

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 APR 16 PM 4:32

CHIEF CLERKS OFFICE
PAUL SEALS

512.499.6203/fax: 512.499.6290
pseals@akingump.com

April 16, 2007

VIA HAND-DELIVERY

Ms. LaDonna Castañuela, Chief Clerk
Attn: Agenda Docket Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Docket No. 2007-0168-AIR Permit Nos. 45586 and PSD-TX-1055 Calhoun County
Navigation Industrial Development Authority

Dear Ms. Castañuela:

Enclosed for filing in the above-styled Docket Number is Applicant's Response to Requests for Hearing and Reconsideration. Please file-stamp the extra copy and return it via the courier.

If you have any questions regarding this matter, please feel free to contact me. Thank you for your attention to this matter.

Sincerely,



Paul Seals

Enclosures

cc: See Certificate of Service and Mailing List

TCEQ DOCKET NO. 2007-0168-AIR

2007 APR 16 PM 4:32

CHIEF CLERKS OFFICE

IN THE MATTER OF	§	BEFORE THE
	§	
CALHOUN COUNTY NAVIGATION	§	
	§	
INDUSTRIAL DEVELOPMENT	§	TEXAS COMMISSION ON
	§	
AUTHORITY APPLICATION FOR	§	
	§	
PERMIT NOS. 45586 AND	§	ENVIRONMENTAL QUALITY
	§	
AND PSD-TX-1055	§	

APPLICANT'S RESPONSE TO HEARING REQUESTS

TO THE HONORABLE COMMISSIONERS OF THE TEXAS WATER COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, Calhoun County Navigation District ("CCND") and NuCoastal Corporation (jointly referred to as "Applicant"), and files this Applicant's Response to Hearing Requests in the above-styled matter requesting that the Commissioners deny the hearing requests and approve Application for Permit Nos. 45586 and PSD-TX-1055 ("Application"), and in support thereof, would respectfully show as follows:

INTRODUCTION

NuCoastal, on behalf of CCND, submitted an application for an amendment to Permit No. 45586, held by CCND, for the repowering of the E. S. Joslin Power Station. The Applicant has selected a site and designed a highly-efficient and state-of-the-art petroleum coke ("petcoke") fired power project that is intended to satisfy the growing energy needs in the State, specifically to help alleviate the impact of higher electrical costs in the South Texas grid. The need for additional safe and environmentally benign sources of energy is recognized as both a state and national priority. The Application, when approved, will further that objective by authorizing the repowering and upgrading of the existing E. S. Joslin Power Station near Point Comfort, Calhoun County, Texas ("Joslin Project"), subject to stringent emission requirements. In addition, the Joslin Project incorporates the safe, beneficial, and superior use of the heating value of the large quantities of petcoke generated by the economically significant petroleum refining industry in the State.

Unlike other carbon-based fuels, such as coal, which are mined or produced to satisfy direct energy demand, petcoke is a manufacturing by-product. Thus, the production of petcoke is not driven by demand for its use as a burner fuel. Significantly, the denial of the Application will

have no impact on the production of petcoke by U.S. petroleum refineries. Accordingly, the volume of petcoke that would have been consumed in the operation of the Joslin Project (in an environmentally controlled manner) would ultimately be burned for another purpose – most probably in a developing-country market – in a manner that would result in significantly higher levels of pollutant emissions that would have been the case had it been burned at the Joslin Project under stringent state and federal environmental requirements.

The Joslin Project is safe. The Joslin Project is located on a large, 70-acre tract, the size of which will serve as a buffer to the closest non-industrial off-property receptor. Those organizations or individuals who oppose the Joslin Project and have requested a contested-case hearing (hereinafter collectively identified as the “**Requestors**”), have not provided any information in their hearing requests that demonstrate they will be affected by the Joslin Project.

Also, the Requestors do not dispute the substance of the Application with respect to the estimated maximum emission rates and the associated modeling of their impact; thus, no issue has been raised concerning the adverse health or environmental impacts of the Joslin Project.

The hearing requests have no basis in fact but are no more than the recent refrain of: “no new coal plants in Texas!” Given the design, size, and location of the Joslin Project, these hearing requests should be considered for what they are – attempts to delay or kill the Joslin Project through the inappropriate and abusive use of the contested-case hearing procedures. The Requestors will not be affected by the Joslin Project and a contested-case hearing can not fulfill any legitimate purpose.

Further, the Commissioners should take note that no relevant and material disputed factual issues have been raised by any other party during the public comment period.

The manner and form of the hearing requests raise fundamental questions regarding the public’s participation in the Commission’s environmental-permitting process. The Requestors have not availed themselves of the appropriate permitting procedures, as established by the Legislature, which are designed to “front load” the public’s input into the early technical review of specific environmental permit applications. Had the Requestors followed those procedures, the staff of the Executive Director could have considered and specifically addressed any legal or technical concerns or questions of the Requestors, or any relevant and material facts that they might have produced as a part of the evaluation of the Applications. Instead, the Requestors seek to circumvent those procedures by raising broad and general concerns to the Commission. Therefore, it is entirely appropriate for the Commission to deny all hearing requests in this matter.

The Requestors were provided early notice to review the Application and provide both informal and formal comments and information specific to the Joslin Project for consideration by the Executive Director and the Applicant. These hearing requests do not raise material and relevant disputed factual issues specific to the Application. As will be discussed below, these hearing requests are based on general concerns that are not appropriate issues for a contested-case hearing and should not be considered by the Commission to be specific factual disputes raised during the public comment period.

