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March 3, 2014

Administrator Gina McCarthy
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Fax number (202) 501-1450

via Federal Express

Re: Petition for Objection to Texas Title V Permit No. O65 for the Operation of the Big Brown Steam Electric Station in Freestone County, Texas

Dear Administrator McCarthy:

Enclosed is a petition requesting that the U.S. Environmental Protection Agency object to the TCEQ's renewal of Title V Permit No. O65, issued to Luminant Generation Company for operation of the Big Brown Steam Electric Station. This petition is timely submitted by the Environmental Integrity Project and Sierra Club. As required by law, petitioners are filing this petition with the EPA Administrator, with copies to EPA Region VI, the Texas Commission on Environmental Quality, and Luminant. The enclosed CD contains electronic copies of all petition exhibits.

Thank you for your attention to this matter.

Sincerely,

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF	§	PETITION FOR OBJECTION
	§	
Clean Air Act Title V Permit (Federal	§	
Operating Permit) No. O65	§	
	§	
Issued to Luminant Generation Company,	§	Permit No. O65
LLC, Big Brown Steam Electric Station	§	
	§	
Issued by the Texas Commission on	§	
Environmental Quality	§	
	§	

**PETITION REQUESTING THAT THE ADMINISTRATOR OBJECT TO
ISSUANCE OF THE PROPOSED TITLE V OPERATING PERMIT FOR THE BIG
BROWN STEAM ELECTRIC STATION, PERMIT NO. O65**

Pursuant to Clean Air Act § 505(b)(2), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), Sierra Club and the Environmental Integrity Project (“Petitioners”) petition the Administrator of the United States Environmental Protection Agency (“EPA”) to object to Federal Operating Permit No. O65 (“Proposed Permit”) for Luminant Generation Company, LLC’s (“Luminant”) Big Brown Steam Electric Station (“Big Brown”), in Freestone County, Texas.¹

Petitioners respectfully request that the Administrator object to the Proposed Permit for the following reasons:

- The Compliance Assurance Monitoring provision for the Big Brown main boilers fails to assure ongoing compliance with the Texas State Implementation Plan (“SIP”) particulate matter (“PM”) limit of 0.3 lb/MMBtu;
- The Proposed Permit fails to identify emission units authorized under certain incorporated Permits by Rule (“PBR”);
- The Proposed Permit fails to specify monitoring methods sufficient to assure compliance with applicable PBR requirements; and
- The Proposed Permit fails to include a compliance schedule addressing Luminant’s ongoing non-compliance with Title V reporting requirements.

¹ Exhibit A (“Proposed Permit”); Exhibit B (Draft Statement of Basis).

The first three above-listed issues were raised in Petitioners' timely filed public comments. The fourth issue arose after the close of the public comment period and is timely raised for the first time in this Petition.²

I. THE BIG BROWN POWER PLANT

The Big Brown power plant is located approximately 90 miles south of Dallas near Fairfield in Freestone County, Texas. It was designed to burn lignite, but currently burns a mix of lignite and western U.S. Powder River Basin coal. Construction of the power plant—which is comprised of two coal-fired boilers (Units 1 and 2), associated pollution control equipment, and auxiliary equipment—began in 1968. Unit 1 commenced commercial operation in 1971 and Unit 2 commenced commercial operation in 1972. The two Units use identical pollution control equipment and are nominally rated at approximately 600 megawatts each.

Luminant considers Big Brown to be a “grandfathered” facility in that the main coal-fired boilers are not subject to any federal New Source Performance Standards (“NSPS”). Thus, the technology-based NSPS particulate matter limit of 0.10 lb/MMBtu that applies to power plants built after 1970 has never been applied to Big Brown. The only federally-enforceable particulate matter limit that applies to the power plant’s main coal-fired boilers is the Texas SIP limit of 0.3 lb/MMBtu.³ Similarly, opacity and other limits contained in the Texas SIP have been applied to the main boilers, but Big Brown has largely escaped the federal Clean Air Act’s modern technology-forcing emission limits. For that reason, Big Brown is among the nation’s top emitters of criteria and hazardous air pollutants when compared to similar coal-fired power plants.

Big Brown’s two coal-fired Units emit massive quantities of particulate matter during malfunction, maintenance, startup, and shutdown events, which occur frequently due to the plant’s inadequate design and poor maintenance. Luminant’s application to authorize planned maintenance, startup, and shutdown activities (“planned MSS”) at Big Brown, states that PM

² 40 C.F.R. § 70.8(d) (explaining that public petitions regarding Title V permits must be based on objections raised during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections during the comment period or the grounds for such objection arose after the comment period); 30 Tex. Admin. Code § 122.360(f).

³ 30 Tex. Admin. Code § 111.153(b); Proposed Permit at 31 (listing 30 Tex. Admin. Code § 111.153(b) as an applicable requirement for the Big Brown main boilers).

emissions from each of the main boilers may be as high as 4,788 pounds an hour.⁴ Based on this representation, the TCEQ authorized PM emissions of 4,788 pounds an hour from each of the Big Brown main Units for hundreds of hours each year.⁵

According to Luminant's Title V excess emissions reports, which were cited in Petitioners' public comments, Big Brown's two Units have exceeded the Texas SIP's opacity limit of 30 percent on thousands of occasions over the past seven years. Luminant's 2011 Emissions Inventory submission reports 430 tons of particulate matter and more than 220 tons of PM_{2.5} during scheduled startups, shutdowns and maintenance and upset events *in a single year*.⁶ To put these numbers in context, the Clean Air Act's stringent New Source Review major modification requirements are triggered by changes to a facility that increase total particulate matter emissions by 25 tons or total emissions of PM_{2.5} by ten tons a year.

Big Brown's emissions affect air quality nearby and downwind of the plant, including in the Dallas Fort-Worth area. EPA's online data for 2011-2013 indicate that PM_{2.5} concentrations in the Dallas area exceed the current National Ambient Air Quality annual standard of 12.0 μm^3 .⁷ Although Big Brown has recently stopped reporting deviations from opacity limits during startup, shutdown, and maintenance, data available for prior years shows that opacity levels are very high during these events, often exceeding 80 percent. Big Brown's quarterly Title V excess emission and deviation reports state that no operational changes have occurred at the plant. Therefore, it can be presumed that high opacity levels – above the SIP limit – continue, and are simply not being reported as Title V deviations. High opacity levels indicate significant release of fine particle emissions.

⁴ Exhibit C (Excerpts from Luminant's Application to Amend Permit No. 56445).

⁵ Exhibit D (Texas Air Quality Permit No. 56445, as amended December, 2011) ("MSS Amendment") at Special Condition 8A. The permit does not establish a hard cap for the amount of time the Big Brown main boilers may be run under the 4,788 pounds per hour limit. According to the permit, the main boilers may run in startup mode for 24 hours at a time. The main boilers may also be run in startup mode for longer than 24 hours, so long as "the incremental time the extended startups exceed 24 hours shall not exceed a combined 600 hours on an annual calendar basis[.]" The permit establishes identical conditions for boiler shutdown.

