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Sierra Club Files Notice of Intent to Sue Luminant (TXU)

Thousands of Air Pollution Violations Noted at Company's Martin Lake Coal-Fired Power Plant

The Sierra Club put Energy Future Holdings Corp. and its subsidiary, Luminant (formerly TXU), on notice in late July that the environmental group intends to sue the utility giant in federal court for thousands of air pollution violations at the Martin Lake coal-fired power plant near Longview, Texas. The Martin Lake plant is #1 in the nation for power plant mercury pollution, emitting 1,705 pounds in 2005, according to the U.S. EPA's Toxics Release Inventory.

Both the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (EPA) ignored excessive soot pollution and other violations at the Martin Lake plant, putting the health of nearby communities at risk, according to the Sierra Club's "notice of intent to sue," a legal prerequisite under the federal Clean Air Act.

Plant Among Dirtiest in the Nation

The Martin Lake coal-fired power plant

emits a toxic soup of air pollution in enormous volumes each year, especially soot particles, mercury, sulfur dioxide, nitrogen oxides, and carbon dioxide—chemicals that worsen asthma, acid rain, smog and global warming.

"Luminant's Martin Lake coal-fired power plant is consistently among the dirtiest in the entire nation and one of the worst polluting coal plants in Texas every year," stated Neil Carman, clean air program director with the Sierra Club's Lone Star Chapter. "Martin Lake has the highest total air pollution among more than 2,000 industrial plants statewide," Carman added. He pointed out that "In fact Martin Lake accounted for nearly 10% of all industrial air pollution in Texas in 2006."

Pollution from the Martin Lake power plant and its smokestack plumes can fly for hundreds of miles over communities in East and North Texas, putting the health of the

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several million Texans who live downwind at risk.

“Martin Lake’s outrageous air pollution is one reason the Dallas-Fort Worth area is once again under siege with high ozone levels when its massive plume of smog-forming nitrogen oxides blows into the north Texas areas,” said Ken Kramer, the Sierra Club’s state director. “Martin Lake has been a big bad apple of a coal plant for decades and needs to be cleaned up according to the Clean Air Act,” Kramer added.

“This coal-fired power plant is consistently in the top 10 highest carbon dioxide emitters in the nation, the top 50 highest sulfur dioxide emitters in the nation, and is shamefully ranked number one in terms of the highest power plant mercury polluter in the U.S.,” noted Ilan Levin, senior attorney with the Environmental Integrity Project, representing Sierra Club in this legal action. “Our goal is to stop illegal air pollution through strict enforcement of the law,” Levin added.

The Environmental Integrity Project, on behalf of the Sierra Club, sent Luminant a 60-day notice letter of intent to sue as required by the federal Clean Air Act. Sierra Club may file suit any time after the end of the 60-day notice period.

Martin Lake Power Plant at a Glance

Data on the Martin Lake Power Plant include the following:

- #1 ranked power plant mercury polluter in the U.S.
- #6 in the nation for carbon dioxide pollution, emitting more than 20 million tons of the greenhouse gas every year, according to U.S. EPA’s Clean Air Markets data.
- #23 in the nation for power plant sulfur dioxide pollution, emitting 79,000 tons in 2007, according to U.S. EPA’s Clean Air Markets data.
- Emits more nitrogen oxide pollution than any other Texas plant, according to U.S. EPA’s 2007 Clean Air Markets data.
- Number 3 in Texas for asthma-causing soot pollution, according to Texas Industrial Emissions Inventory database from the TCEQ (2006).
- Responsible for percent or 1,814,067 tons of air pollution in Texas in 2006, according to Texas Industrial Emissions Inventory database from the TCEQ.

Public Utility Commission Approves Expansive Wind Transmission Plan

Major Step Forward - But Could Have Been Bolder

On July 17 the state Public Utility Commission took another step toward the major expansion of wind – and potentially solar – power in Texas by selecting an electricity transmission scenario that will eventually lead to the construction of transmission lines able to transmit up to 18,456 megawatts of electricity from West Texas and the Panhandle to the more populated areas of the state.

