliciting long-term combined-cycle natural gas turbine capacity and energy resources is referred to as the "Long-Term RFP," and the portion of the 2015 ETI RFP soliciting limited-term capacity and energy resources beginning in 2017 is referred as the "Limited-Term RFP."

In order to verify that the 2015 ETI RFP was conducted in a fair and impartial manner, ETI directed Entergy Services, Inc. (“ESI”)⁶ to retain Mr. Oliver to act as the Independent Monitor. Mr. Oliver’s role was to (i) monitor the design and implementation of the solicitation, evaluation, selection, and contract negotiation processes to ensure their impartiality and objectivity and (ii) provide an objective, third-party perspective on ESI’s efforts to ensure that all proposals were treated consistently and without undue preference to any bidder. As Mr. Walz explains, ESI established a number of processes to ensure that information provided by bidders in response to the 2015 ETI RFP was kept confidential and was not improperly disclosed to or used by any employee, consultant, or other representative of ESI or any other Entergy competitive affiliate. In addition, the processes for each phase of the Project development were carefully documented and reviewed with the Independent Monitor in order to ensure only communications that were appropriate for the particular phase of the RFP were taking place. As part of this process, ESI designated the following separate teams to evaluate proposals:

- Viability Assessment Team – As explained by Mr. Walz, this team was comprised of subject matter experts that reviewed and assessed the technical, environmental, fuel supply/transportation, and commercial merits of proposals. The team performed a qualitative assessment of various criteria to score and compare the relative risks of proposals. Criteria and weightings were defined prior to receipt of proposals.
- Deliverability Assessment Team – As explained by Mr. Charles Long, with respect to the developmental proposals, this team analyzed the net cost of required and avoided

⁶ ESI is an affiliate of the Entergy operating companies (including ETI) and provides engineering, planning, accounting, technical, and regulatory-support services to each of the operating companies. ESI frequently serves as agent for the operating companies in connection with wholesale transactions, including the preparation and management of competitive resource-procurement processes.

transmission upgrades expected to be necessary to achieve full Network Resource Interconnection Service (“NRIS”) and maintain NERC compliance. In addition, for each long-term proposal, the team produced outputs for use in the AURORA production cost modeling, including information regarding potential transmission upgrades, monitored flowgates, and impacts on Voltage and Local Reliability rules.

- Economic Evaluation Team – As explained by Mr. Nguyen, this team was responsible for evaluating the economics of proposals received in the 2015 ETI RFP and, with input from other teams, the economic ranking of such proposals. As discussed by Mr. DeGeorge, the Production Cost Assessment sub-team evaluated ETI’s variable supply cost with the addition of each proposal using the AURORA production cost model. The results of the AURORA modeling were then provided to the Economic Evaluation Team, which layered on projected capacity costs, non-fuel operating costs, and capacity revenues for each proposal. As a result, the economic evaluation estimated the full-in economic cost and benefit to customers of each proposal evaluated, while taking into account other relevant factors such as risk mitigation and reliability.
- Accounting Evaluation Team – As explained by Mr. Kidd, this team was responsible for assessing proposals submitted in the 2015 ETI RFP to ensure compliance with the terms of the RFP and to determine the accounting treatment for each proposal. The team evaluated each proposal based on both the accounting standards in effect at the time of proposal submission as well as the accounting standards expected to be in effect during the term of the proposal, such as the new lease standard issued by the FASB.
- Credit Evaluation Team – As explained by Mr. Walz, this team analyzed bidders to assess potential credit risks and attendant collateral requirements. The evaluation sought

to ensure that the credit quality of the bidders, when considered in light of their RFP proposals, complied with Entergy's corporate risk management standards and that any requirements for collateral or security were identified.