⁶ Exhibit E (Excerpts from Luminant's 2011 Big Brown Emissions Inventory Report). Luminant did not report any emissions from the Big Brown power plant for startup, shutdown, and maintenance activities in 2012. Presumably, this is because these emissions are now covered by Permit No. 56445 and Luminant reports them as part of the plant's annual total for normal operations.

⁷ Data available at http://www.epa.gov/airdata/ad_reports.html

II. PETITIONERS

Environmental Integrity Project is a nonprofit, non-partisan organization dedicated to strict enforcement and effective implementation of state and federal air quality laws. Environmental Integrity Project has offices and staff in Austin, Texas.

Sierra Club, founded in 1892 by John Muir, is one of the oldest and largest grassroots environmental organizations in the country. Sierra Club is dedicated to exploring, enjoying, and protecting natural resources and wild places. Sierra Club has the specific goal of improving outdoor air quality. Sierra Club's members and EIP's staff live, work, and recreate in areas that are directly impacted by the emissions from the Big Brown power plant.

III. PROCEDURAL BACKGROUND

A. Texas Title V Permit No. O65

Big Brown's Texas Federal Operating ("Title V") Permit No. O65 was initially issued on September 13, 2000 and was renewed in 2005. On May 14, 2010, Luminant filed an application to renew Permit No. O65. The TCEQ's Executive Director subsequently issued a draft renewal permit ("Draft Permit"), notice of which was published by Luminant on September 22, 2011. The public comment period for the Draft Permit ended on October 24, 2011. Petitioners timely filed public comments on the Draft Permit on October 24, 2011.⁸ More than two years later, the TCEQ issued a response to public comments and made minor changes to the Draft Permit based on Petitioners' comments.⁹ These minor changes do not address the concerns identified in this petition. The TCEQ's Executive Director also added issuance dates for case-by-case New Source Review ("NSR") permits that are incorporated into the Proposed Permit to address a previous EPA objection.¹⁰ EPA's review period for the Proposed Permit began on November 18, 2013 and ended on January 1, 2014. EPA did not object to the Proposed Permit during its review

⁸ Exhibit F (Public Comments submitted by Environmental Integrity Project and Sierra Club regarding Draft Renewal Permit No. O65) ("Public Comments").

⁹ Exhibit G (The TCEQ's Response to Public Comments) ("Response to Comments").

¹⁰ Exhibit H (Email Correspondence from the TCEQ's Permit Engineer for the Luminant Title V Permit Renewal, dated January 16, 2014) (explaining that permit issuance dates were included "to resolve a prior EPA objection" and that minor revisions received after the Draft Permit went to public notice were not incorporated into Luminant's Title V Permit on renewal).

period. Petitioners are filing this Petition within the 60-day public petition period, which ends on March 4, 2014.¹¹

B. Amendment of Texas Air Quality Permit No. 56445 After the Title V Draft Permit Comment Period Ended

Permit No. 56445, as issued on June 6, 2008, is incorporated by reference into the Proposed Permit. Permit No. 56445 is one of several Big Brown air permits that authorizes emissions from Units 1 and 2¹² On December 16, 2011, the TCEQ amended Permit No. 56445 to authorize emissions from planned maintenance, startup, and shutdown activities (the “MSS Amendment”).¹³ The MSS Amendment is deficient and violates federal requirements for a number of reasons, including, but not limited to, a lack of public notice, impermissibly weakening SIP limits, as well as SIP and Title V reporting requirements. For example, the MSS Amendment allows unlimited opacity levels and exceedingly high particulate matter limits during broadly defined periods of “planned MSS” activity, based on a broad and non-exhaustive list of so-called planned activities that leaves much to Luminant’s interpretation.¹⁴ In addition, to the extent that the MSS Amendment may be read to allow opacity levels greater than 30 percent and PM emissions exceeding 0.3 lb/MMBtu, it conflicts with, and is less stringent than, applicable Texas SIP limits.¹⁵

On December 12, 2011 (four days before the TCEQ actually issued the MSS Amendment to Permit 56445), Luminant filed an application for a minor revision to its Title V Permit to incorporate the amended Permit No. 56445.¹⁶ That application is still pending. However, Luminant has stated in federal court pleadings that the MSS permit was automatically incorporated into its Title V permit upon the filing of its application for a minor revision.¹⁷

¹¹ Response to Comments, Cover Letter.

¹² Proposed Permit at 51 (New Source Review Authorization References table).

¹³ MSS Amendment.

¹⁴ *Id.* at Special Condition 8 (authorizing opacity greater than 20 percent from the Big Brown main boilers), Attachments A & B (defining MSS activities authorized under Permit No. 56445), Maximum Authorized Emission Rate Table (establishing hourly PM limit of 4,788 pounds for each of the Big Brown main boilers).

¹⁵ Proposed Permit at 31-32 (New Source Review Authorization References by Emission Unit table identifying 30 Tex. Admin. Code §§ 111.111(a)(1)(A) (opacity limit) and 111.153(b) (PM limit) as applicable requirements).

¹⁶ Exhibit I (Application for a Minor Revision to Permit No. O65 incorporating the MSS Amendment to Permit No. 56445).

¹⁷ Exhibit J (Defendants’ Proposed Findings of Fact and Conclusions of Law, *Sierra Club v. Energy Future Holdings Corp. and Luminant Generation Co. LLC*, Civil Action No. 6:12-cv-00108-WSS, United States District Court for the Western District of Texas, Waco Division) at COL 87 (“The terms and conditions of the revised

Relying on this legal position, Luminant has stopped reporting deviations from the 30 percent SIP opacity limit at Big Brown Units 1 and 2 during periods of planned boiler maintenance, startup, and shutdown.¹⁸

Petitioners appreciate that the TCEQ has added an “Issuance Date” column to the New Source Review Authorization References table in Luminant’s Title V Permit clarifying that the TCEQ “elected not to incorporate any of the minor revisions received after the renewal permit went to public notice” and that the 2008 version of Permit No. 56445 is the currently incorporated version in the Proposed Permit.¹⁹ We note that the Texas Title V rule at 30 Tex. Admin. Code § 122.217(b) clearly states that applicable requirements, like 30 Tex. Admin. Code Chapter 111 PM and opacity limits, are, “in every case . . . always enforceable” while a permit revision application is pending.²⁰ Because the meaning of this rule is self-evident and because the Proposed Permit is clear that the MSS Amendment is not currently part of the Proposed Permit, we are not petitioning EPA to require modification of the Proposed Permit to restate the obvious.