The decision – on a 2-1 vote of the Commissioners to create five Competitive Renewable Energy Zones (CREZs) where transmission lines will be built – assures that Texas will continue to lead the nation in wind production and was hailed as a major victory by wind production companies as well as environmental organizations.

Scenario 2 Selected

In selecting Scenario 2 – one of five potential scenarios for bringing West Texas wind to the eastern part of the state – the PUC estimates that those transmission companies winning bids will begin constructing the lines within two years at a cost of \$4.93 billion, a cost that will be born by all Texans through an estimated \$4 monthly charge once construction

is complete. In return, Texans will have access to a new clean energy source for decades, and reduce their dependence on expensive natural gas purchases.

Advocates also hope that the transmission lines and wind farms can be combined with other renewable sources such as concentrated solar plants and geothermal energy. The addition of these 18,000+ MWs would also lessen the need for additional nuclear reactors or coal-fired power plants – and might even cause some companies to rethink their investment strategies.

Other Scenario Proposed

Although the adoption of Scenario 2 is a major step forward, groups like Public Citizen, Environmental Defense Fund, and Texas Impact, as well as wind production companies like Shell, BP Wind Energy, and Horizon Wind and the Texas Wind Coalition, had called for an even bolder plan – one that might lead to some 24,000 MWs of wind transmission.

While the Lone Star Chapter of the Sierra Club did not intervene directly in the CREZ proceedings which led to some 1400 filings

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– the Chapter did submit into the record copies of 300 different letters submitted by Texans as a result of a Sierra Club on-line action alert calling for additional investment in wind and solar transmission lines and expressing a preference for Scenario 3.

On the other hand, Luminant (the generation arm of the company once known as TXU), the City of San Antonio, and NRG had instead called for Scenario IB, a much more compact transmission plan that was estimated to lead to some 12,000 MWs of additional production.

Finding Middle Ground

Essentially, PUC Commissioner Paul Hudson and Chairman Barry Smitherman chose a scenario that was bolder than what TXU and NRG wanted, but not as bold as what Public Citizen and Shell wanted.

In explaining his decision to support Scenario 2, Commissioner Hudson said that Scenario 2 was the best bang for the buck – bold enough to assure that wind production capacity would not outstrip the transmission capability within a few years—but not so large that there would be a risk that consumers would pay for transmission lines that would never be used. He also stated that if in a few years it was determined that Texas could handle additional wind generation, more transmission capability could be added.

“It is my fervent hope, my wish, we in Texas will integrate more wind, more renewable, more zero and low-emissions resources, at a more rapid rate, than any country or electric interconnect in history,” Hudson wrote in his July 17th memo in support of Scenario 2. Hudson also noted that because he is stepping down from the Commission in August, it was likely his last major decision and he believed that “the outcome will make a meaningful difference for the state.”

Background to the Decision

The decision-making process actually began as SB 20, in 2005, when the Legislature told retail electric providers not only that they must purchase 5,880 MWs of wind production by 2015 through the Renewable Portfolio Standard, but that the PUC must design a plan to build new transmission lines for wind paid for by all Texas customers. The PUC decision on July 17 was the approval of that plan, which still must be implemented through a series of rulings and a competitive bid process.

Now, the Electric Reliability Council of Texas reports that Texas had already installed more than 5,000 MWs of capacity of wind earlier this year, an amount that will double over the next year as interconnection agreements are implemented. With the CREZ decision, that total should skyrocket within four to five years. Thus, Texas will have already met

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Department of Housing & Community Affairs Ups Budget Request for Low-Income Energy Efficiency Program

Move Follows Request by Sierra Club

Identified Low-Income Weatherization Needs from TDHCA Website

\$0	Amount of state funds used to support Texas WAP.
\$13 million	Typical annual funding received for Texas WAP through DOE, LIHEAP and IOU's
\$300	Estimated annual utility cost savings of weatherized households ¹ .
\$1,000	Estimated added value to a weatherized home ¹ .
12.2%	Percentage of annual income Texas WAP income-eligible households pay for home energy costs ² .
3.7%	Percentage of annual income all non-WAP income eligible households pay for home energy costs ² .
6%	Percentage of all Texas WAP income-eligible households served by Texas WAP.
94%	Percentage of unmet Texas WAP income-eligible household need.
5,400	Number of households that receive WAP assistance in a typical year.
14,000	Number of Texas households on WAP waiting lists on an average day.
15-20 years	Amount of time weatherization provides home energy-related cost savings.