With respect to the Long-Term RFP, ETI made clear that it planned to market-test a self-build option (MCPS) against competitive suppliers on an anonymous basis in order to identify the alternative that met its long-term need at the lowest reasonable supply cost. ESI went to extraordinary lengths to ensure the process was not biased in any way toward the self-build option. Among other things, with the direct involvement of the Independent Monitor, ESI established a detailed process for segregating the personnel responsible for developing the cost estimates, scope, and performance data for the self-build option from those responsible for the evaluation of the bids. In addition, each evaluation team was provided only that data needed to complete its analyses. Thus, for example, the Economic Evaluation Team knew the price, but not the location, of the proposals while the Viability Assessment Team knew the location of the proposals but not the price. ESI developed and applied its Code of Conduct and affiliate rules throughout the process. The Independent Monitor monitored adherence to these requirements and found no violations.

Ultimately, after being directly involved in every phase of the process, the Independent Monitor concluded that the 2015 ETI RFP was undertaken in a fair, equitable and unbiased manner by ESI under his oversight. Further, the Independent Monitor agreed that MCPS was the lowest reasonable cost option for ETI's customers taking into account all costs and risks.

**VI.
REFERRAL TO SOAH AND PREHEARING CONFERENCE**

ETI requests that this matter be referred to the State Office of Administrative Hearings and that thereafter the Administrative Law Judge promptly convene a prehearing conference to address notice and other preliminary matters.

**VII.
NOTICE AND INTERVENTION DEADLINE**

ETI's proposed notice is based on P.U.C. Proc. R. 22.52(a), titled "Notice in Licensing Proceedings" while recognizing that this CCN application is not for a transmission line but rather is for a generating unit at an existing site. ETI proposes to serve notice of this petition, including attachments, on all the parties to ETI's most recent base rate case, and to publish notice once in newspapers of general circulation in ETI's service area within a week of the filing of this Application.

ETI will mail notice of the application to the cities of Conroe, Willis, and Panorama Village (the only municipalities within five miles of the Montgomery County Power Station site) and to the County Judge in Montgomery County, Texas. ETI will also serve notice on the Office of Public Utility Counsel using a method specified in PUC Proc. R. 22.74(b). ETI's proposed form of notice is attached as Attachment A, which is based on notices approved in two recent generation CCN filings for facilities located in Texas, *Application of El Paso Electric Company to Amend Its Certificate of Convenience and Necessity for Two Additional Generating Units at the Montana Power Station in El Paso County*, Docket No. 41763, and *Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Combustion Engine in Lubbock County*, Docket No. 39541.

Pursuant to PUC Proc. R. 22.52(a)(1)(A), ETI proposes an intervention deadline of 45 days following the filing of this Application.

VIII.
MOTION FOR ENTRY OF A PROTECTIVE ORDER

Portions of this filing constitute highly sensitive and confidential materials filed under seal. Entergy Texas requests that the proposed Protective Order attached as Attachment B be entered promptly in this case. In the interim, Entergy Texas will provide copies of confidential or highly sensitive protected materials to parties who agree to be bound by the attached proposed Protective Order, and who indicate that agreement by signing the Protective Order certification, included as Attachment A to the draft Protective Order. The terms of the attached proposed Protective Order are identical to the Commission's standard protective order.

IX.
PRAYER

WHEREFORE, Entergy Texas requests that the Commission grant the relief requested in this Petition and presented in the Application, grant a Certificate of Convenience and Necessity for the Montgomery County Power Station, and any such other relief to which it may be entitled.

October 7, 2016

Respectfully submitted,



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Attorneys for Entergy Texas, Inc.

Certificate of Service

I hereby certify, by my signature below, that a true and correct copy of the foregoing petition, including attachments, was served on all parties to ETI's last base rate case (Docket No. 41791), the Office of Public Utility Counsel, the Cities of Conroe, Panorama Village, and Willis, Texas, and the Montgomery County Judge, by agent, courier receipted delivery, first class mail, certified mail return receipt requested, registered mail, or by facsimile transmission this 7TH day of October, 2016.