The Application and the associated review by the Executive Director set forth literally hundreds of technical facts, some of which include:

- identification of applicable permitting regulations;
- identification of pertinent air contaminants;
- estimation of maximum emission rates for those contaminants; and
- evaluation of impacts of the maximum off-property, ground-level concentration of those emissions through air dispersion modeling.

By simply stating in their hearing requests that an individual or organization is concerned about impacts on their health and the environment should not be considered as putting into dispute any of the above technical facts. How can the Executive Director effectively use public participation in his technical review if no specific technical factual issues are raised that dispute the facts in the Application and the staff review documents? Tellingly, the Requestors filed nothing in response the Executive Director's Response to Comments.

The Requestors are raising general policy and legal issues that are inappropriate for an individual contested-case hearing. The Requestors based their requests on the failure of the Application, which includes solid fuel combustion for power generation, to address Integrated Gasification and Combined Cycle ("IGCC") as part of the Best Available Control Technology ("BACT") analysis. This issue has been addressed by Commission in the context of another solid fossil fuel-fired power plant application and is not an appropriate issue for a contested-case hearing referral. Recently, a state district court judge affirmed that decision by the Commission in the Sandy Creek Energy Associates, LP permit appeal.

The Joslin Project is located in an "attainment area" and emission calculations and associated modeling demonstrate the insignificance of the contribution of the emissions from the Joslin Project to the non-attainment status of other areas in the State. The Applicant has met all requirements of the Commission's rules and guidance concerning possible impacts on a non-attainment area from the emission of "ozone precursors" in an attainment area. The Executive Director properly determined that the Joslin Project emissions will not cause or contribute to a National Ambient Air Quality Standard ("NAAQS") violation. A contested-case hearing is not the appropriate forum for the Commission's revision of its current rules or guidance on the appropriate analysis of the potential impact of the emission of ozone precursors from sources located in an attainment area and whether those emissions will cause or contribute to a NAAQS violation. The Commission should take note that the Requestors have not challenged the Executive Director's determination on this particular Application. Rather, they seek to change the Commission's rules and guidance regarding such analyses and determinations.

The Applicant urges the Commission to take the following into its consideration of the Application:

1. **The Joslin Project will not be a coal-fired plant.**

The Requesters have filed their objections and hearing requests as part of a state-wide and national campaign to contest coal-fired power plants. The Applicant does not propose to use coal as a fuel for the Joslin Project. Petcoke is a granular, carbonaceous solid derived from refinery cracking processes. It is created after intensive extraction of lighter hydrocarbons from petroleum feedstocks. Most petcoke is used as fuel or to produce electrodes for use in aluminum and steel refining. Compared with other solid fossil fuels, petcoke is an attractive fuel for power generation due to its high heat content, low ash content, and lower metal concentrations. The heat content of petcoke is approximately 13,500 Btu/lb, compared to 8,340 and 6,010 for Powder River Basin coal and Texas lignite, respectively. The beneficial resource recovery of petcoke in a highly efficient and stringently controlled process – as is proposed by the Applicant – is far superior to other existing uses of petcoke including use in uncontrolled residential space heating in other parts of the world. Petcoke will be burned – if not in the Joslin Project, then elsewhere in the world. It is not like coal which must be mined. It is a necessary byproduct from petroleum refining. The only questions are where and under what type of environmental controls, if any, will it be burned.

2. **This Joslin Project will not be a pulverized coal plant.**

The Applicant proposes to use “state-of-the-art” commercially viable technology, which includes a new 303 megawatt (“MW”) (gross) Circulating Fluidized Bed (“CFB”) boiler. This technology was identified as a preferred technology to pulverized coal in recent litigation brought in Travis County District Court by Environmental Defense, Inc. against the Commission. See Paragraph 7 of Plaintiffs’ Original Petition, Cause No. D-1-GN-06-003957. The CFB technology proposed by the Applicant has a proven track record with demonstrated advantages to efficiently reach low emission levels of nitrogen oxide (“NO_x”), sulfur dioxide (“SO₂”), and mercury with a minimum of add-on technology and secondary waste generation. This superior performance has been documented through a cooperative agreement between JEA, the largest public power company in Florida, and the Department of Energy, DE-FC21-90MC27403.

3. **This Joslin Project is in an existing heavy industry area.**

The E. S. Joslin Power Station near Point Comfort, a 261 MW, natural gas-fired steam generating unit, was started up in 1971. It is located in a heavy industry area. Since 1948, Alcoa has operated an aluminum refinery at the Alcoa Point Comfort Operations on property immediately adjacent to the Joslin Project. Also adjacent is the Formosa Plastics Corporation manufacturing facility, which began operations in 1983. Both of these major industrial operations are to the north of the Joslin Power Station, separating the Joslin Project from the residential area of Point Comfort, over 2 miles away, north of State Highway 35. **Attachment 1** is a copy of the USGS Topographic Quadrangle Map from the Application.

4. **There is a precedent for the approval of this Application. The Commission has very recently issued a permit for a similar project in the area of the Joslin Power Station.**

In July 2005, Formosa Plastics Corporation filed an application for a similar 300 MW power plant project incorporating a petcoke-fired CFB boiler. Formosa also applied for authority to also use coal as boiler fuel. No hearing requests were filed on this application and the Executive Director issued the permit in December 2006. **Attachment 2** is a table comparing the permitted emission rates for the Formosa power project those in the final draft permit for the Joslin Project, which shows generally lower emissions to be permitted for the Joslin Project.

