

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SMRD DOCKET No. C16-0021-SC-00-E**

**APPLICATION BY LUMINANT MINING COMPANY LLC  
FOR ACCEPTANCE OF SUBSTITUTE COLLATERAL BOND  
PERMIT NOS. 3F, 4K, 5G, 34F, 46C, 48C, 49A, 50B, 51, 53, 54A, 56, AND 58**

**ORDER ACCEPTING BLANKET INTERIM COLLATERAL BOND FOR LUMINANT  
MINING COMPANY LLC'S STATEWIDE SURFACE MINING AND RECLAMATION  
OPERATIONS**

Luminant Mining Company LLC (Luminant), 1601 Bryan Street, Dallas, Texas 75201, has applied to the Railroad Commission of Texas (Commission) for acceptance of a replacement collateral bond to replace its blanket collateral bond currently in place for reclamation obligations arising from operations undertaken at each of Luminant's 13 permitted mines referred to above (the Existing Collateral Bond). In its application filed July 6, 2016, Luminant notified the Commission that in connection with the ongoing Chapter 11 reorganization of Luminant's ultimate parent company, Energy Future Holdings Corp. (EFH), the bankruptcy court has entered an order permitting the refinancing and replacement of the existing debtor-in-possession financing package (Existing DIP Financing), which provides for a carve-out that secures Luminant's Existing Collateral Bond, with a new debtor-in-possession financing package (Interim DIP Financing) that will remain in place until emergence from bankruptcy. Therefore, Luminant requests that the Commission accept replacement bonding secured by a carve-out provided for under the court-approved Interim DIP Financing so Luminant will continue to comply with bond requirements for its above-referenced 13 surface mining and reclamation permits referred to above (Permits).

In accordance with regulatory requirements, Luminant has requested that the Commission approve a replacement blanket collateral bond (the Interim Collateral Bond) for its Texas mining operations secured by a carve-out of up to \$975,000,000 from a superpriority perfected first-lien security interest in substantially all of the assets held directly or indirectly by Texas Competitive Electric Holdings Company LLC (TCEH), the indirect parent company of Luminant, such assets to be owned by TEX Operations Company LLC (TEX Operations) upon the emergence from bankruptcy by TCEH and other TCEH subsidiaries (the Collateral). Luminant makes this request pursuant to §§12.309(h) and 12.310 of the Commission's "Coal Mining Regulations" (Regulations) and §134.121 of the Texas Surface Mining Control and Reclamation Act. Luminant has provided sufficient evidence that the requirements of §12.309(h) for collateral bonds have been met. After considering the application and supporting documents and staff review, the Commission accepts

the Interim Collateral Bond to replace the Existing Collateral Bond for the following permits: Permit Nos. 3F (Big Brown Mine), 4K (Martin Lake Mine), 5G (Monticello Thermo Mine), 34F (Monticello Winfield Mine), 46C (Oak Hill Mine), 48C (Three Oaks Mine), 49A (Bremond Mine), 50B (Kosse Mine), 51 (Leesburg Mine), 53 (Martin Lake AIV South Mine), 54A (Turlington Mine), 56 (Thermo A-1 Mine), and 58 (Martin Lake Liberty Mine) (collectively, the Permitted Mines).

Appropriate notification of the Commission's proposed action was provided by the Commission to this entity and to all other required persons. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon 2011 & Supp. 2016) (Act), and the Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (WEST 2016). Based on the evidence and documentation submitted, the Commission finds that the bond documentation is acceptable to show compliance with Regulations §§ 12.308, 12.309(h), 12.310, and related regulations for replacing an existing blanket collateral bond with a new blanket collateral bond for the Permitted Mines.

#### **FINDINGS OF FACT**

1. By petition on April 29, 2014, EFH sought protection under Chapter 11 of the Bankruptcy Code, U.S.C. §§101-1532 in the United States Bankruptcy Court for the District of Delaware, Case No. 14-10979 (CSS). The petition included many affiliated companies, including Luminant Mining Company LLC which, together with TCEH and its subsidiaries are referred to as "TCEH Debtors" in the bankruptcy proceedings. On June 17, 2014, due to the Chapter 11 proceeding, the Commission issued an order in Docket No. C14-0015-SC-00-E that authorized Luminant to replace its individual self-bonds previously utilized for each of its mines with the Existing Collateral Bond covering its statewide reclamation obligations for the Permitted Mines. The Existing Collateral Bond covers all of Luminant's bonded mining operations in Texas. In its application filed in this proceeding, Luminant notified the Commission that in the ongoing Chapter 11 reorganization of EFH, the Bankruptcy Court has entered an order permitting the refinancing and replacement of the Existing DIP (Debtor in Possession) Financing, which provided a carve-out from the liens securing Existing DIP Financing for the superpriority first lien securing the Existing Collateral Bond, with new Interim DIP Financing, which shall also provide a carve-out from the liens securing Interim DIP Financing for the superpriority first lien securing the Interim Collateral Bond. The Interim DIP Financing will remain in place until the debtor subsidiaries that comprise EFH's competitive businesses which includes the TCEH Debtors (the Competitive Companies) are prepared to emerge from bankruptcy. Upon emergence, the Interim DIP Financing will, subject to certain conditions precedent, automatically