By Courtney R. Nicholson
Courtney Nicholson

PUBLIC NOTICE

On October 7, 2016, Entergy Texas, Inc. (“ETI”) filed an application with the Public Utility Commission of Texas (“Commission”) requesting approval of a Certificate of Convenience and Necessity (“CCN”) permitting ETI to construct a gas-fired combustion turbine generating unit with a summer rating of 923 megawatts at ETI’s existing Lewis Creek facility, which is located near Willis, Texas in Montgomery County. The new unit would be known as Montgomery County Power Station or “MCPS.” As part of its long-term electric supply resource plan, ETI has determined that it needs additional generating resources in the near future. The docket number and style of the application are PUC Docket No. 46416, Application of Entergy Texas, Inc. for Approval of a Certificate of Convenience and Necessity to Construct Montgomery County Power Station. ETI is not seeking to change its rates in this proceeding.

The proposed project would be constructed at ETI’s existing Lewis Creek facility which is located approximately two miles west of Interstate 45 near the city of Willis, Texas. The following municipalities are within five miles of the project site: Willis, Conroe, and Panorama Village. Two gas-fired generating units were installed at Lewis Creek in 1970 and 1971, respectively, and are still in operation. A map showing the location of MCPS may be viewed at ETI’s offices at 350 Pine Street, Beaumont, Texas 77701, and is included with notices published in newspapers of general circulation in ETI’s service area. A copy of the map may also be obtained by contacting Courtney Nicholson at (512) 487-3999, during normal business hours.

The total estimated cost, based on a late 2021 commercial operation date, is \$937.3 million, inclusive of estimated costs of transmission upgrades, contingency, an allowance for funds used during construction, and expenses related to seeking Commission certification.

The deadline for intervention in this proceeding is November 21, 2016, and a letter requesting intervention should be received by the Commission by that date. A request to intervene (original and ten copies) or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Persons who wish to intervene in or comment upon these proceedings should notify the Public Utility Commission of Texas as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

A copy of ETI’s application may be viewed by accessing the “filings – interchange” section of the Commission’s webpage at www.puc.state.tx.us. In addition to the intervention deadline, other important dates may affect participation in this docket. Therefore, any orders or other filings already made in the docket should be reviewed. The control number for this proceeding on the Commission’s webpage is 46416. Persons with questions or who want more information about this application may also contact Courtney Nicholson at (512) 487-3999, during normal business hours.

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DOCKET NO. 46416

APPLICATION OF ENTERGY TEXAS,)	
INC. FOR A CERTIFICATE OF)	PUBLIC UTILITY COMMISSION OF
CONVENIENCE AND NECESSITY TO)	
CONSTRUCT MONTGOMERY)	TEXAS
COUNTY POWER STATION)	

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials), including information whose confidentiality is currently under dispute, by a party providing information to the Public Utility Commission of Texas (“Commission”) or to any other party to this proceeding.

It is ORDERED that:

1. **Designation of Protected Materials.** Upon producing or filing a document, including, but not limited to, records on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face “PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 46416” (or words to this effect) and consecutively Bates Stamping each page. Protected Materials and Highly Sensitive Protected Materials include the documents so designated, as well as the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. **Materials Excluded from Protected Materials Designation.** Protected Materials shall not include any information or document contained in the public files of the Commission or any other federal or state agency, court, or local governmental authority subject to the Public Information Act.¹ Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in, a proceeding is or was public

¹ TEX. GOV'T CODE ANN. §§ 552.001-552.353 (Vernon 2004 & Supp. 2013).

knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. **Reviewing Party.** For the purposes of this Protective Order, a “Reviewing Party” is any party to this docket.
4. **Procedures for Designation of Protected Materials.** On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (a) any exemptions to the Public Information Act claimed to apply to the alleged Protected Materials; (b) the reasons supporting the producing party’s claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (c) that counsel for the producing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. **Persons Permitted Access to Protected Materials.** Except as otherwise provided in this Protective Order, a Reviewing Party may access Protected Materials only through its “Reviewing Representatives” who have signed the Protective Order Certification Form (see Attachment A). Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in this proceeding. At the request of the PUC Commissioners, copies of Protected Materials may be produced by Commission Staff. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. **Highly Sensitive Protected Material Described.** The term “Highly Sensitive Protected Materials” is a subset of Protected Materials and refers to documents or information that a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as specified herein) would expose a producing party to unreasonable risk of harm. Highly Sensitive Protected Materials include but are not

limited to: (a) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act;² (b) contractual information pertaining to contracts that specify that their terms are confidential or that are confidential pursuant to an order entered in litigation to which the producing party is a party; (c) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (d) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN DOCKET NO. 46416” (or words to this effect) and shall be consecutively Bates Stamped. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party’s designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. **Restrictions on Copying and Inspection of Highly Sensitive Protected Material.**

Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. The Reviewing Party shall maintain a record of all copies made of Highly Sensitive Protected Material and shall send a duplicate of the record to the producing party when the copy or copies are made. The record shall specify the location and the person possessing the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided by the producing party, except as specified by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-66.016 (Vernon 2007 & Supp. 2013) (PURA).

8. **Restricting Persons Who May Have Access to Highly Sensitive Protected Material.** With the exception of Commission Staff, the Office of the Attorney General (OAG), and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are (a) outside counsel for the Reviewing Party, (b) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel, or (c) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review Highly Sensitive Protected Materials to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Commission Staff, OAG, and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.
9. **Copies Provided of Highly Sensitive Protected Material.** A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. Representatives of the Reviewing Party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected Materials provided to a Reviewing Party may not be copied except as provided in Paragraph 7. The restrictions contained herein do not apply to Commission Staff, OPC, and the OAG when the OAG is representing a party to the proceeding.
10. **Procedures in Paragraphs 10-14 Apply to Commission Staff, OPC, and the OAG and Control in the Event of Conflict.** The procedures in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party

designates as Highly Sensitive Protected Materials and provides to Commission Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.

11. **Copy of Highly Sensitive Protected Material to be Provided to Commission Staff, OPC and the OAG.** When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to the Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Commission Staff, OPC (if OPC is a party) and the OAG (if the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures specified herein.
12. **Delivery of the Copy of Highly Sensitive Protected Material to Commission Staff and Outside Consultants.** The Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification specified by Paragraph 15. After obtaining the agreement of the producing party, Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification in Attachment A.
13. **Restriction on Copying by Commission Staff, OPC and the OAG.** Except as allowed by Paragraph 7, Commission Staff, OPC and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the presiding officer

directs otherwise. Commission Staff, OPC, and the OAG may make limited notes of Highly Sensitive Protected Materials furnished to them, and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.

14. **Public Information Requests.** In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission, OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. **Required Certification.** Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 46416. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification found in Attachment A to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

The Reviewing Party shall provide a copy of each signed certification to Counsel for the producing party and serve a copy upon all parties of record.

16. **Disclosures between Reviewing Representatives and Continuation of Disclosure Restrictions after a Person is no Longer Engaged in the Proceeding.** Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.
17. **Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials.** Except for Highly Sensitive Protected Materials, which shall be provided to the Reviewing Parties pursuant to Paragraphs 9, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record.
18. **Procedures Regarding Voluminous Protected Materials.** P.U.C. PROC. R. 22.144(h) will govern production of voluminous Protected Materials. Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin,

Texas, or at a mutually agreed upon location, Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.

19. **Reviewing Period Defined.** The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.
20. **Procedures for Making Copies of Voluminous Protected Materials.** Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical or electronic copies of the Protected Materials, subject to the conditions in this Protective Order; provided, however, that before photographic, mechanical or electronic copies may be made, the Reviewing Party seeking photographic, mechanical or electronic copies must provide written confirmation of the receipt of copies listed on Attachment B of this Protective Order identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. **Protected Materials to be Used Solely for the Purposes of These Proceedings.** All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (a) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (b) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Commission Staff or OPC.
22. **Procedures for Confidential Treatment of Protected Materials and Information Derived from Those Materials.** Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected

Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. **Procedures for Submission of Protected Materials.** If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the presiding officer and served under seal to the counsel of record for the Reviewing Parties. The presiding officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (a) shall notify the party which provided the information within sufficient time so that the producing party may seek a temporary sealing order; and (b) shall otherwise follow the procedures in Rule 76a, Texas Rules of Civil Procedure.
24. **Maintenance of Protected Status of Materials during Pendency of Appeal of Order Holding Materials are not Protected Materials.** In the event that the presiding officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected

Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the presiding officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a presiding officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. **Notice of Intent to Use Protected Materials or Change Materials Designation.**

Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of Docket No. 46416 at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.

26. **Procedures to Contest Disclosure or Change in Designation.**

In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate presiding officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting

confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and, without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.

27. **Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation.** If the party asserting confidentiality files an objection, the appropriate presiding officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or Reviewing Party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the presiding officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such presiding officer's ruling.
28. **Maintenance of Protected Status during Periods Specified for Challenging Various Orders.** Any party electing to challenge, in the courts of this state, a Commission or presiding officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (a) the date of an unfavorable Commission order; or (b) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days

from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this paragraph. For purposes of this paragraph, a favorable ruling of a state district court, state appeals court, Supreme Court or other appellate court includes any order extending the deadlines in this paragraph.

29. **Other Grounds for Objection to Use of Protected Materials Remain Applicable.** Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless the Commission or a court orders such additional disclosure, all parties will abide by the restrictions imposed by the Protective Order.
30. **Protection of Materials from Unauthorized Disclosure.** All notices, applications, responses or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. **Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials.** Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, “conclusion of these proceedings” refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand

proceeding, then the “conclusion of these proceedings” is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. **Applicability of Other Law.** This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act,³ the Texas Securities Act⁴ and any other applicable law, provided that parties subject to those acts will notify the party asserting confidentiality, if possible under those acts, prior to disclosure pursuant to those acts. Such notice shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
33. **Procedures for Release of Information under Order.** If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (a) the Reviewing Party shall notify the producing party of the order requiring the release of such information within five (5) calendar days of the date the Reviewing Party has notice of the order; (b) the Reviewing Party shall notify the producing party at least five (5) calendar days in advance of the release of the information to allow the producing party to contest any release of the confidential information; and (c) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with

³ TEX. GOV'T CODE ANN. § 551.001-551.146 (Vernon 2004 & Supp. 2013).

⁴ TEX. REV. CIV. STAT. ANN. arts. 581-1 to 581-43 (Vernon 1964 & Supp. 2013).

any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein. The notice specified in this section shall not be required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.

34. **Best Efforts Defined.** The term “best efforts” as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body, the written opinion of the Texas Attorney General sought in compliance with the Public Information Act, or the request of governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of § 552.301 of the Public Information Act, or intends to comply with the final governmental or court order. Provided, however, that no notice is required where the Protected Materials are sought by governmental officials authorized to conduct a criminal or civil investigation that relates to or involves the Protected Materials, and those governmental officials aver in writing that such notice could compromise the investigation and that the governmental entity involved will maintain the confidentiality of the Protected Materials.
35. **Notify Defined.** “Notify” for purposes of Paragraphs 32, 33 and 34 means written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission, OAG, or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. **Requests for Non-Disclosure.** If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Protective Order, the producing party shall tender

the information for in camera review to the presiding officer within ten (10) calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information.

Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the Commission.

37. **Sanctions Available for Abuse of Designation.** If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.
38. **Modification of Protective Order.** Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.
39. **Breach of Protective Order.** In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

ATTACHMENT A

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket and that I have received a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in Docket No. 46416. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated here shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

ATTACHMENT B

I request to view/copy the following documents:

Document Requested	# of Copies	Non-Confidential	Protected Materials and/or Highly Sensitive Protected Materials

Signature

Party Represented

Printed Name

Date

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