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Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 16, 2007

2007 MAY 16 PM 3:19
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**Re: AMERICAN ELECTRIC POWER SOUTHWESTERN ELECTRIC POWER
TCEQ DOCKET NO. 2007-0598-AIR**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Motion to Overturn in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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TCEQ DOCKET NO. 2007-0598-AIR

2007 MAY 16 PM 3:19

IN THE MATTER OF § BEFORE THE
AMERICAN ELECTRIC POWER § TEXAS COMMISSION ON
COMPANY'S REQUEST TO § ENVIRONMENTAL QUALITY
ALTER PERMIT NO. 4381 / PSD-TX-3 §

CHIEF CLERK'S OFFICE

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO MOTION TO OVERTURN**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) files this response to Sierra Club and Public Citizen's motion to overturn the Executive Director's (ED) alteration of Permit No. 4381 / PSD-TX-3.

I. Introduction

By a letter dated March 8, 2007, American Electric Power (AEP) requested alterations to the permit for the Welsh Power Station in Titus County. In this letter, AEP requested deletion of "references to the design heat input of 5,156 MMBtu/hr and the nameplate generator capacity of 558 MW". AEP also requested deletion of a sentence which reads, "The heat input limit is based upon higher heating value of the fuel." The second request is that the permit be altered "to clarify that the 0.5% sulfur limit for the coal is on a 'wet (as received) basis'". AEP's third and final requested permit alteration is the addition of a special condition "to require that stack testing be conducted for PM, CO, and VOC's once prior to the current expiration date of the permit, and once every third year thereafter".

On March 20, 2007, the ED approved AEP's requested permit alterations and altered Permit No. 4381 / PSD-TX-3 accordingly. On April 12, 2007, Sierra Club and Public Citizen

("Movants") timely filed a motion to overturn the ED's alteration of the permit. For the reasons stated herein, OPIC recommends that this motion be granted.

II. Applicable Law

In Title 30 of the Texas Administrative Code (TAC), § 50.139(a) states that the applicant, the OPIC, or other person may file with the chief clerk a motion to overturn the ED's action on an application, and wherever other agency rules refer to a "motion for reconsideration", that term should be considered interchangeable with the term "motion to overturn executive director's decision." Subsection (b) requires that a motion to overturn be filed no later than 23 days after the date the agency mails notice of the signed permit to the applicant and persons on any required mailing list for the action. Subsection (d) states that an action by the ED is not affected by a motion to overturn filed under this section unless expressly ordered by the Commission, and (e) states that the Commission or General Counsel may extend the period of time for filing motions to overturn and for taking action on the motions.

Air permit alterations are governed by 30 TAC § 116.116(c), which states:

- (1) A permit alteration is:
 - (A) a decrease in allowable emissions; or
 - (B) any change from a representation in an application, general condition, or special condition in a permit that does not cause:
 - (i) a change in the method of control of emissions;
 - (ii) a change in the character of emissions; or
 - (iii) an increase in the emission rate of any air contaminant.
- (2) Requests for permit alterations that must receive prior approval by the executive director are those that:
 - (A) result in an increase in off-property concentrations of air contaminants;

- (B) involve a change in permit conditions; or
 - (C) affect facility or control equipment performance.
- (3) The executive director shall be notified in writing of all other permit alterations not specified in paragraph (2) of this subsection.
 - (4) A request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(a)(2)(C) of this title.
 - (5) Permit alterations are not subject to the requirements of §116.111(a)(2)(C) of this title.

III. Discussion

The Sierra Club and Public Citizen take issue with the alterations regarding heat input and sulfur content of the coal, but not with the third alteration regarding stack testing. This discussion will therefore be similarly limited to the two disputed alterations.

Movants state that the two permit changes were approved by the ED despite the fact that enforcement actions involving violation of these exact same permit terms are currently pending before the Commission. Based on a review of the document entitled, "ED's Preliminary Report and Petition Recommending that the TCEQ Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Southwestern Electric Power Company dba AEP SWEPCO" (TCEQ Docket No. 2004-1364-AIR-E), this appears to be a true statement. Movants assert that when permit terms are unilaterally changed to avoid compliance problems, it undercuts agency enforcement. According to facts alleged in the above-referenced ED's Preliminary Report and Petition, AEP was violating permit conditions and application representations concerning heat input and the sulfur content limit. If the disputed permit language and application representations are not necessary to create a permit which is protective of the public's health and physical property, then OPIC does not share the movants' concern

regarding agency enforcement being undermined. However, if the disputed permit language and application representations are necessary for a protective permit, then OPIC believes that AEP should be held to them, and the use of permit alterations to avoid compliance problems is inappropriate.

Movants assert that limiting the coal's sulfur content to no more than 0.5 percent total sulfur by weight on a "wet basis" will increase sulfur dioxide and small particle pollution, because a "dry basis" condition results in a tighter limit on sulfur emissions. Over the history of this facility, it appears that the ED has not always been consistent when referring to the sulfur content limit – sometimes describing the measurement as on a "dry basis" and sometimes a "wet basis." However, prior to alteration, Special Condition 6 was silent as to whether a "wet basis" or "dry basis" is required. Because this permit, prior to alteration, did not specify that sulfur content be determined on a "dry basis", OPIC cannot conclude that the ED erred in granting a permit alteration to clarify how the sulfur content is to be measured.

The Movants' final point is that the heat input rate is the basis for determining several key emission rates, and they state that the heat input limit of 5,156 MMBtu/hr (millions of British thermal units per hour) is the basis of the emission limits for PM, carbon monoxide, nitrogen oxides, and volatile organic compounds. If any emission limits for this facility were derived using a maximum heat input of 5,156 MMBtu/hr, then OPIC believes that the deletion of this heat input limit is inappropriate. As stated in 30 TAC § 116.116(c), a permit alteration cannot cause an increase in the emission rate of any air contaminant, and Movants assert that deleting the heat input limit would allow this plant's coal-fired boilers to burn hotter, leading to higher PM emissions. It appears that the removal of the heat input limit could cause an increase

in emission rates, and under the requirements of § 116.116(c), such a change cannot be made through the permit alteration process.

IV. Conclusion

OPIC finds that the deletion of the heat input limit from AEP's permit should not have been made by permit alteration, and therefore supports this issue as a basis for overturning the ED's action. OPIC respectfully recommends that the motion to overturn be granted.

Respectfully submitted,

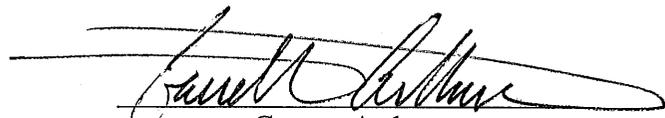
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By 

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2007, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.


Garrett Arthur

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