ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. LUMINANT GENERATION COMPANY, LLC, and BIG BROWN POWER COMPANY, LLC, Defendants.	3-13CV-3236K

BRIEF IN SUPPORT OF THE UNITED STATES' UNOPPOSED MOTION FOR LEAVE TO FILE COMPLAINT UNDER SEAL

Pursuant to Federal Rules of Civil Procedure 5.2(d) and Local Rule 79.3(b)(2) the United States of America, on behalf of the Environmental Protection Agency ("EPA"), hereby files this brief in support of its unopposed motion for leave of Court to file the attached Complaint under seal. The proposed Complaint is attached as sealed Exhibit A to this motion.

In the attached Complaint the United States asserts claims that Defendants have violated and are in violation of the New Source Review, Prevention of Significant Deterioration ("PSD") provisions of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. §§ 7470-7492; the federally-approved PSD regulations of the Texas State Implementation Plan ("SIP"), 30 Tex. Admin. Code §§ 116.110, 116.111, 116.160 (2001), 40 C.F.R. § 52.21 (1996); Title V of the Act, 42 U.S.C. §§ 7661-7661f; and the federally-approved

Texas Title V program, 30 Tex. Admin. Code Chapter 122, §§ 122.10-122.606. To the extent required by CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), the EPA provided an Amended Notice of Violation giving notice to Defendants on July 11, 2013.

The United States moves for leave to file the attached Complaint under seal because Defendants assert claims of Confidential Business Information or Trade Secrets (hereinafter "CBI") over facts pled in the Complaint. The EPA sought information from Defendant Luminant Generation Company, LLC ("Luminant") under the authority of Section 114 of the Act. 42 U.S.C. § 7414. Section 114(c), 42 U.S.C. § 7414(c), allows the recipient of such a request to submit information subject to a claim of CBI. EPA CBI Regulations at 40 C.F.R. Part 2 require EPA to protect information over which such a claim has been asserted until such time as the information is determined to not be properly subject to the CBI claim. *See* 40 C.F.R. § 2.211. The Trade Secrets Act ("TSA"), 18 U.S.C. § 1905, likewise prohibits officers or employees of the United States from publishing, divulging or disclosing Trade Secrets.

In short, because Defendants assert CBI claims over information in the Complaint, the United States moves to file the attached Complaint under seal. However, the United States does not necessarily agree with Defendants' claims. It does not appear that the general information in the Complaint could harm Defendants' competitive position in any way. Therefore, the United States reserves the right to move to unseal the Complaint at a later point in time.[1]

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[1] The Fifth Circuit has articulated a common-law right of the public to access judicial records. *See United States v. Holy Land Foundation for Relief & Development*, 624 F.3d 685, 690 (5th Cir. 2010). The

WHEREFORE, the United States seeks leave of this Court to file the attached Complaint under seal so that information subject to a claim of CBI will remain protected until Defendants have been given the opportunity to support their claims of CBI over the contents of the Complaint. And, WHEREAS the United States reserves the right to move the Court to unseal the Complaint after Defendants have had the opportunity to present a case as to why any of the facts pled in the Complaint should remain under seal. The United States hereby moves this Court for an order allowing the United States to file the Complaint under seal.

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principle of public access to judicial records furthers not only the interests of the outside public, but also the integrity of the judicial system itself. *See S.E.C. v. Van Waeyenberghe,* 990 F.2d 845, 849-50 (5th Cir. 1993) (contrasting public's right to information about judicial proceedings to right to access to judicial records). "Public confidence [in our judicial system] cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view." *In re High Sulfur Content Gasoline Prods. Liab. Litig.,* 517 F.3d 220, 230 (5th Cir.2008); *see also American Civil Liberties Union of Mississippi, Inc. v. State of Miss.*, 911 F.2d 1066 (5th Cir. 1990).

DATED this 16th of August, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2013 the foregoing was filed with the Clerk's Office and a copy of the foregoing Motion for Leave to File Complaint Under Seal was served by electronic mail and United States mail on the following counsel for Defendants.

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