TECHNICAL BACKGROUND

By application dated, July 8, 2005, the Applicant applied to the Commission for issuance of Air Quality Permit Nos. 45586 & PSD-TX-1055 to authorize the construction of facilities for the repowering of the E. S. Joslin Power Station located on approximately 70 acres of land, adjacent to County Road 319, approximately two miles south of State Highway 35. The repowering includes the construction and operation of a new 303 MW (gross) CFB boiler. The emissions from the boiler will be controlled with combustion controls, selective non-catalytic reduction (“SNCR”), and fabric filters. The proposed permitted emissions from the petcoke, limestone, and ash handling systems will use fabric filters to control particulate emissions from all silos, petcoke and limestone preparation buildings, and transfer conveyers. The conveyers will be covered, and both the conveyers and preparation buildings (two enclosed buildings, one for petcoke and one for limestone) will be equipped with air suction which discharges to the fabric filter. All of these facilities were evaluated for BACT and reviewed for off-property impacts.

The Applicant has proposed controls that represent BACT for emissions of volatile organic compounds (“VOCs”) and oxides of nitrogen (“NOx”), carbon monoxide (“CO”), particulate matter, and particulate matter less than 10 microns in aerodynamic diameter (“PM/PM₁₀”), sulfur dioxide (“SO₂”), sulfuric acid (“H₂SO₄”), hydrogen fluoride (“HF”), hydrochloric acid (“HCl”), non-mercury metals, and mercury.

With respect to the demonstration of air quality impacts, the Applicant’s representation of ambient concentrations provided in the Prevention of Significant Deterioration (“PSD”) air permit application were estimated using the applicable air quality models and modeling procedures specified in the EPA Guideline on Air Quality Models, or models and modeling procedures currently approved by the EPA for use in the State program (30 TAC Sec. 116.160(d)).

The modeling analysis indicates that the proposed Joslin Project will not violate the NAAQS or have any adverse impacts on the public health, soils, vegetation, or Class I areas. In addition, the modeling predicted that two compounds (vanadium and silica) would exceed their short term (1-hr) ESL, and based upon the extent, frequency and location of the predicted

exceedances (industrial property), no adverse effects are expected for human health and the environment.

PROCEDURAL BACKGROUND

The Application was received by the TCEQ on July 11, 2005, declared administratively complete on July 22, 2005. Applicant published Notice of Receipt of Application and Intent to Obtain Permit pursuant to 30 TAC Sec. 39.418 on August 13, 2005.

In support of the Application, the Applicant submitted a comprehensive modeling report to evaluate potential impacts of the Joslin Project's emissions. The modeling results and assumptions were never put into question through the public comment period. The Executive Director preliminarily determined that the proposed emissions will not violate state and federal laws on air quality and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants that will be emitted have been evaluated, and BACT will be used for the control of these contaminants. The Executive Director has made a preliminary determination to issue the permits. Applicant subsequently published Notice of Application and Preliminary Decision under 30 TAC Sec. 39.419 on March 1, 2006. The public comment period closed on March 31, 2006.

The Executive Director issued the Response to Comments ("**RTC**") on January 3, 2007. The RTC represents a comprehensive effort to assess, and respond to, all written comments provided to staff during the comment period. The Executive Director's RTC should be considered a compilation of the totality of comments made on the Application. As discussed below, the RTC has tremendous legal significance. The legislative-mandated, public participation process allows for early input to provide meaningful participation and a focus of truly disputed factual issues. Only issues of fact raised during the comment period can form the basis of a disputed issue of fact referred to the State Office of Administrative Hearings ("**SOAH**").

LEGAL AUTHORITY

Hearing requests are filed at several different points during the public review with respect to air quality applications declared administratively complete after September 1, 1999. Pursuant to 30 TAC Sec. 55.156(d), a hearing request can be filed during the public comment period while pursuant to 30 TAC Sec. 55.201, a hearing request can be filed after the close of the public comment period when the RTC has been issued compiling all comments and the Executive Director's response. Both provisions are essentially identical and specifically require that the hearing request be based on a *relevant and material disputed issue of fact that must have been raised during the comment period*.

Under sections 55.156(d)(3) and 55.201(d)(2), a hearing requestor must identify how and why the requestor will be adversely affected by the proposed facility in a manner not common to the general public (i.e. establish a personal justiciable interest), including a description of the

requestors' use of the property which may be impacted by the proposed facility. 30 TAC Sec 55.156(d)(3), Sec. 55.201(d)(2). If a hearing request submitted under section 55.156(d) is granted, only relevant and material disputed issues of fact raised during the comment period can be considered.

After the close of the public comment period, another opportunity for making a request for a contested-case hearing is provided. Under 30 TAC section 55.201, a request for contested-case hearing on the Executive Director's Response to Comments ("RTC"). In this case, the deadline was February 2, 2007. The request must be in writing and filed with the Chief Clerk within the 30-day period, and must contain the name, address, and daytime phone number of the requestors. Finally, the requestors must list all relevant and material disputed issues of fact that were raised during the comment period and that are the basis of the hearing request. 30 TAC Sec. 55.201(d)(4). To facilitate the Commission's determination of the number of scope of issues to be referred to hearing, the requestor should specify the Executive Director's response to comments the requestor dispute and the factual basis of the dispute. Hearing requests filed prior to the Executive Director's RTC should be considered with disfavor by the Commission, given the clear legislative mandate enacted in 1999. Failure to take issue with the Executive Director's RTC raises a substantial question of whether relevant and material disputed issues of fact remain regarding the Application.