IV. PROCEDURAL REQUIREMENTS FOR SUBMISSION AND EPA REVIEW OF PETITIONS

The Clean Air Act requires facilities subject to Title V permitting requirements to obtain a permit that “assures compliance by the source with all applicable requirements.”²¹ Applicable requirements include any standard or other requirement in a state’s federally-approved SIP and

Permit No. 56445 became terms and conditions of Title V Permit No. O65 when Luminant submitted an application to revise Permit No. O65 to the TCEQ in December 2011.”); Exhibit K (Defendants’ Reply Regarding Notice of Supplemental Authority in Support of its Pending Motion to Dismiss, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108) at n6 (“Further, on December 12, 2011, Luminant applied to TCEQ for a revision of its Title V permit to include these new [MSS Amendment] provisions that authorize and regulate planned MSS emissions. Pursuant to EPA-approved and federally enforceable regulations [at 30 Tex. Admin. Code § 122.217(a)], Luminant’s timely application authorizes it to operate, as a matter of federal law, pursuant to the revised MSS terms prior to issuance of the final Title V permit amendment.”).

¹⁸ Exhibit L (Excepts, Oral Deposition of Lucy Fraiser, *Sierra Club v. Energy Future Holdings Corp. and Luminant Generation Co. LLC*, Civil Action No. 6:12-cv-00108-WSS, United States District Court for the Western District of Texas, Waco Division) at 156-158 (Luminant’s witness explains that opacity events that occur during planned MSS activities are no longer considered violations or reported in Luminant’s Title V deviation reports); Exhibit M (Summary of excess emissions reported by Luminant for Permit No. O65 from 2010 1Q-2013 3Q); Exhibit N (Quarterly excess emission reports submitted by Luminant for Permit No. O65 from 2010 1Q-2013 3Q).

¹⁹ Exhibit H.

²⁰ 30 Tex. Admin. Code § 122.217(b); 30 Tex. Admin. Code § 122.10(2)(A) (definition of “applicable requirement” includes “all of the requirements of Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter) as they apply to the emission units at a site”).

²¹ 40 C.F.R. § 70.1(b); 30 Tex. Admin. Code § 122.142(c).

preconstruction permit limits and conditions.²² Title V permit applications must disclose all applicable requirements and any violations at the facility.²³

Where a state permitting authority issues a Title V operating permit, EPA will object to the permit if it is not in compliance with applicable requirements under 40 C.F.R. Part 70.²⁴ If the EPA does not object, any person may petition the Administrator to object within 60 days after the expiration of the Administrator's 45-day review period.²⁵ The Administrator "shall issue an objection . . . if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of the . . . [Clean Air Act]."²⁶ The Administrator must grant or deny a petition to object within 60 days of its filing.²⁷ While the burden is on the petitioner to demonstrate to EPA that a Title V operating permit is deficient, once such a burden is met, EPA is required to object to the permit.²⁸

V. OBJECTIONS

A. **The TCEQ Must Revise the Proposed Permit's Compliance Assurance Monitoring Provision to Assure Compliance with the Applicable SIP Particulate Matter Limit of 0.3 lb/MMBtu at All Times,²⁹ and also Must Ensure that Any Credible Evidence May be Used to Demonstrate Noncompliance**

1. **The TCEQ Must Revise the Proposed Permit's CAM Provision to Assure Compliance with the Applicable SIP Particulate Matter Limit of 0.3 lb/MMBtu at All Times**

EPA's Part 70 monitoring rules are designed to satisfy the statutory requirement that "[e]ach permit issued under [Title V] shall set forth . . . monitoring . . . requirements to assure compliance."³⁰ The TCEQ must take three steps to assure a Title V permit complies with EPA's monitoring rules:

²² 40 C.F.R. § 70.2; 30 Tex. Admin. Code § 122.10(2).

²³ 42 U.S.C. § 7661b(b); 40 C.F.R. §§ 70.5(c)(4)(i), (5), and (8); Tex. Admin. Code § 122.132.

²⁴ 40 C.F.R. § 70.8(c).

²⁵ 42 U.S.C. § 7661d(b)(2); 40 C.F.R. § 70.8(d); 30 Tex. Admin. Code § 122.360.

²⁶ 42 U.S.C. § 7661d(b)(2); *see also* 40 C.F.R. § 70.8(c)(1).

²⁷ 42 U.S.C. § 7661d(b)(2).

²⁸ *New York Public Interest Group v. Whitman*, 321 F.3d 316, 332-34, n12 (2nd Cir. 2003) ("Although there is no need in this case to resort to legislative history to divine Congress' intent, the conference report accompanying the final version of the bill that became Title V emphatically confirms Congress' intent that the EPA's duty to object to non-compliant permits is nondiscretionary").

²⁹ Public Comments at 14-16.

³⁰ 42 U.S.C. § 7661c(c); *see also* 40 C.F.R. §§ 70.6(a)(3)(i)(A) and (B) and 70.6(c)(1).

- Pursuant to 40 C.F.R. § 70.6(a)(3)(i)(A), the TCEQ must ensure that monitoring requirements contained in applicable requirements are properly incorporated into Title V permits;
- Pursuant to 40 C.F.R. § 70.6(a)(3)(i)(B), if an applicable requirement contains no periodic monitoring, the TCEQ must add periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit; and
- Pursuant to 40 C.F.R. § 70.6(c)(1), if periodic monitoring in the applicable requirement is not sufficient to assure compliance with permit terms and conditions, the TCEQ must supplement monitoring to assure such compliance.

The TCEQ must also provide a clear account of its rationale for selecting the monitoring requirements in each Title V permit it issues in the permitting record.³¹

Big Brown's Units 1 and 2 are subject to 30 Tex. Admin. Code § 111.153(b), which prohibits particulate matter emissions from solid fossil fuel-fired steam generators in excess of 0.3 lb/MMBtu, averaged over a two-hour period.³² This limit is a SIP limit³³, and is listed in the Proposed Permit's Applicable Requirements Summary.³⁴ This SIP PM limit applies *at all times* for at least three independent reasons. First, the limit is clear on its face and contains no qualifying language or exemptions. Second, this is a *SIP* limit and SIP limits are not subject to exemptions during maintenance, startup, shutdown, and malfunction activities.³⁵ Third, EPA has spent the better part of the last decade working with the TCEQ to end the historic (and illegal) practice of allowing blanket exemptions from compliance with SIP limits, and EPA has approved a narrow affirmative defense to *penalties* for violations of SIP limits.³⁶ The Proposed Permit

³¹ 40 C.F.R. § 70.7(a)(5) ("The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it.").

³² 30 Tex. Admin. Code § 111.153(b) ("No person may cause, suffer, allow, or permit emissions of particulate matter from any solid fossil fuel-fired steam generator to exceed 0.3 pound of total suspended particulate matter per million Btu heat input, averaged over a two-hour period.").

³³ 40 C.F.R. § 52.2270(c); 64 Fed Reg. 57983, 57985, *Approval and Promulgation of Implementation Plans; Revisions to Particulate Matter Regulations* (October 28, 1999) (approving 111.153(b) into the Texas SIP).

³⁴ Proposed Permit at 31 (Applicable Requirements Summary for GRPBOIL12).