¹ U.S. Department of Energy ² 2006 estimates from Texas State Data Center

The Texas Department of Housing and Community Affairs (TDHCA) on July 21 approved an increase in the amount of appropriations it is requesting from the Texas Legislature out of money collected for the Systems Benefit Fund Weatherization Assistance Program. The agency is now seeking \$10.7 million per fiscal year as an exceptional

item in its Legislative Appropriations Request for 2010-2011.

The decision followed a request from the Lone Star Chapter of the Sierra Club at an earlier meeting of the TDHCA Board that it reconsider the initial proposed request of \$7.5

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million each year for the program. Chapter Conservation Director Cyrus Reed pointed out that since 2003, the legislature had failed to allocate money from the Systems Benefit Fund for “targeted energy efficiency programs” as authorized under the 1999 deregulation legislation.

The Texas Legislature established the Systems Benefit Fund in 1999 as part of the act through a fee paid by electric customers in deregulated areas and authorized three uses of the fund, including low-income energy efficiency.

While certain legislators – most notably House Speaker Pro Tem Sylvester Turner (D-Houston) – have made adequate funding from the SBF one of their key legislative issues, for the last two sessions, only a fraction of the money generated has been spent for its

purposes – and none for weatherization.

Urging Bold Action

Reed called on the Board at its earlier meeting in June to be bold, and ask for the amount they would have received all the years the Legislature failed to provide the money – approximately \$85 million.

“Energy efficiency is the quickest, cleanest and cheapest way for Texas to meet its energy needs,” Reed told the Board members. “And we are talking about spending money that is already being generated, not instituting any new taxes to pay for it.” Reed also noted that there were more than 14,000 Texas residences on a waiting list hoping to get monies to properly weatherize their homes and lower their bills and it made a lot more fiscal sense to permanently lower people’s energy use and bills than have to pay the bills directly (see Table).

The Sierra Club followed up the presentation to the Board with a petition to the Board to seek a substantial increase in appropriations for the weatherization program.

Partial Success

While the Board did not approve the Sierra Club petition, which was also supported by Public Citizen and Environmental Defense through a letter to the Board, it did agree to

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increase the agency's legislative appropriations request for the program from \$7.5 million to \$10.7 million (the latter is the amount the agency was appropriated in 2003 – the last year the agency received state funding for the weatherization program). Under the program, only residents living in the deregulated areas and earning less than 125 percent of the federal poverty rate are eligible for weatherization assistance.

The Sierra Club will be working with legislators to not only restore the currently unfunded program to these historical appropriations, but to seek additional funding from the SBF to help Texans permanently lower their energy bills – and in the process reduce emissions from area power plants.

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its Renewable Portfolio Standard goals some six years early, while setting in motion a plan to go well beyond these goals.

Advocates like the Sierra Club are now calling on the legislature to develop a plan to promote solar power in the same way that it has successfully promoted wind, while also raising the Renewable Portfolio Standard overall. The CREZ zones provide a clear pathway to get there.

**Border Wall and Wildlife, Endangered Species**

A press conference at 10:00 a.m. on Friday, August 22, 2008 in Anzalduas County Park in Mission, Texas will describe the **Sierra Club's Resilient Habitats Initiative** and the relationship to global Climate Change and the endangered species living in the Rio Grande Valley.

The Sierra Club's Wildlife and Endangered Species Committee (WESCOM), a national committee of volunteer leaders, will focus on the detrimental effects of Border Wall construction on endangered species living along the Rio Grande River.

Anzalduas County Park is one of the Valley's most popular and productive wildlife habitats, an example of what is threatened by Border Wall construction. At 1:00 p.m., Sierra Club volunteers will lead a boat tour along the Rio Grande River to observe additional habitat placed at risk by Border Wall plans.

Sierra Club representatives will speak at the press conference on Friday, August 22. For more information about the event sponsored by WESCOM and the Lower Rio Grande Valley Group Sierra Club, please contact Allen McReynolds at 941-952-0175.





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