convert to an exit financing to fund post-emergence business operations of the Competitive Companies (the Exit Financing). Both the Interim DIP Financing and the Exit Financing will be secured by essentially the same assets that secure the Existing Collateral Bond. In accordance with §12.310, Luminant filed its application requesting that the Commission accept, as a replacement for its Existing Collateral Bond, the Interim Collateral Bond secured by the collateral securing the Interim DIP Financing with a carve-out provided from the liens securing the court-approved Interim DIP Financing so that Luminant will continue to comply with the bond requirements for all of its surface mining and reclamation permit operations in Texas, including for the Permitted Mines. Luminant's application containing the required documentation was received by the Commission on July 6, 2016, and supplemented on August 5, 2016, September 1, 2016, September 6, 2016, and on September 8, 2016. Luminant's application was transferred to the Hearings Division by the Surface Mining and Reclamation Division on July 8, 2016. Staff's review memorandum and attachments were filed with the Hearings Division by letter dated September 9, 2016.

2. The Regulations at §12.310(a), § 12.308(c), and §12.309(h)(1)-(3) state, respectively:

*12.310(a) The Commission may allow permittees to replace existing bonds with other bonds if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds.*

*12.308(c) A blanket bond covering statewide or countywide operations may be furnished if the terms and conditions thereof are sufficient to comply with the Regulations in §§12.308-12.311 of this title (relating to Form, Conditions, and Terms of Performance Bond and Liability Insurance), and if approved by the Commission.*

*12.309(h) Collateral bonds. Real and personal property posted as a collateral bond shall meet the following criteria:*

*(1) the applicant shall grant the Commission a mortgage or perfected first-lien security interests in real or personal property with a right to sell or otherwise dispose of the property in the event of forfeiture under through 12.317 of this title (relating to Performance Bond Forfeitures Criteria and Procedures);*

*(2) in order for the Commission to evaluate the adequacy of the property offered to satisfy this requirement, the applicant shall submit a schedule of the real or personal property which shall be pledged to secure the obligations under the indemnity agreement. The list shall include:*

*(A) a description of the property;*

*(B) the fair market value as determined by an appraisal conducted by an appraiser authorized by the Commission; and*

*(C) proof of possession and title to the real property; and*

*(3) the property may include land which is part of the permit area; however, land pledged as security shall not be mined under any permit.*

Luminant requests the Commission's acceptance of the Interim Collateral Bond in the total amount of \$975,000,000. This amount is in excess of the existing \$924,629,478 in approved reclamation costs for the Permitted Mines. Luminant requests that the Commission determine that its proffered Interim Collateral Bond meets requirements for acceptance of reclamation bonding of all of its mining and reclamation operations in Texas, including the Permitted Mines, on the basis that Luminant has presented documentation showing that it meets the requirements for a blanket collateral bond pursuant to §§12.310(a), 12.308(c), and 12.309(h)(1)-(3) for a collateral bond.

3. Luminant currently has in place the Existing Collateral Bond with financing, which provided a carve-out from the liens securing Existing DIP Financing for the superpriority first lien securing the Existing Collateral Bond accepted by the Commission in a total amount of \$1.1 billion for all of its statewide permits. The surface coal mines for which this bond applies are: Permit No. 3F, Big Brown Mine, Freestone County; Permit No. 4K, Martin Lake Mine, Panola and Rusk Counties; Permit No. 5G, Monticello Thermo Mine, Hopkins County; Permit No. 34F, Monticello Winfield Mine, Titus and Franklin Counties; Permit No. 46C, Oak Hill Mine, Rusk County; Permit No. 48C, Three Oaks Mine, Bastrop and Lee Counties; Permit No. 49A, Bremond Mine, Robertson County; Permit No. 50B, Kosse Mine, Limestone and Robertson Counties; Permit No. 51, Leesburg Mine, Camp County; Permit No. 53, Martin Lake AIV South Mine, Panola and Rusk Counties; Permit No. 54A, Turlington Mine, Freestone County; Permit No. 56, Thermo A-1 Mine, Hopkins County; and Permit No. 58, Martin Lake Liberty Mine, Rusk County. The amount of the Interim Collateral Bond will be \$975,000,000, reduced from the Existing Collateral Bond amount of \$1,100,000,000 based on current operations and reclamation activities. This \$975,000,000 amount is in excess of the existing \$924,629,478 in approved reclamation costs for the Permitted Mines.
4. As a condition for conducting surface mining and reclamation activities, the Act requires that the applicant file a performance bond in acceptable form and in an amount sufficient to assure the completion of the approved reclamation plan if the work had to be performed at the direction of the Commission in the event of forfeiture. The Interim Collateral Bond obligates the applicant to either complete the reclamation plans for lands in default or, if it fails to do so, to pay to the State of Texas, acting by and through the Commission, the amount necessary to complete the reclamation plans, but not to exceed the bond amount. The amount of the Interim Collateral Bond is in excess of the total amount of approved reclamation costs for all of Luminant's surface mining and reclamation operations in Texas, including the Permitted Mines.

