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Ex. 6

December 19, 2017

Sent via Certified U.S. Mail Return Receipt Requested and Email (Pruitt.Scott@epa.gov)

E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Additional Information in Support of Petition for Reconsideration and Administrative Stay—Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County, 81 Fed. Reg. 89,870 (Dec. 13, 2016) (Docket No. EPA-HQ-OAR-2014-0464)

Dear Administrator Pruitt:

Thank you for your letter dated September 21, 2017, responding to the petition for reconsideration and administrative stay submitted by Vistra Energy Corp. (“Vistra”), Luminant Generation Company LLC (“Luminant”), and other Vistra subsidiaries on February 13, 2017, regarding the U.S. Environmental Protection Agency’s (“EPA”) final action entitled *Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard—Supplement to Round 2 for Four Areas in Texas: Freestone and Anderson Counties, Milam County, Rusk and Panola Counties, and Titus County* (“Final Rule”), published at 81 Fed. Reg. 89,870 (Dec. 13, 2016). We are very encouraged that, as stated in your letter, EPA intends to undertake an administrative action with notice and comment to revisit the nonattainment designations in the Final Rule for portions of Freestone and Anderson Counties, Rusk and Panola Counties, and Titus County, Texas. We are writing to provide additional new information in support of our petition for reconsideration and to urge EPA to take prompt action to revisit and correct the nonattainment designations.

As you know, the Final Rule rejected the State of Texas’s recommended designations for these three areas in Texas for the 2010 1-hour SO₂ National Ambient Air Quality Standard (“NAAQS”). Instead, the Final Rule adopted designations based solely on modeling simulations submitted by the Sierra Club. The three areas designated by EPA as nonattainment surround Luminant’s Big Brown Power Plant, Martin Lake Power Plant, and Monticello Power Plant, respectively.

In addition to Vistra’s petition, the Texas Commission on Environmental Quality (“TCEQ”) submitted a petition for reconsideration to EPA on December 11, 2017. Vistra fully supports TCEQ’s petition. As explained in Vistra’s

and TCEQ's petitions, reconsideration is necessary so that the final designations may be based on SO₂ monitoring data collected by TCEQ, and not solely on Sierra Club's over-predictive modeling simulations. Moreover, as explained below and in TCEQ's petition, new information has become available that further supports reconsideration and warrants EPA's correction of these three nonattainment designations.

RETIREMENT ANNOUNCEMENTS FOR MONTICELLO AND BIG BROWN REQUIRE CHANGE IN DESIGNATIONS

First, Luminant has sought and obtained approval from the Electric Reliability Council of Texas ("ERCOT") to decommission and permanently retire the Monticello Plant and the Big Brown Plant, which are the two stationary sources that Sierra Club claimed to cause nonattainment in Titus County and Freestone and Anderson Counties, respectively. Once retired, these units will have zero SO₂ emissions.

As to Titus County, on October 6, 2017, Luminant submitted a Notice of Suspension of Operations ("NSO") to ERCOT to permanently retire all three units at the Monticello Plant as of January 4, 2018.¹ On October 27, 2017, ERCOT issued its Final Determination on the NSO, finding that the plant is not required for Reliability Must Run ("RMR") service and clearing Luminant to decommission and permanently retire the Monticello Plant according to the schedule in the NSO.²

As to Freestone and Anderson Counties, Luminant submitted an NSO to ERCOT on October 13, 2017, to permanently retire both units at the Big Brown Plant as of February 12, 2018.³ On November 6, 2017, ERCOT issued its Final Determination clearing that retirement as well.⁴

Given these retirements and the source-specific nature of the SO₂ designations, the nonattainment designations for Titus County and Freestone and Anderson Counties are in error and should be changed. Sierra Club's modeling simulations—EPA's sole rationale for the nonattainment designations—were based on the assumption that the Monticello Plant and the Big Brown Plant would continue to operate, an assumption that is in error. These units will have zero SO₂ emissions following their retirement. There is thus no basis for the designations and no reason for TCEQ to expend resources developing a state implementation plan ("SIP") submission to address these erroneous designations. Because a nonattainment designation carries with it additional permitting requirements for new sources seeking to locate in these areas, the erroneous nonattainment designations will also needlessly impede economic activity in these communities. Additionally, if EPA does not correct the nonattainment designations now, EPA's own resources will be expended unnecessarily in reviewing SIP revisions, reclassifying the area to attainment at a later date, and continuing to work with TCEQ on maintenance planning that will extend for years after redesignation. Rather than waste limited agency resources in this manner, the designations for these areas should be corrected now, and these two areas should be designated as attainment or, at a minimum, unclassifiable.

¹ ERCOT, Notice of Suspension of Operations of a Generation Resource, Monticello SES (Oct. 6, 2017), http://www.ercot.com/services/comm/mkt_notices/archives/1528.

² ERCOT, Notice of Suspension of Operations Initial and Final Determination, Monticello Unit 1, Unit 2, Unit 3 (Oct. 27, 2017), http://www.ercot.com/services/comm/mkt_notices/archives/1555.

³ ERCOT, Notice of Suspension of Operations of a Generation Resource, Big Brown SES (Oct. 13, 2017), http://www.ercot.com/services/comm/mkt_notices/archives/1537.