The controlling statutes and Commission rules provide factors to be considered in determining whether a requestor is a person affected by the Executive Director's decision, such that the Commission's decision will affect a personal, justiciable interest related to a legal right, duty, privilege, power, or economic interest. An interest common to members of the general public does not qualify as a personal justiciable interest. Texas Water Code Sec. 5.115, 30 TAD Sec 55.203(a). With respect to individual requestors, Sec. 55.203(c) directs the Commission to consider:

- (1) whether the interest claimed is protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person; and
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person.

When the requestor is a group or association, the group or association is considered to be "affected" by the decision, and thus may request a contested-case hearing only if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires participation of the individual members in the case.

The Executive Director, the Public Interest Counsel, or the Applicant may request that the group explain how the group or association meets those requirements. 30 TAC Sec. 55.205(a) and (b).

While various groups (and arguably certain individuals) have submitted hearing requests on the Application prior to the close of the public comment period, it is important to note that no filings of any kind were made in response to the Executive Director's RTC. The Requestors have ignored the process provided by the Commission's rules and instead have elected to demand a contested-case hearing. The Requestors generally ignored the regulatory factors set out above, and have failed to establish that they possess "affected person" status.

The Requestors have exhibited no genuine desire to learn answers to relevant and material questions of concern regarding the Application. Neither have they displayed a genuine desire to understand the proposed permit and to evaluate the Executive Director's RTC. The entire regulatory process for public participation and comment on pending applications, which has been followed to the letter by the Applicant (at great cost to the Applicant and the Commission) has been ignored by the Requestors. Instead, the Requestors have demanded, from the beginning, a contested-case hearing based on their ill-defined issues of concern, none of which are relevant and material to the Commission's consideration of this Application.

MODELING RESULTS

Before responding to the individual hearing requests filed in this matter, the results of the modeling analysis should be duly noted. Unlike pre-1999 process for considering hearing requests – when all issues could be reserved for challenge in a contested-case hearing so long as the request was made by an affected person and reasonable, the post-1999 process considers that matters can no longer be challenged if not specifically raised before the close of the public comment period. This is a significant change with respect to this Application because the specific assumptions and methodology of the emission calculations and modeling were never challenged by the Requestors. As the modeling results of the various air contaminants have never been contested, they should be considered and then accepted by the Commission as undisputed issues of fact, which are binding upon the Requestors, as a matter of law.

The air modeling performed by the Applicant was audited by the Executive Director for confirmation that proper modeling procedures were employed. **Attachment 3** is a compilation of tables contained in the RTC showing the predicted ground-level impacts for each contaminant and the corresponding state standards, federal standards, or Effects Screening Level for the Joslin Project. It is difficult to contemplate how the Requestors could be reasonably affected by the projected emissions given the low, *undisputed*, modeling numbers shown in that attachment.

In light of the undisputed modeling results provided in the Application, the Requestors cannot reasonably be thought to be affected by the emissions from the Joslin Project. On this basis alone, and given the environmentally protective design of the Joslin Project, all hearing requests should be denied. In addition, the hearing requests can also be denied because they all fail to raise a relevant and material disputed issue of fact raised during the public comment period.

HEARING REQUESTS

Two documents were filed as hearing requests in this matter prior to the close of the public comment period. No hearing requests or motions for reconsideration were filed in response to the Executive Director's RTC. The hearing requests on file will be discussed in individual detail below. Generally, all of these hearing requests suffer from the same fatal flaw: namely, that the Requestors are not affected persons and their hearing requests are not tied to relevant and material disputed issues of fact that were raised during the public comment period.

A. Affected Persons

1. Individuals

Only two documents identified as hearing requests have been filed in this case. Only one of those documents, the March 31, 2006 letter from David Frederick, legal counsel for Sustainable Energy and Economic Development Coalition ("SEED"), identifies any individuals. The Applicant would point out that there is no explicit statement that these identified individuals are requesting a hearing in their individual capacities, but they are merely identified as being members of SEED. Without conceding that these are individual requests, the Applicant will treat them as such for the purposes of this response and in the context of the organizational standing issue.

Based upon the information provided in the March 31, 2006 hearing request, the Applicant believes that none of the identified individuals are affected persons under Texas Water Code Section 5.115 and 30 TAC Sec. 55.203(a). As a general matter, the Requestors have failed to "identify the person's justiciable interest affected by the Application, including a brief, but specific, written statement explaining in plain language the individual's location and distance relative to the proposed facility or activity that is the subject of the Application and *how and why the individual believes he or she will be adversely affected* by the proposed Joslin Project in a manner not common to members of the general public." 30 TAC Sec. 55.201(d)(2).

Assertions of ownership of property or residence in the general area of the Joslin Project do not distinguish the individual from members of the general public as to the effect of the emissions from the Joslin Project. As shown on Attachment 1, the Joslin Project is located in an isolated area of Calhoun County within an area

of heavy industrial land use. The individuals have not demonstrated an impact that is distinguishable from members of the general public.

i. **Mr. John Dugger, Ms. Mary Ann Traylor and Mr. Fred Woodland**

These individuals are identified by SEED as “very near ranch owners.” However, no specific location information is provided to determine if these individuals may be affected. SEED asserts that they are concerned about health impacts on themselves, their workers and their cattle. Also, they state that they are concerned about the potential aesthetic impact of the “plume from the smoke stacks.” These general statements have been made without disputing the emission calculations and air modeling results, and as a consequence, they do not constitute a reasonable basis for the Commission’s consideration of these individuals as whether they may be affected in a manner distinguishable from members of the general public.

ii. **Ms. Ruby Williams**

Ms. Williams and her husband and children are identified by SEED as living within 2 miles of the plant. However, no specific location information is provided to determine if these individuals may be affected. SEED asserts that these individuals are likewise concerned about the aesthetics impact and health consequences of future air emissions from the Joslin Project. Yet these general statements have not disputed the accuracy of the emission calculations and air modeling results presented by the Applicant, and thus, they do not constitute a reasonable basis for the Commission’s consideration of these individuals as whether they may be affected in a manner distinguishable from members of the general public.

iii. **Tim Strykus**

Mr. Strykus is identified by SEED as a fisherman, who fishes the bay waters due south of the plant. SEED asserts that he is concerned about the aesthetics and health impacts of the Joslin Project and about its impacts on fish. SEED does not provide any information regarding the whereabouts of Mr. Strykus’ residence or property, and it has failed to distinguish how his interest may be different than members of the general public. Without disputing the accuracy of the emission calculations and air modeling, SEED has not submitted sufficient information to constitute a reasonable basis for the Commission’s consideration as to whether he may be affected.

All of these individuals have raised aesthetic impacts relating to visibility. SEED has not disputed the proposed permit limitations regarding opacity and “no visible emissions.” The emissions represented in the Application and the limitations in the proposed permit are designed to prevent a diminution in off-property visibility. Opacity in the baghouse emissions is limited to 5% and the permit

establishes a no visible emissions off property from other sources. The asserted affect claimed by these individuals is not supported by sufficient information for the Commission's consideration as to whether they may be affected in a manner distinguishable from members of the general public.

iv. **Clay Maxwell**

Mr. Maxwell is identified by SEED as a "Steelworker (USA) member and representative". SEED provides no information regarding Mr. Maxwell's residence, property or workplace location. This general information is insufficient for the Commission's consideration as to whether he may be affected in a manner distinguishable from the general public. Regarding Mr. Maxwell's representative capacity as a member of Steelworker (USA), there is no information identifying the nature of this organization or that Mr. Maxwell has been authorized by it to serve in this capacity. Applicant believes that Mr. Maxwell does not have standing to request a hearing in his own right.

v. **Diane Wilson**

Ms. Wilson submitted a hand-written form public comment letter dated October 4, 2006 (after the close of the public comment period). In her letter, Ms. Wilson did not request a contested-case hearing, but she does state that she is a member of SEED and Public Citizen. She also states that she will be adversely impacted by the emissions. She further makes the contention that Lavaca Bay is a mercury Superfund Site, and she notes that her son is autistic and that commercial fishermen will be adversely affected by the mercury, lead, NO_x, SO₂, particulate and hydrochloric acid emissions. She gives her address in Seadrift, Texas, which is over 20 miles from the Joslin Project. Without objecting to the emission calculation and air modeling, these general statements are not sufficient to constitute a reasonable basis for the Commission consideration as whether she may be affected in a manner distinguishable from members of the general public.

2. **Groups and Associations**

The groups and associations that filed requests for hearing (the "**Organizations**") also failed to demonstrate their "affected person" status. The requests must state that "one or more members of the group or association would otherwise have standing to request a hearing in their own right." 30 TAC Sec. 55.205(a)(1). Also, the interests that the group or association seeks to protect must be germane to the organization's purpose. 30 TAC Sec. 205(a)(2).

The "Comments and Request for Contested Case Hearing", dated September 12, 2005, was submitted by Public Citizen's Texas Office, the Sustainable Energy and

Economic Development (SEED) Coalition, Texas Black Bass Unlimited; Sierra Club's Lone Star Chapter, Sierra Club's Coastal Bend Regional Group (Calhoun-Nueces County area), Greater Fort Worth Sierra Club Regional Group, Sierra Club's Cross Timbers Regional Alliance, and Blue Skies Alliance.

i. Public Citizen

Public Citizen represents that it has 5 members in Calhoun County, but fails to provide any other information regarding these members which could be used to determine whether they also satisfy the regulatory standards for individual standing, as required under the standards set forth in 30 TAC Sec. 55.205(a)(1). Thus, Public Citizens has failed to provide sufficient information to constitute a reasonable basis for the Commission's consideration whether Public Citizen may be an affected person.

ii. The SEED Coalition ("SEED")

In the September 12, 2005 hearing request, SEED represents that it has 600 members in the Point Comfort, Victoria, San Antonio, Corpus Christi, Austin, and Dallas-Fort Worth areas, but has failed to provide any information substantiating the individual standing of any of its members. Likewise, the general information regarding the individuals identified in the March 31, 2006 hearing request, as discussed above, is inadequate to demonstrate that any individual SEED member has standing to request a hearing in this matter.

iii. Texas Black Bass Unlimited ("TBBU")

TBBU represents that it has 2,000 members in Texas; yet it provides no information regarding the proximity of any of its members to the Joslin Project. As is the case with the prior two organizations, TBBU has failed to provide sufficient information to constitute a reasonable basis for the Commission's consideration whether any member has standing to request a hearing in this matter to prove the individual standing of any of its members.

iv. Various Sierra Club Groups ("Sierra Club")

Sierra Club represent that the Texas State Sierra Club's Lone Star Chapter has 26,675 members, with more than 440 members in the Coastal Bend Regional group, including the Calhoun County area and adjacent counties. The Alamo Sierra Club Regional group is represented as having more than 2,300 members in the San Antonio area. This general membership information is inadequate to demonstrate that any individual members of the Sierra Club Regional groups have standing to request a hearing in this case. As with the TBBU, the Sierra Club regional groups from various parts of the State have failed to provide sufficient and specific information

regarding the interests sought to be protected and how they are germane to these regional groups throughout the State.

v. **The Blue Skies Alliance (“Blue Sky”)**

Blue Sky states in the September 2005 letter that it represents “4,000 citizens through mailing lists, e-mail lists and monthly meetings.” As with the others, this general information is inadequate to demonstrate that any individual member of Blue Skies Alliance has standing to request a hearing in this case.

In considering whether these Organizations are affected, the Applicant suggests that the September 12, 2005 hearing request, which was filed prior to technical review by the Executive Director, prior to the Executive Director’s preliminary decision and draft permit, and prior to the Executive Director’s RTC, should be viewed for what it is – symptomatic of the national and state-wide efforts to delay and kill coal-fired power plants and not relevant and material to the specific facts of the Application. Issues raised in the request by the Organizations were obviously lifted from comments on coal plant applications in other parts of the State. As will be discussed below, the issues may be of national and statewide concern to the Organizations, but they are not relevant and material to a small, petcoke-fired power plant located in an isolated area of Calhoun County.

B. Requested Hearing Issues

1. September 12, 2005 Request

In their September 12, 2005 request, the Organizations identified eighteen issues that in their opinion, are indicative of the areas in which the “application itself and the projected draft permit is also likely to be inadequate”. A review of those issues demonstrates that they are not relevant and material disputed issues of fact. The Organizations filed this hearing request shortly after Notice of Receipt and Intent to Obtain an Air Quality Permit was published on August 13, 2005. The timing of the request, and its contents, show the true intent of the Organizations – that being to delay and kill another coal-fired power plant in the State. The Organizations were not interested in availing themselves of the procedural process mandated by the Legislature in 1999. The Organizations were not interested in submitting technical comments or concerns to the Executive Director and the Applicant for their consideration in reviewing the Application for possible modification or adjustment to address the expressed concerns. Only SEED filed an additional comment after the publication of the Executive Director’s Preliminary Decision on March 1, 2006. Nothing was filed by any person or Organization in response to the Executive Director’s RTC on January 3, 2007.

Issue No. 1. *“The emission limits for nitrogen oxides, particulate matter and sulfur pollution are not protective of public health.”*

This is not a relevant and material disputed issue of fact. The Requestors have not disputed the projected emission rates nor disputed the associated air modeling, which predicts maximum ground level concentrations for these air contaminants. The Requestors could not dispute the final draft permit limitations for these air contaminants because their request was filed six months prior to publication of the Executive Director’s preliminary decision and draft permit. The Application demonstrates that the predicted emission will be below these health standards. The draft permit limits the emissions to ensure that these standards are met. In the absence of a factual dispute of the emission estimates and modeling, this issue is an inappropriate challenge to the state and federal health-based standards that have been established for these contaminants. The Requestors do not dispute the information in the Application. Such a challenge, because it is not based on a disputed issue of fact, is not an appropriate issue for referral.

Issue No. 2. *“The application and projected draft permit do not require offsets of any pollutant type. Nitrogen oxides, sulfur dioxide and carbon pollution are of particular concern.”*

This is not a relevant and material disputed issue of fact. The Requestors are challenging the TCEQ rules and guidance for the issuance of PSD permits. It is undisputed that the Joslin Project is located in an attainment area. If in a nonattainment area, the Joslin Project would be subject to offsets (actual emission reductions associated with either new significant major sources or major modifications to existing sources triggering nonattainment review). As pointed out by the Executive Director in the RTC, unless the Applicant is proposing to “net out” of PSD review – which is not the case with the Application – offsets are not applicable to the Application. Again, this is not an issue that is appropriate for referral.

There is no state regulatory program to address offsets from “carbon pollution.” Any issue relating to carbon pollution, climate change or global warming would be inappropriate for referral.

Issue No. 3. *“The projected 1,839 tons per year of total NOx emissions from this plant would affect the ability of the DFW area to come into attainment with the 1-hour and 8-hour ozone standards.”*

This is not a relevant and material disputed issue of fact. The Application estimates the annual NOx emissions from the operation of the petcoke-fired CFB boiler at the Joslin Project to be approximately 813 tons per year. The Executive Director’s review confirmed that the NOx emissions would be below a *de minimis* level for PSD review. Under current TCEQ guidelines for review of sources in

attainment areas, the Executive Director concluded that the NO_x emissions from the Joslin Project would not cause or contribute to nonattainment in other areas in the State. The Requestors are using their request as an attack on the long-standing practice used by the Executive Director in its review of PSD permit applications in attainment areas. A challenge to this practice is not a factual dispute but a dispute of public policy or interpretation of regulations, which would not form an appropriate basis for a referral.