5. Commission Staff recently updated estimated reclamation costs in respect of the Permitted Mines for [one] of the Permits. The total amount of estimated reclamation costs for Luminant Permits is set out in the table below. The total amount of estimated reclamation costs is \$924,629,478, which is less than the amount of the proffered Interim Collateral Bond.

Permit Number	Mine Name	Reclamation Cost Estimate Date	Reclamation Cost Estimate
Big Brown Mine	3F	February 9, 2015	\$ 24,448,255
Martin Lake Mine	4K	September 1, 2016	\$ 124,265,032
Monticello Thermo Mine	5G	June 6, 2014	\$ 40,945,674
Monticello Winfield Mine	34F	February 11, 2015	\$ 129,529,692
Oak Hill Mine	46C	December 3, 2014	\$ 218,309,341
Three Oaks Mine	48C	February 24, 2016	\$ 73,456,371
Bremond Mine	49A	June 6, 2014	\$ 3,494,680
Kosse Mine	50B	May 3, 2016	\$ 176,165,220
Leesburg Mine	51	May 3, 2016	\$ 4,886,759
Martin Lake AIV South Mine	53	June 6, 2014	\$ 40,448,786
Turlington Mine	54A	March 28, 2016	\$ 41,931,578
Monticello Thermo A-1 Area Mine	56	January 6, 2016	\$ 3,487,626
Liberty Mine	58	April 29, 2016	\$ 43,260,464
<b>Total Reclamation Costs</b>			<b>\$ 924,629,478*</b>

\*Note: Each of the bond amounts includes 10% for administrative costs.

6. The Surface Mining and Reclamation Division filed Luminant's request and supporting documentation (Bond Package) with the Hearings Division by letter dated July 8, 2016. By letter dated August 4, 2016 (received by the Commission on August 5, 2016), September 1, 2016, September 6, 2016, and September 7, 2016 (received by the Commission on September 8, 2016), Luminant supplemented its application with additional supporting documentation. A copy of Staff's memorandum and attachments were transferred to the Hearings Division on July 8, 2016; Staff's review was filed with the Hearings Division on September 9, 2016.
7. The following items were included in the Bond Package: Luminant's pleading requesting acceptance of the bond, a form for Interim Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits (Attachment A-1); a form for Exit Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits (Attachment A-2); Affidavit of Gary L. Moor, Corporate

Secretary, Luminant Mining Company LLC dated June 29, 2016, regarding the Disclosure Statement (Attachment B); current and post-emergence high-level corporate structure charts (Attachment C); copies of two Bankruptcy Court Orders, Attachments D and E, consisting of an Order dated June 24, 2016 authorizing the debtors to enter into the Exit Financing Commitment Letter and take other actions, and an Order dated June 24, 2016 approving post-petition financing for TCEH and certain of its debtor affiliates, granting liens and providing superpriority administrative expense claims, authorizing refinancing of secured post-petition debt and modifying the automatic stay, respectively; a proposed form for the Collateral Trust Agreement (CTA) (Attachment F); Affidavit of David Herr Regarding Duff & Phelps, LLC, Appraiser of Property Pledged in Support of Collateral Bond (Attachment G); Report by Duff & Phelps, LLC, entitled *Appraisal of the Fair Market Value of Texas Competitive Electric Holdings, Excluding Properties to be Mined and Certain Other Real Property, as of April 30, 2016* dated June 15, 2016 (Attachment H); Affidavit of Terry L. Nutt Demonstrating Proof of Possession and Title to Real Property Pledged in Support of Collateral Bond (Attachment I); Certificate of Liability Insurance Submissions (Attachment J); Commission approval of 2015-2016 Certificates of Insurance (Attachment K); and a Certificate of Incumbency for Luminant's officers signing the bond (Attachment L). Luminant supplemented the application by letter dated August 4, 2016 (received by the Commission on August 5, 2016) with its executed Interim Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits (Attachment A-1); supplemental Certificate of Liability Insurance Submissions (Attachment J-1); replacement Certificate of Incumbency for Luminant's officers signing the bond (Attachment L); and Senior Security Superpriority Debtor-In-Possession Credit Agreement dated as of August 4, 2016 (Attachment M). Luminant supplemented the application by letter dated September 1, 2016, with a Collateral Schedule Certificate (Attachment N) and Affidavit of Terry L. Nutt Regarding Highly Sensitive Confidential Commercial and Financial Information (Attachment O). Luminant supplemented the application by letter dated September 6, 2016, with the agreed version of the Exit Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits (Attachment A-2) and the agreed version of the CTA (Attachment F-1). Luminant supplemented the application by letter dated September 7, 2016, with the revised agreed version of the Exit Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits (Attachment A-2) and the revised agreed version of the CTA (Attachment F-1).

8. The following is the current ownership and control of Luminant Mining Company LLC. Energy Future Holdings Corp. is the parent corporation of Energy Future Competitive Holdings Company. Energy Future Competitive Holdings Company is the parent corporation of Texas Competitive

Electric Holdings Company LLC. Texas Competitive Electric Holdings Company LLC is the corporate parent of Luminant Holding Company LLC, the corporate parent of Luminant Mining Company LLC. Luminant Mining Company LLC is a Delaware limited liability company.

9. The Bankruptcy Court previously determined that the TCEH Debtors should continue to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code and that in order to continue to manage and operate the businesses and properties in the best interests of the TCEH Debtors, creditors, and others, a financing arrangement was needed that included the existing carve-out in favor of the Commission from the superpriority lien in the collateral securing the Existing DIP Financing in an amount up to \$1,100,000,000 (the RCT Reclamation Support Carve Out).
10. As part of the bankruptcy proceeding, on June 24, 2016, the Bankruptcy Court entered an order (A) Authorizing the Debtors to (I) Enter Into the Exit Financing Commitment Letter and the Fee Letter, (II) Pay Associated Fees and Expenses, and (B) Granting Related Relief (Attachment D). Also on June 24, 2016, the Bankruptcy Court entered an order (A) Approving Postpetition Financing for Texas Competitive Electric Holdings Company LLC and Certain of its Debtor Affiliates, (B) Granting Liens and Providing Superpriority Administrative Expense Claims, (C) Authorizing Refinancing of Secured Post-Petition Debt and (D) Modifying the Automatic Stay (Attachment E). By these orders, the Bankruptcy Court granted permission for the Competitive Companies to replace the Existing DIP Financing with the Interim DIP Financing until emergence from bankruptcy, and, subject to certain conditions precedent, for the Interim DIP Financing to automatically convert into the Exit Financing upon emergence without further action from the Bankruptcy Court or otherwise. The material terms of the Interim DIP Financing and Exit Financing were provided for in an executed commitment letter from several large financial institutions (the Financing Commitment) (Attachment D at Exhibit 1). The Interim DIP Financing agreement was finalized August 4, 2016 (Attachment M). Consistent with the Financing Commitment, the Interim DIP Financing agreement and the related order provides the Commission with a super-priority first lien with a carve-out from the liens securing the Interim DIP Financing (consistent with the RCT Reclamation Support Carve Out provided for under the Existing Collateral Bond) of up to \$975,000,000.
11. Upon emergence of the Competitive Companies from bankruptcy, subject to certain conditions precedent, the Interim DIP Financing will be automatically replaced with Exit Financing that will provide the Commission with a perfected first-out first lien on the Collateral (to be owned by TEX

Operations upon emergence), with substantially the same priority as under the Existing DIP Financing and the Interim DIP Financing (the RCT Exit Lien). Each of the Competitive Companies other than Luminant shall guarantee Luminant's obligations to the Commission under the Exit Bond. The RCT Exit Lien will be granted pursuant to customary security instruments (*i.e.*, mortgages and security and pledge agreements) and held and enforced by an independent third-party trustee under the terms of the CTA. Luminant provided a proposed form of a CTA (Bond Package, Attachment F). Following negotiations on the proposed form, the Commission, Luminant, and the other entities that will be parties to the CTA finalized the agreed version of the CTA (Bond Package, Attachment F-1). The CTA will govern, among other things, the relative priority of the RCT Exit Lien and other liens securing the Exit Financing (*i.e.*, granting the Commission super-priority of up to \$975,000,000 ahead of the liens securing the Exit Financing). An executed version of the CTA will be submitted promptly following the Competitive Companies' emergence from bankruptcy.

12. Pursuant to §12.300(1)(E), one of the methods of collateralizing a bond for reclamation performance is with a perfected, first-lien security interest in real or personal property, in favor of the Commission. Luminant has granted to the Commission a perfected first-lien security interest that meets the requirements of §12.309(h)(1)-(3).
  - (a). The Interim Collateral Bond grants to the Commission a super-priority lien, consistent with the existing RCT Reclamation Support Carve Out, pursuant to a carve out from the perfected first-lien security interest securing the Interim DIP Financing in the Collateral of up to \$975,000,000. The lien that the Commission will receive is senior to any other obligations or liabilities of the TCEH Debtors, including those related to the Interim DIP Financing, other than certain professional fees. The Bankruptcy Court has issued orders approving the Interim DIP Financing, including the carve-out in favor of the Commission (Bond Package, Attachments D and E).
  - (b). Luminant has presented an acceptable schedule of pledged assets supporting the lien in favor of the Commission to secure its obligations under the Interim Collateral Bond. This schedule of assets is contained in the Bond Package, Attachment H, the independent appraiser Duff & Phelps' report, *Texas Competitive Electric Holdings, Appraisal of the Fair Market Value of Texas Competitive Electric Holdings, Excluding Properties to be Mined and Certain Other Real Property, as of April 30, 2016*, dated June 15, 2016, at 35-39 and 59-73. Additional description of the property is contained in the Bond Package, Attachment I (the real property

affidavit of Terry L. Nutt), Schedule A, the first 14 pages of which categorizes the pledged real property by county, central appraisal account, company, group, site, and acreage. Luminant has also provided a Collateral Schedule Certificate (Attachment N) that further describes the assets pledged as the Collateral, provides additional valuation details from Duff & Phelps regarding the assets pledged, and describes the security documents that will create the Commission's security interest in the assets pledged as the Collateral, including how that security interest will be perfected. Together, these materials provide an adequate description of the assets pledged as collateral for the bond [see subparagraph (c)].