⁴ ERCOT, Notice of Suspension of Operations Initial and Final Determination, Big Brown Unit 1 and Unit 2 (Nov. 6, 2017), http://www.ercot.com/services/comm/mkt_notices/archives/1565. Luminant initially explored a sales process for the Big Brown Plant, but that process is complete and Luminant has determined to retire Big Brown in accordance with the schedule in the NSO and not to sell it.

DEPLOYMENT OF ADDITIONAL AIR MONITORING STATIONS SUPPORT UNCLASSIFIABLE DESIGNATIONS

Second, the recent deployment of additional air monitoring stations by TCEQ near the Martin Lake Plant and the Big Brown Plant warrant reconsideration and correction of the designations for Rusk and Panola Counties and Freestone and Anderson Counties. As explained in the petition for reconsideration, TCEQ developed and submitted to EPA Monitor Placement Evaluation Reports for the placement and operation of source-oriented air quality monitoring stations in the three areas at issue.⁵ In two of the areas, monitors have been deployed and are now operational. The monitor for the Martin Lake Plant (CAMS 1082) was installed by TCEQ approximately 2.2 kilometers downwind of the plant to the north based on predominant wind direction, and the monitor for the Big Brown Plant (CAMS 1084) was installed by TCEQ approximately 5.2 kilometers to the southwest of that plant.

The actual data from these monitors will provide more reliable evidence of actual air quality conditions than Sierra Club's modeling simulations, and EPA should have afforded TCEQ the opportunity to collect the necessary three-years-worth of data before a nonattainment designation is considered. In making NAAQS designations, sound science and policy favor collecting actual monitoring data before making a nonattainment designation. But in the case of these three Texas designations, the timing of the designations was driven by a consent decree that EPA previously entered into with Sierra Club (that neither the State of Texas nor Luminant were a party to). The deadlines in that consent decree did not provide the State with the opportunity to collect actual data to support designations. The State has since deployed monitoring systems consistent with EPA's stated desire to make designations based on monitoring data where it exists, not based on modeling simulations. The Final Rule failed to do this and should be corrected for that reason. The deployment of monitors at Martin Lake and Big Brown warrant correction of these two nonattainment designations to unclassifiable so that the State can continue to collect additional data to determine the attainment status of the area.

CONSERVATION OF AGENCY AND STAKEHOLDER RESOURCES AND JUDICIAL ECONOMY SUPPORT A NEW RULEMAKING

In addition, we urge EPA to undertake its notice-and-comment action to revisit the Final Rule *promptly* and without further delay. As your letter recognizes, prompt action is necessary to alleviate associated and pending planning obligations on the State of Texas. Your letter (at 1) committed to providing "clarity regarding any potential changes *before* the state or regulated entity expend resources investing in regulatory obligations that are currently required." (emphasis added). Without prompt action to correct the erroneous designations, Texas must commit significant resources to develop and promulgate a nonattainment SIP revision. Such a SIP is counterproductive and unnecessary, given that the sources in two of the three areas will be retired prior to the SIP submission date, and monitors have been deployed to collect actual air quality data upon which final designations can be made.

Further, the designations should be corrected now to provide the State with sufficient time to collect monitoring data *prior to* developing a SIP revision, even if one is ultimately necessary. In the event a SIP revision is necessary for one of these areas based on the results of the actual monitoring data, it would conserve both TCEQ and EPA resources if the State is allowed to develop a targeted SIP based on that actual monitoring data, and not over-predictive modeling. Monitoring data will focus and inform the State's development of a SIP

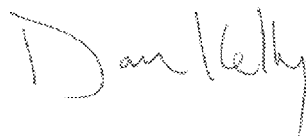
⁵ See TCEQ, Annual Monitoring Network Plan (2017), available at https://www.tceq.texas.gov/assets/public/compliance/monops/air/annual_review/historical/2017-AMNP.pdf.

revision, streamline EPA's review of that revision, and ensure that any required emission reductions do not over-control.

Prompt action by EPA is also necessary to avoid the burden and uncertainties of litigation over the Final Rule. All petitions for review of the Final Rule (which were filed by the State of Texas, Luminant, and Sierra Club) are presently consolidated before the U.S. Court of Appeals for the Fifth Circuit, following the court's denial of EPA's motion to transfer to the D.C. Circuit the petitions for review filed by the State of Texas and Luminant. *See State of Texas et al. v. EPA et al.*, No. 17-60088 (5th Cir.). The D.C. Circuit has, in turn, transferred to the Fifth Circuit the petitions for review originally filed in that court. The Fifth Circuit is presently holding the petitions in abeyance based on EPA's representation that it intends to revisit the Final Rule. However, the court was clear that any party may seek to end the stay if developments warrant. EPA must file a status report with the court by January 11, 2018, in which it must update the court on the status of its reconsideration proceeding. We urge EPA to initiate its notice-and-comment action prior to that date, so that the parties are not compelled to seek an end to the litigation stay in light of the impending deadlines in the Final Rule.

Again, thank you for your letter of September 21, 2017, and your commitment to revisit these three Texas designations. We look forward to participating in the upcoming notice-and-comment action by EPA and to providing additional information to support correction of these three designations. In the meantime, please contact me if I can provide any further information.

Sincerely,



Daniel Jude Kelly
VP & Associate General Counsel

cc: Richard Hyde, Executive Director, TCEQ
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA