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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE

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Texas Commission on Environmental Quality
Office of the Chief Clerk - MC 105
Tax Relief - Appeal
P. O. Box 13087
Austin, Texas 78711-3087

RE: Appraisal District Reply Brief to Applicant and OPIC Response to Appraisal District Appeal of TCEQ Executive Director's Use Determinations as further styled:

TCEQ Docket No.	Applicant	Use Det. No.	CAD	Category
2007-0961-MIS-U	Houston Pipeline	06-11002	Rusk	Cathodic Protection, etc.
2007-0962-MIS-U	Houston Pipeline	06-11004	Panola	Cathodic Protection, etc.
2007-0903-MIS-U	Energy Transfer	06-11006	Freestone	Cathodic Protection, etc.
2007-0963-MIS-U	Energy Transfer	06-11009	Rusk	Cathodic Protection, etc.
2007-0911-MIS-U	Energy Transfer	06-11021	Freestone	Electric Driver Compressor Engines

Dear Commissioners:

Applicants Houston Pipeline Company and Energy Transfer Fuel, through their agent Duff & Phelps LLC, have filed a response to our appeals of the referenced positive Use Determinations granted by TCEQ earlier this year. This letter is in reply to their comments as well as those of Office of Public Interest Counsel which essentially upheld, with slight modification, the Executive Director's actions. Appellants Rusk, Panola, and Freestone CADs all urge a reversal or further modification of the referenced Use Determinations based on the following points of discussion.

Applicant:

"To date, neither the Appellant nor their private appraisal firm with which each Appellant contracts for this purpose, Pritchard & Abbott, Inc., have recognized any exemptions granted by the TCEQ to the Applicant in either of these Appraisal Districts - whether such exemptions are in dispute or not. Appellants have instead ignored the determinations..."

Reply:

Besides being an incorrect allegation by the Applicant, this is not a pertinent issue for the commissioners to adjudicate. Neither Pritchard & Abbott, Inc., nor the three appraisal districts involved ignored the positive Use Determinations. The appraisal districts reviewed the applications for exemption and then denied them because they were administratively incomplete, lacking the Use Determinations that must accompany the applications. Although the applications themselves were timely filed by May 1, 2007, TCEQ did not issue their positive Use Determinations until several weeks after May 1, with the appraisal district notified by TCEQ of these determinations several days later.

On page 11 of the Property Tax Exemptions for Pollution Control Property - Draft Guidelines Document for Preparation of Use Determination Applications ("guidelines), under the Use Determination section, it

states: *"Once the technical review has been completed, the applicant will receive a use determination letter and the use determination... **If** a positive use determination is made, the applicant must **then submit the use determination**, along with the appropriate exemption request form, to the appraisal district in order to receive the tax exemption* (emphasis added)."

Per instructions shown on page 3 of the guidelines, the taxpayer did not even timely satisfy the first requirement in the process, namely submitting the application to TCEQ by January 31, 2007. As stated in the guidelines, this deadline was established *"to allow sufficient time for TCEQ to complete review of all applications and issue a use determination prior to May 1. The county tax appraisal districts have a May 1 deadline for businesses to submit their tax appraisal information.... The agency (TCEQ) will make every effort to issue a determination prior to May 1 for all applications received."* The TCEQ can apparently waive their own deadline for accepting applications, but it is apparent from this language in the guidelines that the May 1 deadline is a key date for Use Determinations to be issued, most likely in recognition of the fiduciary burden placed upon appraisal districts to finalize and certify values to the taxing entities in a timely fashion. In this case, Use Determinations were not granted by TCEQ until well after May 1, 2007.

The taxpayer did in fact file application exemptions with the appraisal districts before May 1, 2007, but according to further instructions on page 12 of the guidelines, each application *"**must include** the TCEQ's positive use determination* (emphasis added)." Obviously no Use Determination could be included with the exemption applications because none had been issued by TCEQ by May 1. Any date past May 1 places undue burden on the appraisal district to review, appeal, and otherwise deal with these applications.

The appraisal districts accordingly notified the Applicants of the denials of the exemptions, including cause thereof, for tax year 2007. The taxpayer's local remedies per various Property Tax Code provisions include protesting these denials, if desired, to the Appraisal Review Board in each appraisal district. TCEQ simply has no jurisdiction in this matter.

In summary, the taxpayer failed to satisfy the requirements necessary for these exemption applications to be considered timely for tax year 2007. The appraisal districts continue with the current TCEQ appeal process - an altogether separate process outside the scope of appraisal district operations - with the stipulation that any conclusions reached by the commissioners in this case are applicable beginning tax year 2008. Should the Applicants prevail in these hearings, they will need to file their exemption applications with the appraisal districts for tax year 2008 for the appraisal districts to consider them again at that time.

Applicant:

"Dielectric coatings, sacrificial anodes, and pipeline inspection and gauging equipment help protect the integrity of the pipeline from inadvertent product release and consequent environmental (air and/or water) contamination to the environment and population. The inclusion of this equipment does not aid or enhance product delivery throughout a pipeline system."

Reply:

This assertion of the applicant goes to the heart of the matter. It is 100% wrong to claim or otherwise imply the purpose of this equipment is entirely for pollution control. We recognize the undeniable fact that if a pipeline does not leak, there will be no pollution. This is easy to understand, but simplistic to the issue at hand. A <u>non-polluting design</u> does not magically transform the primary purpose of equipment

into pollution control. **The true and inherent purpose of this equipment is to enhance and ensure the safety and productivity of the pipeline itself.** Pollution control is merely an accordant byproduct, albeit a convenient and legitimately profitable one that does not need TCEQ tax incentives to be enacted.

The "pollutants" in this case are the hydrocarbon gases or liquids that are being transported over long distances for sale to, or use by, an end-user. Safety is enhanced when these products actually make it to the end-user in their full-stream entirety. Obviously leaks due to pipeline corrosion and degradation negatively impact the transportation and delivery process, causing volumes and/or sales to fall below intended amounts. With the unprecedented rise in oil and gas prices over the last few years, these volumes and sales are increasingly significant and vital to the interests of all financial stakeholders.

Cathodic protection, dielectric coatings, and sacrificial anodes are installed essentially to keep the pipeline from going away; without this equipment, the line would corrode and dissolve itself into the soil - i.e., be eventually reclaimed by nature. A pipeline owner simply cannot allow this to happen, because without a pipeline *there can be no pipeline business.* This is by definition an undeniable purpose of **100% productivity**. In this respect, this equipment is unique among almost all other equipment on the PEL as this equipment is impeding the actual salable commodities themselves - the hydrocarbon products being transported - from exiting the structure **so as to maximize net income**. This is opposed to actual pollution control equipment that serves to keep harmful emissions, toxins, wastewater, effluent, or otherwise non-commercial and dangerous substances from entering the environment. Actual pollution control equipment does not have a measurable rate of return; in fact, in most cases the business can operate fine, if not more profitably, without it. This is a large part of why the TCEQ exemption program was enacted in the first place.

OPIC:

"Freestone suggests that a positive use determination should apply only for gasoline storage tanks and not for pipelines. The narrative description alongside the PEL states the exemption applies to tanks and/or piping. Since the PEL description specifically includes piping, OPIC cannot agree with Freestone's limited interpretation of the exemption."

Applicant:

"We are unable to determine what the "intent" was of the TCEQ Predetermined Equipment List (PEL), other than it is for predetermined pollution control equipment."

Reply:

OPIC and applicant are making reference to the case being made by appellants concerning the intent of the inclusion of the cathodic protection category on the PEL. It is the appellants contention this category was intended only for underground piping as it relates to gasoline tanks at service stations, and therefore the scope of this exemption has been unduly broadened by applicant to include gathering and transmission pipelines. Other than to issue subpoenas for witness testimony from advisory group participants regarding specific discussion on this topic when the PEL was last formulated, we have no way of documenting for the record what the true intent of this category was (or is). Conversations with TCEQ staff was the source of our contention, which makes sense when examining the verbiage under the description column on the PEL for these items which refer to tanks and "piping." Piping is distinguishable from "pipelines" per the following standard dictionary definitions:

American Heritage Dictionary
pip··ing (pīi'pĭing) **n.**

1. A system of pipes, such as those used in **plumbing** *(emphasis added).*
2. *Music*
   . The act of playing on a pipe.
   . The music produced by a pipe when played.
3. A shrill, high-pitched sound.
4. A narrow tube of fabric, sometimes enclosing a cord, used for trimming seams and edges, as of slipcovers.
5. A tubular ribbon of icing on a pastry.