- (c). The assets that collectively represent the Collateral and the total appraised asset value [see subparagraph (e)] are as follows: the Comanche Peak nuclear power plant in Somervell County, Texas; the Martin Lake (Rusk County), Monticello (Titus County), Sandow (Milam County), Oak Grove (Robertson County), and Big Brown (Freestone County) coal-fueled generating facilities; the Permitted Mines (excluding real property within the mine permit areas) that provide fuel to the coal-fueled plants; the gas-fueled generation assets at De Cordova (Hood County), Stryker Creek (Cherokee County), Morgan Creek (Mitchell County), Graham (Young County), Lake Hubbard (Dallas County), Trinidad (Henderson County), Permian Basin (Ward County), Valley (Fannin County/Grayson County), and the two recently acquired gas-fueled generation assets at Forney (Kaufman County) and Lamar (Lamar County); real property, fixtures/improvements and personal property assets located at the various power generation facilities; certain intangible assets, including those associated with the TXU Energy retail electric business; and various other assets, including certain real property, nuclear fuel, and mineral interests (Bond Package, Attachment H, Duff & Phelps' report, at 35-39 and 59-73, Attachment B at 25-30, Attachment I, Schedule A (first 14 pages), and Attachment N).
- (d). Duff & Phelps is a qualified appraiser that the Commission finds is authorized under §12.309(h)(2)(B) for purposes of providing the fair market value of the Collateral used to secure Luminant's obligations under the Interim Collateral Bond.
- (e). Duff & Phelps found the Collateral to have a total appraised asset value of \$7,650,378,000 (Bond Package, Attachment H at iv), which well exceeds the \$975,000,000 amount of the Interim Collateral Bond. The value of the real property within Luminant's Permitted Mines

(approximately \$321.5 million) and certain other real property interests (approximately \$13.9 million) is excluded from the value of the Collateral supporting the Interim Collateral Bond.

- (f). Luminant meets the requirement of §12.309(h)(3) because Luminant is not offering those real property assets within mine permitted areas as collateral in support of the collateral bond, and Duff & Phelps has deducted that value in its appraisal of the Collateral (Bond Package, Attachment H at ii, iv, 4-6, and Appendix A and Appendix B).
  - (g). Staff financial review states that certain intangibles should not be included in reviewing the adequacy of the collateral. Excluding the intangibles (Staff review dated September 9, 2016, pages 8-9) results in a fair market value of the Collateral of \$4.662 billion. The fair market value of the collateral is more than sufficient for the amount of the bond, \$975 million, using either Luminant's valuation or the valuation with the Staff's exclusion of intangibles.
13. The Interim Collateral Bond (Bond Package, Attachment A-1) was executed by authorized officers of the permittee, M.A. McFarland, Chairman of the Board, President, and Chief Executive, Luminant Mining Company LLC, and Terry L. Nutt, Senior Vice President, Luminant Mining Company LLC. Signatures were appropriately attested and acknowledged. A certificate of incumbency was provided for these officers indicating that they held their positions as of the date of signing, August 3, 2016 (Attachment L). Authorization for the action of Luminant is also contained via the Bankruptcy Court's orders; Luminant is included in the definition of "TCEH Debtor" and as such may take any necessary actions related to providing the Collateral to secure its reclamation obligations to the Commission.
14. The Interim Collateral Bond has been conditioned upon the faithful performance of all the requirements of the Act, the Coal Mining Regulations, and the provisions of the reclamation plan and permit. The Interim Collateral Bond conforms to §§12.304-12.307 of the Regulations relating to amount and duration of the performance bond, and to §§12.308-12.311 of the Regulations relating to form, conditions, and terms of performance bond and liability insurance. The Interim Collateral Bond is in a form acceptable to the Commission. The total amount of the Interim Collateral Bond is in excess of the total amount of approved reclamation costs for surface mining and reclamation operations in Texas, including the Permitted Mines. The amount of the Existing Collateral Bond to be replaced was determined by the Commission in various proceedings as in excess of the estimated costs of reclamation (§12.304, Regulations). The amount of the Interim Collateral Bond is sufficient to

cover the costs of reclamation should a third party be required upon the direction of the Commission to complete reclamation in the event of forfeiture of the Interim Collateral Bond. The Interim Collateral Bond is payable to the Commission and contains the undertaking by Luminant to complete the reclamation plans for lands in default or to pay to the State of Texas, acting by and through the Commission, an amount necessary to complete the approved reclamation plans, not to exceed the bond amount. The Interim Collateral Bond will continue in effect until replaced in accordance with the Act and Regulations or until reclamation is complete and the Permits terminated as ordered by the Commission. The specific provisions of §12.309(h) for collateral bonds are met. Luminant has granted the Commission a perfected superpriority first-lien security interest in real property subject to the rights of the Commission to forfeit the Interim Collateral Bond in accordance with §§12.314-12.317. Luminant has submitted a schedule of real property pledged to secure the obligations under the collateral bond and indemnity agreement that includes descriptions of real property by reference to county appraisal district records, fair market value as determined in the appraisal, as well as proof of possession and title to the real property (Bond Package, Attachment H, Attachment B at 25-30, and Attachment I, Affidavit of Terry L. Nutt, Senior Vice President and Controller of TCEH).

