

APR 17 2019

UNITED STATES OF AMERICA      Electricity Delivery and  
BEFORE THE DEPARTMENT OF ENERGY      Energy Reliability  
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

Luminant Energy Company LLC

)

OE Docket No. EA- 471

APPLICATION OF LUMINANT ENERGY COMPANY LLC  
FOR AUTHORIZATION  
TO TRANSMIT ELECTRIC ENERGY TO MEXICO

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Dated: April 17, 2019

**Luminant Energy Company LLC** ) OE Docket No. EA-\_\_\_\_\_

Pursuant to Section 202(e) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a(e), and Part 205, Subpart W of the U.S. Department of Energy’s (“DOE”) regulations, 10 C.F.R. § 205.300, *et seq.*, Luminant Energy Company LLC (“LUME” or “Applicant”) hereby requests authorization to transmit electric energy from the United States to Mexico for a period of five years (“Application”). In support of this Application, LUME respectfully states as follows:

## A. Description of LUME and Its Upstream Ownership Structure

The exact legal name of the Applicant is Luminant Energy Company LLC. LUME, a Texas limited liability company, manages the optimization, marketing, and deployment of approximately 18,000 megawatts ("MW") of generation capacity located within the Electric Reliability Council of Texas ("ERCOT") (including 2,300 MW fueled by nuclear power, 4,500 MW fueled by coal, 11,400 MW fueled by natural gas, as well as a 180 MW solar facility), manages power purchase agreements, and meets the energy supply requirements of various competitive retail energy service providers within ERCOT. LUME is certified as a Qualified Scheduling Entity with ERCOT and is registered with the Public Utilities Commission of Texas as a wholesale power marketer. LUME is also conditionally

authorized to sell wholesale electric energy, capacity, and ancillary services outside of ERCOT at market-based rates pursuant to authority granted by the Federal Energy Regulatory Commission ("FERC").<sup>1</sup>

LUME is a wholly-owned subsidiary of Vistra Energy Corp. ("Vistra"). Vistra is a corporation organized under the laws of the State of Delaware that is publicly traded on the New York Stock Exchange under the symbol VST. Vistra is the ultimate parent company of, and conducts its principal operations through, Vistra Asset Company, LLC, a Delaware limited liability company ("Vistra Asset"), and Vistra Asset's wholly and indirectly owned retail electric provider and power generation company subsidiaries.

#### **B. LUME Affiliates**

Through its direct and indirect parent and affiliate companies, LUME is affiliated with generation located in the markets operated by the California Independent System Operator Corporation, ISO New England Inc., Midcontinent Independent System Operator, Inc., New York Independent System Operator, Inc. and PJM Interconnection, LLC.

LUME is also affiliated with Electric Energy, Inc. ("EEInc."),<sup>2</sup> which operates a generation-only balancing authority area ("BAA"). The EEInc. BAA is directly

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<sup>1</sup> *Luminant Energy Company LLC*, 165 FERC ¶ 61,222 (2018).

<sup>2</sup> On December 26, 2018, EEInc. filed an application with FERC requesting authorization to sell all of its transmission assets to GridLiance Heartland LLC. *Electric Energy, Inc.*, Joint Application For Authorization Under Section 203 Of The Federal Power Act, Docket No. EC19-42-000 (filed Dec. 26, 2018). This application remains pending.

interconnected with the Tennessee Valley Authority and the Louisville Gas and Electric Company/Kentucky Utilities BAAs.

In addition, LUME is affiliated with TXU Energy Retail Company LLC ("TXU Energy"), a Texas limited liability company that operates as a competitive retail electric provider solely in ERCOT. TXU Energy is a wholly owned subsidiary of Vistra Preferred Inc., a Delaware corporation that is a wholly owned subsidiary of Vistra Asset.<sup>3</sup>

Neither LUME nor any of its affiliates has a franchised service area.