Issue No. 4. *“The BACT analysis performed in the permitting process does not fully explore the best available control technologies. Specifically, CCND did not adequately consider or propose Integrated Gasification Combined Cycle (IGCC) as part of their BACT analysis.”*

This is not a relevant and material issue of fact. This issue is raised in the context of a coal plant permit. The Applicant does not propose to use coal as a fuel. Regardless of relevancy, through this issue, the Requestors seek a modification in the Commission’s process for evaluating BACT. As pointed out by the Executive Director in the RTC, the Commission does not redefine the design of a proposed source in evaluating BACT. Specifically, the Commission does not require an applicant to explore other ways to obtain the desired business result. IGCC was not evaluated by the Applicant because it is a different production process. Under current Commission rules, guidance and practice, the Applicant was not required to research alternative sources of electricity or energy conservation as part of the BACT analysis. The Executive Director reviewed the Application and confirmed that the Applicant is proposing emission limits that represent BACT. Accordingly, the Requestors’ disagreement with the Commission’s methodology for the performance of the BACT analysis is not an appropriate issue for referral.

Issue No. 5. *“The application (and projected draft permit) does not utilize best available control technologies for sulfur pollution as established by an application filed prior to this one for the City Public Service plant in San Antonio.”*

This issue is not a relevant and material disputed issue of fact. Again, the Requestors raise an issue in the context of coal plant permitting. The Applicant proposes a different combustion technology and associated pollution control technologies. The Applicant proposes the use of a CFB boiler with operating conditions (e.g. limestone bed materials) which substantially reduce sulfur emissions. The Applicant proposes a sulfur removal (control) efficiency of 98.5 percent, which was confirmed by the Executive Director to be in the range (if not slightly better) than other coal burning power plants. This issue is not appropriate for referral.

Issue No. 6. *“The application (and projected draft permit) do not adequately examine the impact of NOx, SO2 and PM emissions on Class I areas such as Big Bend.”*

This is not a relevant and material disputed issue of fact. Again, the Requestors are challenging the established and long-standing practice of the Commission regarding its review of proposed emissions on Class I areas. Under this practice and EPA policy, the Commission’s review is to be limited to major new sources, or major modifications to existing sources, located within 100 kilometers of a Class I area. Big Bend National Park is well over 100 km from the Joslin Project. A challenge to the Commission’s methodology is not an appropriate issue for referral.

Issue No. 7. *“The application (and projected draft permit) does not examine the opportunities for obtaining sulfur and mercury emissions reductions through coal washing.”*

This is not a relevant and material disputed issue of fact. The Applicant does not propose to use coal as a fuel. The Applicant proposes to use petcoke as the primary fuel with natural gas used to initiate startup operations. “Coal washing operations” are not applicable to petcoke. The Executive Director stated in the RTC that he was unaware of studies or examples demonstrating the appropriateness of washing in addition to more conventional technologies to control SO₂ and mercury. This is not an appropriate issue for referral.

Issue No. 8. *“The application (and projected draft permit) does not examine the opportunities to reduce emissions by using lower emission fuels.”*

This is not a relevant and material disputed issue of fact. Again, the Requestors raise another coal plant issue that is not applicable to the Applicant’s petcoke-fired CFB boiler. The issue raised by the Requestors relates to the type of “coal” an applicant proposes to use as fuel. This Applicant proposes to use petcoke as its fuel source (with natural gas for initiating startup). The proposed permit would limit maximum sulfur content in the petcoke used as fuel. The Applicant proposes a 98.5 percent sulfur-removal efficiency. This issue is not appropriate for referral.

Issue No. 9. *“The application (and projected draft permit) does not address global warming gases which clearly should be regulated by the TCEQ. The TCEQ has the authority and the responsibility to regulate global warming gases and must do so.”*

This is not a relevant and material disputed issue of fact. The Requestors seek the establishment of a regulatory program for “global warming gases”. The incorporation of requirements regarding global warming gases (e.g. CO₂) into an

individual permit is inappropriate. The decision to regulate such gases is more appropriate for legislation or rulemaking. This issue is not appropriate for referral.

Issue No. 10. *“The application (and projected draft permit) does not adequately manage emissions during start-up and shutdown.”*

This issue is not a relevant or material disputed issue of fact. The Applicant has proposed authorization of startup emissions from the CFB. The Applicant has described the procedures for the startup sequence and associated emission estimates. The emissions are listed on the Maximum Allowable Emission Rate Table (“MAERT”) and consist of hourly emissions only. As represented in the Application, the startup operations are not expected to occur on a frequent basis, and no adjustment to the annual (tons/year) emission rates, based on startup contributions, was proposed by the Applicant. The CFB will be equipped with continuous emission monitors (“CEMs”) and a continuous opacity monitor. The Requestors do not dispute any of the proposed procedures or emission rate estimates that are contained in the Application nor do they challenge any of the specific terms in the proposed permit. This is not an appropriate issue for referral.