15. The Interim Collateral Bond contains a provision that Luminant will promptly notify the Commission in accordance with the Regulations if it becomes unable to fulfill its obligations under the Interim Collateral Bond. The Interim Collateral Bond contains a provision that the Principal/Permittee agrees that any liability that has accrued against it under the Act, the Coal Mining Regulations, or the Permits as originally issued, amended, revised, renewed, or replaced, is transferred to the Interim Collateral Bond.
16. The Commission also approves continued compliance with §12.311 for minimum liability insurance coverage [§12.311(b)]. Staff filed its review and administrative approval of the replacement certificates of insurance submitted by Luminant, as supplemented. Luminant submitted proof of public liability insurance by certificates for each permit certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations covered by that permit by letter dated July 20, 2015 (Bond Package, Attachment J). Luminant supplemented this application with the required revision application fee for each of its permits. By letter dated July 28, 2016, the certificates were replaced with new certificates reflecting an August 1, 2017 expiration date (Attachment J-1). By letter dated September 9, 2016, Staff filed a copy of its review of the updated certificates and its letter approving the certificates of insurance dated August 30, 2016. The replacements provide for personal injury and property damage protection in an amount adequate to

compensate all persons injured or property damages as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of State law and adequately identify the permit areas to which the insurance applies. The regulation provides for minimum insurance coverage for bodily injury in the amount of \$500,000 for each occurrence and \$1,500,000 aggregate; and minimum insurance coverage or property damage in the amount of \$500,000 for each occurrence and \$1,000,000 aggregate. Each certificate is dated on or before August 1, 2016, and indicates that Associated Electric & Gas Insurance Services Limited, 1 Meadowlands Plaza, East Rutherford, NJ 07073 issued Policy No. XL5147505P, effective August 1, 2016 to August 1, 2017, that complies with these amounts of coverage. Each certificate was accompanied by a certificate dated July 10, 2014 of the Assistant Secretary of Associated Electric & Gas Insurance Services Limited (AEGIS) demonstrating that AEGIS has the authority to execute, issue, countersign, endorse, cancel and non-renew policies of the Company (AEGIS), provided such powers are exercised only by those officers and employees designated by AEGIS' Chief Executive Officer. The Certificate of the Assistant Secretary also certified that AEGIS has the power and authority to carry out such duties and that Ronald Bertrand has been and remained on the date of the assistant secretary's certificate and on the date of the signing of the insurance certificates the designee of AEGIS. In addition, an affidavit signed on July 10, 2014 was submitted by Luminant signed by Sid Stroud, Director, Environmental Mining, Luminant Mining Company LLC affirming that he had the authority by Luminant on July 10, 2014 to authorize Ronald Bertrand to issue certificates of insurance verifying insurance coverage on behalf of Luminant for documentation to the Commission and that he did authorize Mr. Bertrand on July 10, 2014 to issue the certificates verifying the insurance coverage. (Bond Package, Attachment J-1).

17. Based upon the application, as supplemented, the Interim Collateral Bond, and other evidence submitted by Luminant and Commission Staff, the Commission finds that the Interim Collateral Bond meets the requirements for acceptance as set out in the Findings of Fact. A proposed order was circulated to Luminant and Staff for comment. Neither party filed exceptions or objections to the proposed order; each party filed waivers of the preparation and circulation of a proposal for decision.
18. Luminant and its parent, TCEH (and the subsidiaries of TCEH providing any Collateral), are current in the payment of franchise taxes, respectively, as required by TAX CODE §§171.001 *et seq.* (Vernon 2015 & Supp. 2016).

19. Open meeting notice of consideration of this application has been provided (TEX. GOV'T CODE §551.044 (Vernon 2012)).

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction pursuant to §§134.001, *et seq.* of the TEX. NAT. RES. CODE, including §§134.121-134.122, §134.125, and §134.127 and the Coal Mining Regulations, §§12.308(a)(2), 12.308(c), and §12.309(h) to consider this application for acceptance of a collateral bond. The Commission's action will be consistent with the actions of the Bankruptcy Court.
2. The Interim Collateral Bond has been conditioned upon the faithful performance of all the requirements of the Act, the Coal Mining Regulations, and the provisions of the reclamation plan and permit. The amount and period of liability of the Interim Collateral Bond comply with §§12.304-12.307 of the Regulations and with §§12.308-12.311 of the Regulations relating to replacement, form, terms and conditions, and liability insurance. Because the terms and conditions are sufficient to comply with §§12.308-12.311, the Interim Collateral Bond may be approved by the Commission.
3. The Interim Collateral Bond in the amount of \$975,000,000 will provide sufficient bonding for the reclamation operations approved for the Permits for which it was submitted based on proof that the criteria set out for collateral bonds have been met and the amount of the Interim Collateral Bond is in excess of approved reclamation costs of \$924,629,478.
4. Proper notice including notice of Commission consideration of this matter has been provided as required by the Act, Regulations, and "Practice and Procedure."

**IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS** that the Findings of Fact and Conclusions of Law as set out in this Order are hereby adopted;

**IT IS FURTHER ORDERED** that the Commission accepts the Interim Collateral Bond for statewide mining and reclamation operations submitted by Luminant to replace the Existing Collateral Bond for the permits listed in Finding of Fact No. 3 of this Order;

**IT IS FURTHER ORDERED** that the Existing Collateral Bond for the permits listed in Finding of Fact No. 3 of this Order is hereby replaced;

**IT IS FURTHER ORDERED** that the Commission may vary the required bond amount of each permit as affected as reargues are increased or decreased or where the cost of reclamation changes; and

**IT IS FURTHER ORDERED** by the Commission that this Order shall not be final and effective until 25 days after the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE §2001.142, by agreement under TEX. GOV'T CODE §2001.147, or by written Commission Order issued pursuant to TEX. GOV'T CODE §2001.146(e). If a timely motion for rehearing of an application is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 90 days from the date Commission Order is signed.

**SIGNED IN AUSTIN, TEXAS**, on this 27<sup>th</sup> day of September, 2016.

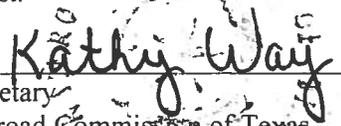
**RAILROAD COMMISSION OF TEXAS**

  
\_\_\_\_\_  
CHAIRMAN DAVID J. PORTER

  
\_\_\_\_\_  
COMMISSIONER CHRISTI CRADDICK

  
\_\_\_\_\_  
COMMISSIONER RYAN SITTON

Attest:

  
\_\_\_\_\_  
Secretary  
Railroad Commission of Texas



**RAILROAD COMMISSION OF TEXAS**

**Surface Mining and Reclamation Division**

**Interim Collateral Bond and Indemnity Agreement for  
Surface Mining and Reclamation Permits**

Big Brown Mine, Permit No. 3F  
Martin Lake Mine, Permit No. 4K  
Monticello-Thermo Mine, Permit No. 5G  
Monticello-Winfield Mine, Permit No. 34F  
Oak Hill Mine, Permit No. 46C  
Three Oaks Mine, Permit No. 48C  
Bremond Mine, Permit No. 49A  
Kosse Mine, Permit No. 50B  
Leesburg Mine, Permit No. 51  
Martin Lake AIV South Mine, Permit No. 53  
Turlington Mine, Permit No. 54A  
Thermo A-I Mine, Permit No. 56  
Martin Lake Liberty Mine, Permit No. 58  
(Collectively, the "Permitted Mines")

**Railroad Commission  
of Texas  
RECEIVED**

**AUG 05 2016**

**Surface Mining Division**

Permittee: Luminant Mining Company LLC

KNOW ALL BY THESE PRESENTS:

WHEREAS, Luminant Mining Company LLC ("Mining Company" or "Principal-Permittee"), a Texas limited liability company, is undertaking surface mining operations at the above-listed Permitted Mines pursuant to the above-listed permits ("Permits") issued by the Railroad Commission of Texas ("Commission"); and

WHEREAS, Under 16 Texas Administrative Code §§ 12.1 *et seq.* (hereinafter referred to as the "Coal Mining Regulations"), retention of the Permits are conditioned on Mining Company, as Principal-Permittee, posting a performance bond to insure reclamation of the permit areas of the Permitted Mines in accordance with the reclamation plans as approved by the Commission ("Reclamation Plans"); and

NOW, THEREFORE, To secure performance and payment in accordance with this bond, Principal-Permittee grants the Commission a carve-out of Nine Hundred Seventy-Five Million Dollars (\$975,000,000.00) from the super-priority perfected first-lien security interest in certain real property and personal property of Texas Competitive Electric Holdings Company LLC ("TCEH"), the indirect parent company of Mining Company, and of certain TCEH subsidiaries (the "Collateral Bond" or "bond"), in accordance with the orders of the United States Bankruptcy Court for the District of Delaware regarding debtor-in-possession financing and exit financing, which orders are attached hereto and incorporated herein by reference as if fully set forth herein. This bond excludes real property within the Permitted Mines.