Dictionary.com Unabridged (v 1.1)
pipe··line /'[**pahyp**-lahyn] **—noun**

1. a **long** tubular conduit or series of pipes, often underground, with pumps and valves for flow control, used to transport crude oil, natural gas, water, etc., **esp. over great distances** *(emphasis added).*
2. a route, channel, or process along which something passes or is provided at a steady rate; means, system, or flow of supply or supplies: Freighters and cargo planes are a pipeline for overseas goods.
3. a channel of information, esp. one that is direct, privileged, or confidential; inside source; reliable contact.

verb (used with object)

4. to convey by or as if by pipeline: to pipeline oil from the far north to ice-free ports; to pipeline graduates into the top jobs.

It is our contention that if the TCEQ, in conjunction with the advisory group, had meant to include on the PEL cathodic protection for **pipelines** related to oil and gas transmission, and not just **piping** which refers to much smaller and contained facilities that store gasoline at service stations, the description clearly would have included references to pipelines. As it is, the description columns are being unfortunately misconstrued by the applicant in a way that was never intended.

Applicant:

"This compressor station consists of eight natural gas compressors, four of the units are electric and four are natural gas engines. Currently, the site is permitted for 154 tons per year (tpy) of NOx emissions (Permit #79010). The addition of the electric drive compressors allowed ET Fuel to authorize the station under the "Permit by Rule (PBR) instead of a "Prevention of Significant Deterioration (PSD) permit..."

Reply:

By applicant's own admission, there was no current environmental mandate for ET Fuel to change the engines at this site. Instead, there was only the desire by ET Fuel to maintain a certain amount of compression (thus profits) on their line. By conversion to either lean-burn compressor engines or electric drive engines, applicant was able to convert from PSD permit to PBR permit so that the *site in total* could fall below a certain Nox emissions amount.

We agree with the ED's reply brief that reverses the previously granted positive Tier II Use Determination of 100% exemption amount for the electric drivers and instead now recommends the exemption only applies to the relative difference in cost between the new electric drive engines versus a standard fuel powered engine. This falls in line with the current 20% exemption amount on the PEL relating to lean-burn compressor engines. In fact, applicant mentions in their response brief that "Electric driver construction/installation costs, as well as life cycle operating costs, are generally cost indifferent to Lean Burn Gas-Fired Compressor Engine technologies...". In this regard, if the electric drivers in the instant case

are replacing lean-burn engines at the site (and not just standard gas-fired compressor engines), no further exemption amount would be warranted.

Finally, appellants must point out the glaring inconsistency of the PEL with regards to declaring some items as ineligible for exemption because they are standard or common practice now, while inexplicably allowing exemptions for other items that are similarly situated. For example, entire sections of the proposed new PEL relating to paint spray booths are being recommended for removal due to the fact that paint spray booths are simply not built any more without all this "pollution control" equipment because this equipment is in reality process equipment. The concept, which we wholeheartedly agree with, is that including equipment on the PEL that needs no tax incentive for installation is contrary to the spirit and stated goals of TCEQ exemption law. In other words, if the equipment is to be (or has been) installed as a necessary and integral component to be used in the normal course of business for productivity or safety enhancement purposes - ABSENT ANY ENVIRONMENTAL POLLUTION CONTROL CONSIDERATIONS - common sense forces the conclusion that this equipment simply does not belong on the PEL at 100% exemption. We feel this is certainly the case with cathodic protection for gathering and transmission pipelines, as well as for mud recycling and blowout prevention systems on drilling rigs.

Stated in its most elemental form, if it can be reasonably demonstrated that for the installed "pollution control" equipment the taxpayer can state "we were going to do that anyway," there should not be an automatic 100% TCEQ exemption granted for this equipment. Instead, either a lower tier application process should be required, or the amount of exemption on the PEL should be changed to reflect the actual percentage applicable to pollution control versus safety and/or productivity purposes. The PEL and the Decision Flow Chart are useful tools for efficient administration of this application procedure; however, Property Tax Code Section 11.31(g)(3) instructs the TCEQ to adopt rules that *"allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services."* We believe this wording is the heart of the intent of this exemption, and we urge the TCEQ to review this application - as well as all others - with this instruction foremost in mind.

Thank you for consideration of these points.

Sincerely,

PRITCHARD & ABBOTT, INC.

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2007-0903-MIS-U - Freestone Central Appraisal District
2007-0911-MIS-U - Freestone Central Appraisal District
2007-0963-MIS-U - Rusk County Appraisal District

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