## **II.** **COMMUNICATIONS**

Communications regarding this Application should be addressed to the following persons:

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Managing Counsel, Regulatory & Compliance  
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<sup>3</sup> On February 19, 2019, Vistra submitted an application to FERC seeking authorization for the acquisition of Crius Energy Holdings, Inc. ("Crius"). *Crius Energy Corp.*, Application for Authorization of Transaction Under Section 203 Of The Federal Power Act, And Requests For Shortened Comment Period, Expedited Action And Waivers Of Filing Requirements, Docket No. EC19-59-000 (filed Feb. 19, 2019). Through its subsidiaries, Crius operates as a competitive energy marketer that supplies electricity and natural gas to commercial and residential customers throughout the United States. This application remains pending.

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### **III. JURISDICTION**

Pursuant to section 202(e) of the FPA, the Department of Energy's Office of Electricity Delivery and Energy Reliability is the sole agency with jurisdiction over the proposed export of electric energy to Mexico.

LUME has obtained or will obtain all necessary Mexican federal and provincial authorizations to effect any proposed export that involves electricity sourced in Mexico. No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this Application.

### **IV. TECHNICAL DISCUSSION**

By this Application, LUME seeks authorization to transmit electric energy, on either a firm or interruptible basis, to Mexico. LUME desires to export electric energy acquired from U.S. generating sources to Mexico over international electric transmission facilities. The Presidential Permits under which the relevant border facilities were constructed and maintained, and details related thereto, are set forth in Exhibit C.

Pursuant to Section 202(e) of the FPA, before DOE grants authorization to export electricity, it first evaluates the impact of the export on the reliability of the U.S. electric system. DOE approves an application to export electricity unless it finds that "the proposed transmission would impair the sufficiency of electric supply within the United

States,” or that “the proposed transmission . . . would impede or tend to impede coordination in the public interest of facilities subject to the jurisdiction of the Commission.” 16 U.S.C. § 824a(e). In applying these two criteria to requests for export authorizations submitted by electric power marketers such as LUME, DOE has declined to follow a rigid application of the information filing requirements set forth in DOE’s regulations; and, instead has used a flexible approach to account for the unique nature of power marketers.<sup>4</sup>

With respect to the first criterion, as a power marketer, LUME does not own any electric generation, transmission facilities, or distribution facilities and does not hold a franchise or service territory or native load obligation. With regard to transmission owned, operated or controlled by LUME’s affiliates, LUME has one affiliate, EEInc., that owns six parallel generation tie lines that are approximately 8 miles long in the EEI BAA. EEInc. offers transmission service pursuant to a FERC-approved Open Access Transmission Tariff (“OATT”).<sup>5</sup> Other than EEInc., LUME is not affiliated with any entity that owns or controls transmission facilities in the United States other than facilities interconnecting its generation facilities to the grid. Thus, LUME has no “transmission system” of its own on which power exports could have a reliability or stability impact. LUME proposes to export electric energy to Mexico utilizing one or more of the existing transmission facilities at the U.S.-Mexico border that are authorized for third-party use, as identified in Exhibit C to this Application.

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<sup>4</sup> See, e.g., *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *NorAm Energy Servs., Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Servs. Corp.*, No. EA-114 (July 15, 1996); *USGen Power Servs.*, No. EA-112 (June 27, 1996); *CNG Power Servs. Corp.*, No. EA-110 (June 20, 1996); *Destec Power Servs., Inc.*, No. EA-113 (May 31, 1996).

<sup>5</sup> See, e.g., *Electric Energy, Inc.*, Docket No. ER10-3305-002 (May 11, 2015) (unpublished letter order approving revisions to the EEInc. OATT).

Additionally, all electricity exported by LUME will be surplus to the needs of the selling entities and LUME's U.S. customers. As DOE has recognized, the export of surplus electricity by an entity with no native load will not impair the sufficiency of electric supply within the U.S.<sup>6</sup>

DOE has interpreted the second criterion used to analyze applications to export electricity "primarily as an issue of the operational reliability of the domestic electric transmission system."<sup>7</sup> As noted above, LUME does not own, operate or control any transmission or distribution systems in the United States. Additionally, in making the necessary commercial arrangements and obtaining transmission capacity from unaffiliated third parties necessary to export electricity under the authorization requested herein, LUME will comply with existing industry procedures for obtaining transmission capacity, including reserving transmission service in accordance with FERC's Open Access Same-Time Information System and scheduling delivery of the export with the appropriate Regional Transmission Organization(s) ("RTOs") or Independent System Operator(s) ("ISOs") and/or BAAs.