³⁵ 75 Fed. Reg. 68989, 68992, *Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities* (November 10, 2010) ("Although one might argue that it is appropriate to account for . . . variability [of emissions under all operating conditions] in technology-based standards, EPA's longstanding position has been that it is not appropriate to provide exemptions from compliance with emission limits in SIPs that are developed for the purpose of demonstrating how to attain and maintain the public health-based NAAQS.").

³⁶ *Id.* ("For purposes of demonstrating attainment and maintenance, States assume source compliance with emission limitations at all times. Thus, broad provisions that would exempt compliance during periods of startup, shutdown,

must assure compliance with the Texas SIP's PM limit at all times and may not relax the limit or exempt Luminant from compliance with the limit during startups, shutdowns, maintenance, or upsets events.³⁷

Big Brown's Units 1 and 2 are subject to Compliance Assurance Monitoring ("CAM") requirements and the Proposed Permit must include a CAM provision that assures compliance with the Texas SIP's PM limit. The CAM rule requires the collection of data *at all times*, including periods of maintenance, startup, shutdown, and malfunction to demonstrate continuous compliance with applicable limits.³⁸ The purpose of CAM "is to require, as part of the issuance of a permit under Title V of the Act, improved or new monitoring at those emissions units where monitoring requirements do not exist or are inadequate to meet the requirements of this part."³⁹ In addition, a CAM provision cannot "[e]xcuse the owner or operator of a source from compliance with any existing emission limitation or standard . . . that may apply under federal, state, or local law, or any other applicable requirements under the Act."⁴⁰ CAM provisions do not relax applicable limits or establish new limits. Rather, CAM provisions establish improved monitoring methods as part of the Title V permitting process when necessary to assure compliance with applicable limits.

The Proposed Permit includes a CAM provision for the Texas SIP's PM limit as it applies to the Big Brown Units 1 and 2. The CAM provision identifies opacity as the compliance indicator, but then it goes on to include the following vague and confusing text:

malfunction and/or maintenance would undermine the integrity of the SIP."), 68996 ("We note that to the extent that a violation of the NAAQS is caused by a violation of an emission limit in a SIP, the most effective means to ensure limited harm to ambient air quality from the exceedance would be an action for injunctive relief. That remedy is unaffected by our approval of the affirmative defense, which is limited to actions for penalties."); Exhibit O (Letter from Jeff Robinson, Chief, EPA Region 6 Air Permits Section to Richard Hyde, Director, TCEQ Air Permits Division, Re: Process for Addressing Emissions from Maintenance, Startup, and Shutdown Activities in New Source Permits for Major Sources (May 21, 2008)).

³⁷ 42 U.S.C. § 7410(i) (providing that, with limited inapplicable exceptions, neither states nor the EPA Administrator may issue orders modifying SIP requirements with respect to any stationary source); 40 C.F.R. § 70.6(a)(1) ("[Title V permits must include] [e]missions limitations and standards . . . that assure compliance with all applicable requirements at the time of permit issuance").

³⁸ 40 C.F.R. § 64.7(c) ("Except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities . . ., the owner or operator shall conduct all monitoring in continuous operation . . . at all times that the pollutant-specific emissions unit is operating.").

³⁹ 40 C.F.R. § 64.10(a)(1).

⁴⁰ *Id.*; *see, also*, 30 Tex. Admin. Code § 122.161(d) ("The requirements of Subpart G of this Chapter (related to Periodic Monitoring and Compliance Assurance Monitoring) shall not be used to justify the approval of monitoring which is less stringent than the monitoring which is required by the TCAA, FCAA, or a local air pollution control agency").

For each valid 2-hour block that does not include boiler startup, shutdown, maintenance, or malfunction activities, if the opacity exceeds 20% averaged over the 2 hour block period, it shall be considered and reported as a deviation.⁴¹

Petitioners' public comments explained that this CAM provision is inadequate, because Luminant failed to justify the correlation of the opacity limit selected with particulate matter levels.⁴² Petitioners' also emphasized that if the TCEQ declined to require direct monitoring of PM emissions, that it "must treat any exceedance of the 20 percent opacity limit as an exceedance and hence a violation of the plant's PM limits."⁴³ The TCEQ disagreed, stating in its Response to Comments that the Draft Permit "includes monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and monitoring sufficient to assure compliance with the terms and conditions of the permit."⁴⁴ In support this contention, the TCEQ provided the following information in response to Petitioners' comments:

The company has performed numerous stack tests on the Big Brown main boilers (Units 1 & 2) and the results have always indicated that total suspended particulate fell well below 0.3 lb/MMBtu with corresponding opacity also indicating less than 20%, in all cases[.] . . .

Opacity may be monitored as an indicator that Big Brown Units 1 & 2 (BB12) are in compliance with the 0.30 lb/MMBtu PM emission rate limitation in § 111.153(b). This is confirmed by the attached graph, which shows the one-hour average PM emission rates determined by stack sampling tests versus the average of opacity readings recorded during the stack sampling tests. The graph shows that PM emission rates are 50% or less of the 111.153(b) limitation when opacity is 20% or less. . . .

Based on our assessment of this data, the TCEQ believes that the continuous opacity monitoring remains adequate for ensuring compliance with PM emission limits of 30 TAC § 111.153(b) [0.3 lb/MMBtu], for BB12.⁴⁵

The TCEQ's response is deficient because Luminant's stack test reports – none of which are publicly available – cannot demonstrate that maintaining opacity levels below 20 percent during periods of "normal" or "steady state" (as defined by Luminant) operation assures compliance with the Texas SIP PM limit during boiler startup, shutdown, maintenance, and

⁴¹ Proposed Permit at 37 (emphasis added).

⁴² Public Comments at 14-15.

⁴³ *Id.* at 16 (emphasis added).

⁴⁴ Response to Comments at Response F.

⁴⁵ *Id.*

upsets, or malfunctions. The SIP limit applies at all times. As EPA emphasized in its recent Hayden Station Title V objection, a CAM provision that excludes data generated during upset events and MSS activities — when emissions are at their highest — does not assure ongoing compliance with a SIP limit.⁴⁶ Thus, the TCEQ failed to demonstrate that opacity levels below 20 percent during normal operations, as specified in the Proposed Permit’s CAM provision, correlates with compliance with PM SIP limit during startups, shutdowns, maintenance, and malfunction events.