Mining Company as Principal-Permittee, for itself, its successors and assigns, is held and firmly bound unto the State of Texas, acting by and through the Commission, in Austin, Travis County, Texas, in the sum of the Collateral Bond for the payment which will and truly be made in Austin, Travis County, Texas. The conditions of this obligation are that if Principal-Permittee shall faithfully and fully perform the requirements set forth in the Permits applicable to the Permitted Mines as amended, renewed, revised, or replaced, issued pursuant to the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, §§ 134.001 *et seq.* (hereinafter referred to as the "Act"), and faithfully and fully perform the requirements set forth in the Coal Mining Regulations, Surface Mining and Reclamation Division, pertaining to the reclamation of surface mined lands, promulgated in accordance with the provisions of the Act and the Administrative Procedure Act, Texas Government Code §§ 2001 *et seq.*, as now or hereafter amended, and faithfully fulfill all obligations under the aforementioned Reclamation Plans, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And Principal-Permittee, for value received, agrees that no amendment to existing laws, rules or regulations, no adoption of new laws, rules or regulations, and no modification of the Reclamation Plans shall in any way alleviate its obligation under this bond, and it does hereby waive notice of any such amendment, adoption, or modification.

Principal-Permittee further agrees to give prompt notice to the Commission in accordance with the Coal Mining Regulations if it becomes unable to fulfill its obligations under this bond.

Principal-Permittee further agrees that any liability that has accrued against it under the Act, the Coal Mining Regulations, or the Permits as originally issued, amended, revised, renewed, or replaced, is transferred to this bond.

Principal-Permittee further agrees that if at any time the fair market value of the collateral securing this bond does not equal or exceed the amount of this bond, the Principal-Permittee shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permits, and the Principal-Permittee shall discontinue surface coal mining operations in accordance with the Act and the Coal Mining Regulations until new performance bond coverage is approved. Notwithstanding the foregoing, however, nothing in this instrument shall be construed as a waiver of the Commission's ability to enforce the Act, the Coal Mining Regulations, or the Permits, or to seek bond forfeiture in accordance with the provisions of the Act, the Coal Mining Regulations, or this instrument.

Upon default by Mining Company in the performance of its reclamation or payment obligations pursuant to this instrument, Mining Company agrees to either complete the Reclamation Plans for lands in default or, if it fails to do so, to pay to the State of Texas, acting by and through the Commission, the amount necessary to complete the Reclamation Plans, but not to exceed the bond amount of Nine Hundred Seventy-Five Million Dollars (\$975,000,000.00), as determined by the Commission.

Upon request, and upon timely and proper showing by Mining Company, the Commission agrees to release Mining Company from all or part of the bond if the Commission is satisfied that the reclamation requirements covered by the bond have been accomplished as

required in accordance with the Coal Mining Regulations. This bond and agreement shall be in full force and effect for the duration of Principal-Permittee's reclamation obligation on the lands affected by the Reclamation Plans for as long as required by the Reclamation Plans and the Coal Mining Regulations, or until the Principal-Permittee is otherwise relieved of its obligation by order of the Commission.

IN WITNESS WHEREOF, the Principal-Permittee has caused these presents to be duly signed and sealed, and the signatories hereby cause this agreement to be executed by their duly authorized officers or representatives.

LUMINANT MINING COMPANY LLC  
Principal-Permittee



By: Signature

M. A. McFarland  
Name

Chairman of the Board, President and Chief  
Executive, Luminant Mining Company LLC  
Title

Terry Nutt  
By: Signature

Terry Nutt  
Name

Senior Vice President,  
Luminant Mining Company LLC  
Title

ATTEST: Gary L. Moor  
Signature

Gary L. Moor  
Name

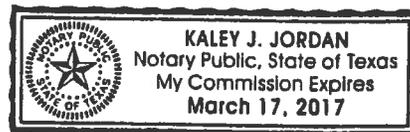
Secretary,  
Luminant Mining Company LLC  
Title

THE STATE OF TEXAS       §  
  §  
COUNTY OF DALLAS       §

This instrument was acknowledged before me on the 3 day of August, 2016, by M. A. McFarland, who being by me duly sworn did say that he is the Chairman of the Board, President, and Chief Executive of Luminant Mining Company LLC, the entity that executed the above and foregoing Interim Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits, and that said instrument was signed on behalf of said company, and that said M. A. McFarland duly acknowledged to me that said entity executed the same.

Kaley J. Jordan  
Notary Public in and for the  
State of Texas

My Commission Expires:  
3/17/2017



THE STATE OF TEXAS       §  
  §  
COUNTY OF DALLAS       §

This instrument was acknowledged before me on the 3 day of August, 2016, by Terry Nutt, who being by me duly sworn did say that he is the Senior Vice President of Luminant Mining Company LLC, the entity that executed the above and foregoing Interim Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits, and that said instrument was signed on behalf of said company, and that said Terry Nutt duly acknowledged to me that said entity executed the same.

Kathy J. Jordan  
Notary Public in and for the  
State of Texas

My Commission Expires:

3/17/2017

IN WITNESS WHEREOF, the Railroad Commission of Texas hereby accepts, as of this 27th day of September, 2016, the foregoing Interim Collateral Bond and Indemnity Agreement for Surface Mining and Reclamation Permits.

RAILROAD COMMISSION OF TEXAS

David Porter  
CHAIRMAN  
Christi Coddick  
COMMISSIONER  
Ron Allen  
COMMISSIONER

ATTEST:

Kathy Way  
Secretary