LUME also will schedule its exports from the U.S. in compliance with all applicable reliability criteria, standards, and guidelines as they are set out by the North American Electric Reliability Corporation ("NERC") (or any successor organization), the North American Energy Standards Board (or any successor organization) and regional reliability councils and as applied by U.S. transmission providers.

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<sup>6</sup> Order No. EA-216-C at 2.

<sup>7</sup> *Id.*

As noted above, LUME is a power marketer, and does not own or operate a transmission system. Accordingly, LUME does not have the ability to cause a violation of the terms and conditions contained in the existing authorizations associated with the international transmission facilities identified in Exhibit C. Specifically, LUME does not have the ability to cause total exports on Presidential Permit facilities to exceed the authorized instantaneous transmission rate.

**V.**  
**CONSISTENCY WITH LAWS**

Authorization of the exports proposed by LUME is consistent with the existing North American Free Trade Agreement and U.S. energy policy and will foster development of a more efficient and competitive North American energy market. LUME will conduct all operations pursuant to this authorization in accordance with the provisions of the FPA and pertinent rules, regulations and orders adopted or issued thereunder, and in conformity with the reliability criteria, standards and guidelines of NERC, regional reliability councils, and BAs, including any relevant RTOs or ISOs. Compliance with these statutes, rules, regulations, and orders will ensure that the proposed transmission will not impede or tend to impede the regional coordination of electric utility planning or operations.

LUME believes that DOE is not required to conduct an environmental assessment or an environmental impact statement in connection with this Application and that DOE's approval of this Application is eligible for categorical exclusion under Appendix B to



Subpart D, paragraph B4.2 of the revised DOE regulations implementing the National Environmental Policy Act of 1969.<sup>8</sup>

## VI. PROCEDURAL ISSUES

LUME respectfully submits that it satisfies the requirements of Section 202(e) of the FPA and Part 205, Subpart W of DOE's regulations applicable to applications for authorization to transmit electric energy from the United States to Mexico. LUME respectfully requests waiver of the requirement to file this application six months in advance of the authorization requested herein to allow issuance of an order granting LUME authorization to transmit electric energy to Mexico no later than July 17, 2019.<sup>9</sup> LUME also requests any waivers deemed necessary for DOE to issue the order requested herein.

## VII. EXHIBITS

The following exhibits identified in the DOE's regulations are attached hereto as follows:

- Exhibit A:     Agreements  
                  (Not Applicable)
- Exhibit B:     Legal Opinion of LUME's Counsel
- Exhibit C:     Transmission System Information  
                  (submitted in lieu of maps)
- Exhibit D:     Irrevocable Limited Power of Attorney  
                  (Not Applicable)

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<sup>8</sup> See e.g., *Shell Energy North America (US), L.P.*, Order No. EA-338-A at 8 (May 9, 2013) (Order Authorizing Electricity Exports to Mexico).

<sup>9</sup> DOE previously has granted authorization to export electric energy from the United States on an expedited basis where the applicant was a power marketer that planned to market surplus power. See, e.g., *Tenaska Energiá de Mexico, S. de R.L. de C.V.*, Order No. EA-417 (June 15, 2016); *Global Pure Energy, LLC*, Order No. EA-390 (Mar. 4, 2014).

- Exhibit E: Statement of any Corporate Relationship or Existing Contract which in any way Relates to Control or Fixing of Rates for Purchase, Sale or Transmission of Electric Energy  
(Not Applicable)
- Exhibit F: Operating Procedures Regarding Available Capacity and Energy  
(Not Applicable)
- Exhibit G: Verification

**VIII.**  
**CONCLUSION**

For the foregoing reasons, LUME respectfully requests that DOE grant this Application as requested herein. LUME is willing to provide any additional information DOE may require to expedite review and approval of this Application.