The deficiency of the CAM provision is highlighted by a recent order issued by the United States District Court for the Western District of Texas interpreting it. According to the Order, any credible evidence that Luminant’s Units 1 or 2 exceeded the Texas SIP’s PM limit of 0.3 lb/MMBtu limit could not be used to demonstrate non-compliance with the limit, because the exceedances occurred during malfunction, maintenance, startup, and shutdown activities and thus fell outside of the CAM provision’s reporting requirement.⁴⁷ According to the Court, credible evidence of noncompliance is not available in a citizen suit and “a concerned citizen is limited to the compliance requirements, as defined in the Title V permit, when pursuing a civil lawsuit for CAA violations.”⁴⁸ The Order states that if EPA believes the CAM provision improperly modifies or relaxes an applicable requirement, “the appropriate procedure would be for the EPA . . . to reopen the permit and add an omitted ‘applicable requirement,’ or amend any defect in the permit approving process.”⁴⁹ Until EPA takes such an action, the Texas SIP’s PM limit at 30 Tex. Admin. Code § 111.153(b) will remain practicably unenforceable at the Big

⁴⁶ Order Granting in Part and Denying in Part Petition for Objection to Permit, *In the Matter of Public Service Company of Colorado, Hayden Station*, Petition VIII-2009-01 at 8 (March 24, 2010) (“Section III.c of Appendix G of the permit says periods of startup, shutdown, and malfunction may be excluded from the 24-hour average opacity for reporting CAM excursions. However, the CAM rule at 40 C.F.R. 64.7(c) requires the collection of data at all times the process is operating, which includes periods such as startup, shutdown, or malfunctions. . . . CDPHE must remove from the permit this exclusion for collecting data during periods of startup, shutdown, and malfunction.”) (emphasis added).

⁴⁷ Exhibit P (Order Granting Motion for Partial Summary Judgment, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108 (W.D. Tex. February 10, 2014)) at 3 (“Defendants do not contest the fact that there were instances between January 2008 and July 2011, when emissions exceeded 0.3 lb/mmBtu. Instead, Defendants argue that it is entitled to summary judgment because those PM exceedances still complied with the PM limits in Big Brown Plant’s Title V permit”).

⁴⁸ *Id.* at 15-16 (emphasis added).

⁴⁹ *Id.* at 12-13 (“Once approved, a plaintiff is foreclosed from collaterally attacking the Title V permit that is issued to a power plant. Such is the case even if the deficiencies are overlooked and remain undiscovered until after the permit is issued. Should a permit deficiency go unnoticed for a period of time, the appropriate procedure would be for the EPA or the states to reopen the permit and add an omitted ‘applicable requirement,’ or amend any defect in the permit approving process.” (internal citations omitted) (emphasis added)).

Brown power plant during periods of malfunction, maintenance, startup, and shutdown.⁵⁰ As the above-cited federal district court order clearly demonstrates, the Proposed Permit's CAM provision has thwarted enforcement of, and does not assure compliance with, the Texas SIP's PM limit that applies to Big Brown's two main Units. The TCEQ's position that the CAM provision assures compliance is completely undermined by the Order and TCEQ's explanation regarding the sufficiency of the CAM provisions is implausible on its face.

Requested Revision to the Proposed Permit:

To assure ongoing compliance with the Texas SIP PM limit and to confirm that the limit applies at all times, the Administrator should object to the Proposed Permit and require the TCEQ to remove the portion of the CAM text that excludes periods of malfunction, maintenance, startup, and shutdown.

2. TCEQ Must Ensure that Any Credible Evidence May be Used to Demonstrate Non-compliance

Related to the above objection, the TCEQ must also revise the Proposed Permit to ensure that any credible evidence may be used to demonstrate noncompliance with applicable requirements.

The Federal Register preamble for EPA's CAM rule explains that "compliance with an approved part 64 monitoring plan does not shield a source from enforcement actions for violations of applicable requirements of the Act if other credible evidence proves violations of applicable emission limitations or standards."⁵¹ EPA emphasized that Title V permits may not be written to limit the types of evidence used to prove violations of emissions standards and that Title V provisions that purport to establish such limits are "null and void."⁵²

The Proposed Permit does not contain any language expressly limiting the kinds of evidence that EPA or citizens may rely on to identify violations of applicable requirements.⁵³

⁵⁰ Petitioners respectfully disagree with the Court that a CAM provision inserted into a Title V Permit through a minor revision may be read to alter or weaken the underlying applicable requirement. Notwithstanding the possibility of Petitioners' right to potentially appeal the Court's Order, EPA is obligated, now, to act to object and to correct the Big Brown permit's deficient CAM provision.

⁵¹ 62 Fed. Reg. 54900, 54907, *Compliance Assurance Monitoring* (October 22, 1997).

⁵² *Id.* at 54907-54908.

⁵³ Indeed, the Proposed Permit provides that Luminant "shall comply with 30 TAC § 122.146 using at a minimum, *but not limited to*, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and *any other credible evidence or information.*" Proposed Permit at 14 (Special Condition 15) (emphasis added).

However, a federal district court recently interpreted Big Brown’s Title V permit to do just that, holding that compliance with the Proposed Permit’s CAM provision is the exclusive method for citizens to demonstrate compliance.⁵⁴

If [the credible evidence rule is] expanded to citizen suits, a permit holder would have to defend itself against every conceivable measurement, test, or theory that can be submitted as credible evidence to challenge a power plant’s compliance with its Title V permit. See *EME Homer City*, 727 F.3d at 298 (*The plain text of Title V, in turn, lists only two ways in which it can be violated: operating without a Title V permit or violating the terms of a Title V permit while operating a source.*). Such a position would undermine the permit’s objective as the ‘source-specific bible for Clean Air Act compliance.’⁵⁵

While Petitioners could identify no explicit language in the Texas SIP specifically authorizing the use of credible evidence to enforce SIP limits, EPA has made it clear that any Title V permit term that prohibits the use of credible evidence is “null and void.” The federal district court determined that, absent specific authorization in the Title V permit, credible evidence may not be used by citizens to enforce the permit’s emission limits. Therefore, it is EPA’s duty to evaluate the sufficiency of the Proposed Permit – and whether the Proposed Permit meets the enforceability requirements – in light of that court decision.

In order to assure that applicable requirements are enforceable and consistent with the Credible Evidence Rule and EPA’s assurances in the preamble to the CAM rule, the Administrator must object to the Proposed Permit and require the TCEQ to clarify that credible evidence may be used to enforce the terms and conditions of the Proposed Permit in any enforcement action, including those actions brought pursuant to the Clean Air Act’s citizen suit provisions, 42 U.S.C. § 7604.

Requested Revision to the Proposed Permit:

To assure that applicable requirements in the Proposed Permit are practicably enforceable, the Administrator should require the TCEQ to revise the Proposed Permit to include the following condition: “Nothing in this permit shall be

⁵⁴ Exhibit P at 16. (“[A] concerned citizen is limited to the compliance requirements, as defined in the Title V permit, when pursuing a civil lawsuit for CAA violations.”).

⁵⁵ *Id.* (emphasis added).

interpreted to preclude the use of any credible evidence to demonstrate non-compliance with any term of this permit.”

B. The TCEQ Must Revise the Proposed Permit to Identify Emission Units Authorized Under Incorporated Permits by Rule⁵⁶

Each Title V permit must “include . . . all applicable requirements for all relevant emissions units in the major source.”⁵⁷ Permits By Rule (“PBR”) requirements and limits are defined as applicable requirements for Texas Title V permits.⁵⁸ The Proposed Permit’s New Source Review Authorization References table incorporates the following PBRs by reference: Rule 058 (05/12/1981) and 30 Tex. Admin. Code §§ 106.124 (09/04/2000), 106.227 (09/04/2000), 106.263 (11/01/2001), 106.412 (09/04/2000), 106.433 (09/04/2000), 106.452 (09/04/2000), 106.454 (11/01/2001), 106.477 (09/04/2000), and 106.532 (09/04/2000).⁵⁹ However, the Proposed Permit does not identify any emissions unit authorized under these PBRs and thus fails to list applicable requirements for certain “emissions units in the major source.”⁶⁰ The Proposed Permit is therefore incomplete. Unless the Proposed Permit includes this information, regulators and members of the public will not be able to determine which emission units at the Big Brown power plant are subject to limits and requirements established by each applicable PBR.⁶¹ Moreover, even if an interested party is able to determine which emissions units are subject to PBR requirements, a court is not likely to enforce an applicable requirement that is not listed on the face of the Proposed Permit.⁶² Because this is so, the Proposed Permit fails to identify and assure compliance with all applicable requirements.

The TCEQ’s response to public comments indicates that “[s]ome of the PBRs claimed [by Luminant] do not require registration (specifically 106.183 for boilers, heaters, and other combustion devices, 106.472 for organic and inorganic liquid loading and unloading, 106.478 for

⁵⁶ Public Comments at 11.

⁵⁷ 40 C.F.R. § 70.3(c).

⁵⁸ 30 Tex. Admin. Code § 122.10(2)(H).

⁵⁹ Proposed Permit at 51-52.

⁶⁰ *Id.* at 53-56.

⁶¹ *Objection to Title V Permit No. O1420, CITGO Refining and Chemicals Company, Corpus Christi Refinery—West Plant* (October 29, 2010) at ¶ B.1 (draft permit is deficient because it fails to list any emissions units subject to incorporated PBRs); *Objection to Title V Permit No. O2164, Chevron Phillips Chemical Company, Philtex Plant* (August 6, 2010) at ¶ 7 (draft permit fails to meet 40 C.F.R. § 70.6(a)(1), because it does not list any emission units to be authorized under specified PBRs).

⁶² *United States v. EME Homer City Generation*, 727 F.3d 274, 300(3rd Cir. 2013) (explaining that the Court lacks jurisdiction to enforce a requirement omitted from a Title V permit).

storage tank and change of service, and 106.371, cooling water units), thus, authorization letters will not always be available for those particular PBRs.”⁶³ This response is deficient for two reasons. First, none of the PBRs listed in the TCEQ’s response were the subject of Petitioners’ comments. Second, the fact that some PBRs do not require registration does not address Petitioners’ concern that the Draft Permit failed to identify emission units authorized by PBRs that are explicitly incorporated by reference into the Draft Permit. Whether or not an incorporated PBR requires registration, the units subject to each PBR must at least be listed in the Proposed Permit to identify and assure compliance with applicable PBR requirements.

Requested Revision to the Proposed Permit:

To ensure that the Proposed Permit properly identifies all applicable requirements and that incorporated PBR limits and requirements are practicably enforceable, the Administrator must object to the Proposed Permit and require the TCEO identify all units authorized under each incorporated PBR.

C. The TCEQ Must Revise the Proposed Permit to Specify Monitoring Methods for PBR Emission Limits⁶⁴

The Proposed Permit must include monitoring requirements that assure compliance with all applicable requirements, including requirements established by incorporated PBRs.⁶⁵ Where monitoring in an applicable requirement is not sufficient to assure compliance with the requirement, the Proposed Permit must establish supplemental monitoring.⁶⁶ With one exception, neither the Proposed Permit nor the PBR rules listed in the Proposed Permit’s New Source Authorization References table identify any specific monitoring method to assure compliance with applicable PBR requirements.⁶⁷ While the Proposed Permit does identify the TCEQ’s PBR recordkeeping rule at 30 Tex. Admin. Code § 106.8 as an applicable requirement and includes Special Conditions 11 and 12 related to PBR recordkeeping, these provisions do not specify which monitoring methods—if any—are necessary to assure compliance with applicable

⁶³ Response to Comments at Response F.

⁶⁴ Public Comments at 14.

⁶⁵ 40 C.F.R. §§ 70.6(a)(3)(i)(B) and (c).

⁶⁶ *Id.*

⁶⁷ Proposed Permit at 44 (establishing a PBR-related Periodic Monitoring requirement for opacity).

PBR requirements. Rather, they merely provide a non-exclusive menu of options that Luminant may pick and choose from at its discretion to demonstrate compliance.⁶⁸ This broad, non-exclusive list does not assure compliance with PBR requirements.⁶⁹

In addition, the laundry list of options for monitoring compliance with PBR standards is so vague that it is virtually meaningless:

“The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit’s compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets . . . , chemical composition of raw materials, speciation of air contaminants data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring . . . , or control device parametric monitoring.”⁷⁰

The PBR requirements allow each permit holder to determine which records will provide sufficiently “reliable data,” effectively “outsourcing” the Title V permit obligation to specify the monitoring method that will assure compliance with each emission limit or standard. Neither the Proposed Permit, nor the accompanying Statement of Basis, nor the TCEQ’s response to public comments provide a rationale for the TCEQ’s determination that the Proposed Permit includes

⁶⁸ *Id.* at 12-13 (“The permit holder shall maintain records to demonstrate compliance with any emission limitation or standard that is specified in a permit by rule (PBR) or Standard Permit listed in the New Source Review Authorizations attachment. The records shall yield reliable data from the relevant time period that are representative of the emission unit’s compliance with the PBR or Standard Permit. These records may include, but are not limited to, production capacity and throughput, hours of operation, material safety data sheets . . . , chemical composition of raw materials, speciation of air contaminants data, engineering calculations, maintenance records, fugitive data, performance tests, capture/control device efficiencies, direct pollutant monitoring . . . , or control device parametric monitoring.”); 30 Tex. Admin. Code § 106.8(c) (“Owners or operators of all other facilities to be constructed and operate under a PBR must retain records as follows . . . (2) maintain records containing sufficient information to demonstrate compliance with the following: (A) all applicable general requirements of § 106.4 of this title or the general requirements, if any, in effect at the time of the claim; and (B) all applicable PBR conditions”).

⁶⁹ 40 C.F.R. §§ 70.6(a)(1) and (c); *Objection to Federal Operating Permit No. O17, City of Garland Power and Light, Ray Olinger Plant* (January 22, 2010) at ¶ 4 (“Pursuant to 40 CFR § 70.8(c)(1), EPA objects to issuance of the Title V permit because the *Applicable Requirements Summary* table fails to identify the specific emission limitations and standards, include those operational requirements that assure compliance with 40 CFR Part 60, Subpart GG, as required by 40 CFR § 70.6(a)(1). In response to this objection, the draft Title V permit must reference the specific compliance option and associated monitoring selected by the permit holder that will be used to ensure compliance with the emission limitations governing standards of performance for stationary gas turbines regulated under 40 CFR Part 60, Subpart GG.”); *Objection to Title V Permit No. O1420, CITGO Refining and Chemicals Company, Corpus Christi Refinery—West Plant* (October 29, 2010) at ¶ B.1 (Title V permit that fails to include monitoring, recordkeeping, and reporting requirements for emissions units is objectionable).

⁷⁰ 30 Tex. Admin. Code § 106.8(c).

monitoring provisions sufficient to assure compliance with applicable PBR requirements.⁷¹ The TCEQ's response to public comments merely states that "[d]uring review of the draft permit, fifty emission units were reviewed for adequacy of monitoring and additional monitoring was incorporated for many."⁷²

This vagueness also prevents EPA and the public from effectively evaluating whether applicable monitoring requirements have been met. For example, Petitioners would likely review and/or challenge monitoring relying upon undefined "engineering calculations" to determine compliance without more information about how those calculations were to be made and whether they reflect current operating conditions or industry standards.

Requested Revision to the Proposed Permit:

To assure that incorporated PBR limits and requirements are practicably enforceable, the Administrator should object to the Proposed Permit and require the TCEQ to specify the monitoring method that will assure compliance with each applicable PBR limit or standard, and provide a reasoned basis for each determination.

D. The TCEQ Must Revise the Proposed Permit to Establish a Compliance Schedule that Requires Luminant to Report all Deviations from the 30 Percent Opacity Limit

As part of the Title V permitting renewal process, the TCEQ must develop a "schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance."⁷³ Big Brown's Units 1 and 2 regularly exceed the 30 percent Texas SIP opacity limit. Each exceedance of the Texas SIP opacity limit is a deviation that must be included in Luminant's Title V excess emissions reports.⁷⁴ Luminant no longer reports exceedances of the 30 percent SIP opacity limit that occur during so-called "planned MSS"

⁷¹ Order Partially Granting and Partially Denying the Petition for Objection, *In the Matter of the Premcor Refining Group, Inc.*, Petition VI-2007-02 (May 28, 2009) at 27 (granting petition for objection to renewal of a Texas Title V permit on the ground that TCEQ failed to provide a rationale to demonstrate that the monitoring requirements in the permit are sufficient to assure compliance).

⁷² Response to Comments at Response F.

⁷³ 40 C.F.R. § 70.5(c)(8)(iii)(C); 30 Tex. Admin. Code § 122.142(e).

⁷⁴ 75 Fed. Reg. 68994 ("All emissions in excess of the applicable emission limits are considered violations"); 30 Tex. Admin. Code § 122.145(2)(A) ("The permit holder shall report, in writing, to the executive director all instances of deviations, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.").

activities as deviations. This failure to report is a violation of applicable Title V reporting requirements that the TCEQ must address through a compliance schedule in the Proposed Permit.⁷⁵

Petitioners were unable to raise this issue during the comment period, because Luminant did not cease reporting opacity exceedances during startup, shutdown and maintenance until after the TCEQ issued the “MSS Amendment” to Permit No. 56445 on December 16, 2011, *after the comment period for the Draft Permit had closed.*

1. Emissions from the Big Brown Plant have Exceeded and Continue to Exceed Applicable Opacity Limits⁷⁶

Big Brown Units 1 and 2 must comply with the opacity limit of 30 percent (averaged over a six minute period) established by 30 Tex. Admin. Code § 111.111(a)(1)(A), subject to a limited exemption allowing no more than one 6-minute exceedance per hour.⁷⁷ This limit is incorporated into the Texas SIP and is an applicable requirement of the Proposed Permit.⁷⁸ According to Luminant’s Title V excess emissions reports, Big Brown exceeded this SIP opacity limit on more than 7,500 occasions between 2006 and 2010.⁷⁹ Luminant reported an additional 2,461 exceedances of the Texas SIP opacity limit between January 2011 and October 2013.⁸⁰ Assuming up to one allowable exceedance per hour, Luminant has still exceeded the opacity limit on a regular basis since its Title V Permit was last renewed. The TCEQ contends that the Proposed Permit need not contain a compliance schedule, because the TCEQ’s Executive Director has determined that the vast majority of Luminant’s self-reported opacity deviations

⁷⁵ *Title V Deviation Reporting and Permit Compliance Certification*, TCEQ Field Operations Guidance (2012) at 12 n3 (“The permit holder is required by the TV permit to comply with the requirement to report a deviation. Noncompliance with that requirement is a separate deviation.”). This document is available electronically at: http://www.tceq.texas.gov/assets/public/compliance/field_ops/guidance/Title_V_Guidance_2012_November.pdf (last accessed on January 17, 2014).

⁷⁶ Public Comments at 2.

⁷⁷ 30 Tex. Admin. Code § 111.111(a)(1)(E) (“Visible emissions during the cleaning of a firebox or the building of a new fire, soot blowing, equipment changes, ash removal, and rapping of precipitators may exceed the limits set forth in this section for a period aggregating not more than six minutes in any 60 consecutive minutes, nor more than six hours in any 10-day period. This exemption shall not apply to the emissions mass rate standard, as outlined in § 111.151(a) of this title (relating to Allowable Emissions Limits).”).

⁷⁸ Proposed Permit at 32.

⁷⁹ Public Comments at Attachment F (tallying violations of the 30 percent opacity limit at Big Brown Units 1 and 2 from 2006 3Q to 2010 4Q); Exhibit M.

⁸⁰ Exhibits M and N.

qualify for the affirmative defense, listed at 30 Tex. Admin. Code § 101.222.⁸¹ This response fails to address Petitioners' issue. As EPA has repeatedly made clear, if the criteria are met, the affirmative defense can be used to avoid *penalties* only, but it does not “modify any applicable emission limitation, nor . . . [does it] authorize violations of applicable emission limitations.”⁸² That the TCEQ has exercised enforcement discretion, has chosen to take no action, or is satisfied that the reported deviations qualify for the affirmative defense is not evidence that Luminant is complying with the opacity limit, and the TCEQ cannot exempt Luminant from having to report any deviations from that limit.

2. Luminant no Longer Reports Deviations from the Texas SIP Opacity Limit that Occur During Startup, Shutdown, and Maintenance Activities

The TCEQ's Title V rules require permit holders to “report, in writing, to the executive director all instances of deviation, the probable cause of the deviations, and any corrective actions or preventative measures taken for each emission unit addressed in the permit.”⁸³ Luminant has stopped reporting deviations from the Texas SIP opacity limit for Units 1 and 2 during maintenance, startups, and shutdowns based on its legal position that the December 16, 2011 MSS Amendment to Permit No. 56445 effectively creates an exception to the SIP limit.⁸⁴ Luminant's legal position is mistaken for several reasons. First, the MSS Amendment *has not* been incorporated into the Proposed Permit and changes to Permit No. 56445 in 2011 *are not* part of the Proposed Permit. Second, the Proposed Permit still lists the SIP opacity limit as an applicable requirement, and Luminant has not requested that the TCEQ remove that requirement from the permit. Third, even if the December 2011 MSS Amendment to Permit No. 56445 had been incorporated into the Proposed Permit, the TCEQ's rules provide that, to the extent that the MSS Amendment establishes limits *less stringent* than the SIP, Luminant must continue to demonstrate compliance with the SIP limits.⁸⁵ Finally, as a matter of law, the TCEQ cannot

⁸¹ Response to Comments at Response A.

⁸² 75 Fed. Reg. 68994.

⁸³ 30 Tex. Admin. Code § 122.145(2)(A).

⁸⁴ Exhibits M and N.

⁸⁵ 30 Tex. Admin. Code § 116.115(b)(2)(H)(ii) (“Holders of permits . . . shall comply with the following: If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.”).

modify SIP requirements through the Title V or NSR permitting process (and most certainly cannot alter or weaken a SIP limit through a Title V “minor revision”).⁸⁶

Luminant has not reported any changes to the two main Units or to pollution control equipment that could significantly reduce – let alone eliminate – excess opacity during planned MSS activities.⁸⁷ Yet, it ceased reporting deviations from the Texas SIP opacity limit during startup, shutdown, and maintenance activities after the MSS Amendment was issued in December 2011.⁸⁸ The power plant operates just as it has for decades, which is to say that the particulate matter and opacity pollution controls simply do not work during periods when PM emissions are at their highest. Rather than trying to remedy this problem, Luminant is hiding behind a permit that does not – and cannot – supersede the Texas SIP opacity limit. Luminant’s ongoing failure to include planned MSS opacity events in its deviation reports is a violation of Title V reporting requirements. Moreover, as explained above, even if an affirmative defense applies, it does not change underlying standards, and any exceedance of an emission limitation or standard remains a reportable deviation under Title V.

Requested Revision to the Proposed Permit:

The Administrator should object to the Proposed Permit and require the TCEQ to revise the Proposed Permit to include a schedule for Luminant to supplement its incomplete quarterly excess emissions reports for 2012 and 2013 by reporting all deviations from the 30 percent opacity limit, including those that occurred during startup, shutdown, or maintenance.

VII. CONCLUSION

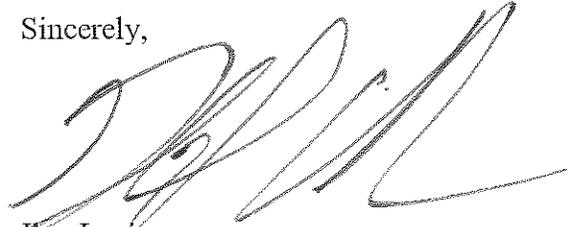
For the foregoing reasons, the Proposed Permit is deficient and the Administrator should object to it.

⁸⁶ 42 U.S.C. § 7410(i).

⁸⁷ Exhibit N. The TCEQ’s Title V rules require information about corrective actions and preventative measures taken to address non-compliance with applicable requirements to be included in Title V excess emissions reports. 30 Tex. Admin. Code § 122.145(2)(A). Luminant’s excess emissions reports do not identify any changes to Big Brown Units 1 or 2 that would significantly reduce, let alone completely eliminate, exceedances of the Texas SIP opacity limit during planned MSS activities.

⁸⁸ Exhibit L.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan Levin', written in a cursive style.

Alan Levin

Gabriel Clark-Leach

ENVIRONMENTAL INTEGRITY PROJECT

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FOR PETITIONERS SIERRA CLUB and
ENVIRONMENTAL INTEGRITY
PROJECT

BIG BROWN PETITION EXHIBITS

- Exhibit A** (“Proposed Permit”) Title V Permit No. O65 for Luminant Generation Company’s Big Brown Steam Electric Station
- Exhibit B** Draft Statement of Basis for Renewal of Title V Permit No. O65
- Exhibit C** Excerpts from Application to Amend Permit No. 56445
- Exhibit D** (“MSS Amendment”) Texas Air Quality Permit No. 56445
- Exhibit E** Excerpts from Luminant’s 2011 Big Brown Emissions Inventory Report
- Exhibit F** (“Public Comments”) Public Comments submitted by Environmental Integrity Project and Sierra Club regarding Draft Renewal Permit No. O65
- Exhibit G** (“Response to Comments”) The TCEQ’s Response to Public Comments filed by Environmental Integrity Project and Sierra Club
- Exhibit H** Email from Chuck Lowary, dated January 16, 2014
- Exhibit I** Application for a Minor Revision to Permit No. O65 incorporating the MSS Amendment to Permit No. 56445
- Exhibit J** Defendants’ Proposed Findings of Fact and Conclusions of Law, *Sierra Club v. Energy Future Holdings Corp. and Luminant Generation Co. LLC*, Civil Action No. 6:12-cv-00108-WSS, United States District Court for the Western District of Texas, Waco Division
- Exhibit K** Defendants’ Reply Regarding Notice of Supplemental Authority in Support of its Pending Motion to Dismiss, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108
- Exhibit L** Excerpts from Oral Deposition of Lucy Fraiser, *Sierra Club v. Energy Future Holdings Corp. and Luminant Generation Co. LLC*, Civil Action No. 6:12-cv-00108-WSS, United States District Court for the Western District of Texas, Waco Division
- Exhibit M** Big Brown Main Boilers Excess Emission Reports Summary Chart
- Exhibit N** Quarterly Excess Emission Reports submitted for Permit No. O65 from 2010 1Q-2013 3Q
- Exhibit O** Letter from Jeff Robinson, Chief, EPA Region 6 Air Permits Section to Richard Hyde, Director, TCEQ Air Permits Division, Re: Process for Addressing

Emissions from Maintenance, Startup, and Shutdown Activities in New Source Permits for Major Sources (May 21, 2008).

Exhibit P Order Granting Motion for Partial Summary Judgment, *Sierra Club v. Energy Future Holdings Corp.*, No. W-12-CV-108 (W.D. Tex. February 10, 2014)

CERTIFICATE OF SERVICE

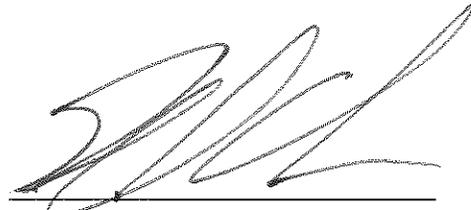
I declare under penalty of perjury under the laws of the United States that I have provided copies of the foregoing Petition to persons or entities below via Federal Express or hand delivery.

Texas Commission on Environmental Quality
Office of Permitting & Registration
Air Permits Division
Technical Program Support Section, MC-163
P.O. Box 13087
Austin, Texas 78711-3087

U.S Environmental Protection Agency
Attn: Air Permit Section Chief
Region 6
1445 Ross Avenue, Suite 1200
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U.S. Environmental Protection Agency
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Ms. Shawn Glacken
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