Respectfully submitted,

/s/ Stephen J. Hug  
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*Attorney for  
Luminant Energy Company LLC*

Dated: April 17, 2019

**EXHIBIT A**  
**(NOT APPLICABLE)**

## **EXHIBIT B**

### **Opinion of Legal Counsel**



STEPHANIE ZAPATA MOORE  
EVP & General Counsel  
Vistra Energy  
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m 214.542.6460

April 15, 2019

Attention: Mr. Christopher Lawrence  
Office of Electricity Delivery and Energy Reliability  
OE-20, Room 8G-024  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

RE: Legal Opinion, Application of Luminant Energy Company LLC for Authorization to Transmit  
Electric Energy to Mexico, OE Docket No. EA-\_\_\_\_\_

Ladies and Gentlemen:

The following opinion is given in support of the Application of Luminant Energy Company LLC for  
Authorization to Transmit Electric Energy to Mexico, dated April 15, 2019.

- 1) I am an attorney at law, authorized to practice law in Texas.
- 2) I am Executive Vice President and General Counsel to Luminant Energy Company LLC, a duly formed  
and validly existing limited liability company, which is in good standing under the laws of Texas.
- 3) Luminant Energy Company LLC has the power under the Texas Business Organizations Code, its limited  
liability company agreement and certificate of formation to act in the manner described in this  
Application.
- 4) To the best of my knowledge and belief, Luminant Energy Company LLC has complied with or is in the  
process of complying with all Federal and State laws regarding the matters contemplated in the  
Application.

Very truly yours,

  
Stephanie Zapata Moore

## **EXHIBIT C**

### **Transmission System Information**

**International Electric Transmission Facilities at the  
U.S. – Mexico Border Authorized for Third-Party Use for  
Luminant Energy Company LLC Exports to Mexico**

<b>Present Owner</b>	<b>Location</b>	<b>Voltage</b>	<b>Presidential Permit No.</b>
AEP Texas Central Company	Laredo, TX	138-kV 230-kV	PP-317 PP-317
	Brownsville, TX	138-kV 69-kV	PP-94 PP-94
	Eagle Pass, TX	138-kV	PP-219
Baja California Power, Inc.	Imperial Valley, CA	230-kV	PP-234-1 PP-234-2
Comision Federal de Electricidad	Falcon Dam, TX	138-kV	N/A
	Redford, TX	7.2-kV	PP-51
	Presidio, TX	13.8-kV	PP-03
El Paso Electric Company	Diablo, NM	115-kV	PP-92
	Ascarate, TX	115-kV	PP-48
Generadora del Desierto -- WAPA	San Luis, AZ	230-kV	PP-304
San Diego Gas & Electric	Miguel, CA	230-kV	PP-68
	Imperial Valley, CA	230-kV	PP-79
Sharyland Utilities, Inc.	McAllen, TX	138-kV	PP-285

**EXHIBIT D**  
**(NOT APPLICABLE)**



**EXHIBIT E**  
**(NOT APPLICABLE)**

**EXHIBIT F**  
**(NOT APPLICABLE)**

## **EXHIBIT G**

### **Verification**

**VERIFICATION**

**STATE OF TEXAS**

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**CC:**

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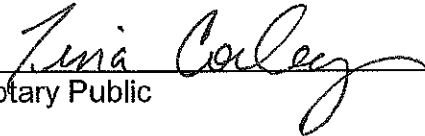
**COUNTY OF DALLAS**

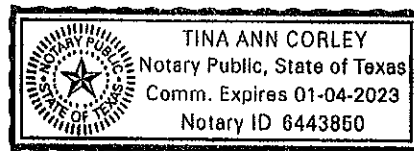
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Stephen J. Muscato being first duly sworn, states that she/he is Senior Vice President and Chief Commercial Officer of Luminant Energy Company LLC; that she/he is authorized to execute this verification; that she/he has read the above and foregoing Application for Authorization to Transmit Electric Energy to Mexico is familiar with the contents thereof; and that all of the statements and facts contained therein, are true and correct to the best of her/his knowledge, information, and belief.

  
\_\_\_\_\_

**SUBSCRIBED AND SWORN** to before me on this 15 day of April, 2019.

  
\_\_\_\_\_  
Notary Public



My Commission expires: 1-4-23