Issue No. 11. *“The application (and projected draft permit) does not adequately manage fugitive emissions both from coal and ash handling and during startup and shutdown.”*

This is not a relevant and material disputed issue of fact. This is not a coal plant. The Applicant is not requesting authority to combust coal in the CFB boiler. Regardless of relevancy, the Applicant has proposed BACT for the emissions proposed to be permitted from the aggregate (petcoke, limestone, sand, and ash) handling facilities. Fly ash and bottom ash will be controlled by baghouses. All conveyors will be covered and equipped with a suction system for routing to a baghouse. The permit includes opacity limits. The permit conditions apply during normal operations as well as during startup. The Requestors have not disputed any of the representations in the Applications nor have they disputed any proposed permit term. This is not an appropriate issue for referral.

Issue No. 12. *“The mercury emissions for this plant do not meet the BACT standards established for these plants by the draft permits issued by the TCEQ in the Spruce 2 and Sandy Creek applications given E. S. Joslin’s projected 60 pounds per year.”*

This is not a relevant and material disputed issue of fact. This is another pulverized coal plant issue that is not relevant and material to the Application, which incorporates petcoke as fuel for the CFB boiler. The Applicant will meet the mercury emission requirements outlined in 40 CFR 63 (“MACT”), even though the Joslin Project is not specifically subject to this federal regulation.

Based on these requirements, the Applicant proposes a mercury emission rate of 3.0 E-6 lb/MMBtu. As pointed out by the Executive Director in the RTC, this value is consistent with, or provides a greater level of control for mercury, than do other coal-fired plants. The inherent design of the CFB will contribute to greater mercury control efficiency. The flue gas of the CFB is generally in the range of 150 to 160 degrees F, compared to a typical pulverized coal-type boiler with a flue-gas temperature of around 300 degrees F. The reduced flue-gas temperature will result in mercury being emitted in greater quantity in particulate form, as compared to as a gas, thereby enhancing the control/capture capability of a baghouse to remove this material. This is not an appropriate issue for referral.

Issue No. 13. *“The TCEQ must implement more comprehensive baseline ambient air monitoring in Point Comfort, Texas.”*

This is not a relevant and material disputed issue of fact. As pointed out by the Executive Director in the RTC, the monitoring of ambient conditions is not a requirement for the issuance of an air quality permit. The Requestors seek to modify the rules, guidance and long-standing practice of the Commission regarding the consideration of an air quality permit application. This issue is not appropriate for referral.

Issue No. 14. *“The application (and projected draft permit) does not consider the diesel and particulate pollution that would result from the trains that would bring coal to this plant.”*

This is not a relevant and material disputed issue of fact. The Applicant is not required to analyze emissions resulting from the use of rail lines. Trains are categorized as mobile sources, and their engine emissions, by definition, are not subject to regulation in an individual-point, source-permit proceeding. The Requestors seek to change the law, rules and permit methodology through this issue. This issue is not appropriate for referral.

Issue No. 15. *“Air toxics that would come from this plant are not adequately addressed. Also, the toxicology review also does not address short-term SO₂ spikes.”*

This is not a relevant and material disputed issue of fact. The Requestors do not challenge the emission estimates nor the associated modeling. Full dispersion modeling was conducted to estimate off property impacts. The Requestors simply disagree with the Commission’s methodology for reviewing those predicted off-property ground level concentrations. An issue challenging the Commission’s health effects review protocols and methodology is not an appropriate issue for referral.

Issue No. 16. *“The application (and projected draft permit) must state what specific equipment makes and models will be used for the boiler and control equipment as well as the manufacturer guaranteed emissions levels from this equipment. Petroleum coke is a toxic oil refining byproduct that needs to adequately controlled at the E. S. Joslin power station. The application and TCEQ information project 95% control efficiency without providing sufficient details on the manufacturer or testing to confirm 94% will be achieved.”*

This issue is not a relevant and material disputed issue of fact. The Applicant has represented in the Application that the proposed CFB will be a Foster Wheeler-designed unit. Although under the long-standing practice of the Commission, specific models and equipment numbers (and associated vendor guarantees) are not required to be provided in the Application, the Applicant will be required to meet the control technologies, representations for such technologies and operational equipment. A Foster Wheeler-designed unit was constructed and has been operated by JEA, the largest public power company in Florida. Performance information from this facility was used to complete the Application and form the basis of Applicant’s representations regarding emissions and control efficiencies. The sulfur removal efficiency represented in the Application is 98.5 percent. The proposed permit contains monitoring and testing requirements to ensure that the CFB and associated equipment are operated as represented in the Application. Whether specific vendor equipment and guarantees are in the Application is not an issue appropriate for referral.

Issue No. 17. *“Texas Effects Screening Levels (ESLs) have not been appropriately defined by the TCEQ.”*

This is not a relevant and material disputed issue of fact. The Requestors challenge the Commission’s procedures for the review of potential health impacts in individual permit applications through ESLs. The Requestors do not dispute the emission calculations or the associated modeling, which predicted maximum off-property ground level concentrations. They simply disagree with the process for using ESLs in health-effect reviews of permit applications. A challenge to the ESL process is not an appropriate issue for referral.

Issue No. 18. *“The TCEQ should be regulating radon and its carcinogenic byproducts that the public will be exposed to as a result of this plant.”*

This is not a relevant and material disputed issue of fact. As pointed out by the Executive Director in the RTC, the Commission does not regulate radon or its byproducts for solid-fuel (e.g. petcoke, coal) fired power plants. The Requestors seek to change the Commission’s methodology and long-standing practice regarding this issue. Any modification of this methodology or practice is appropriate for legislation or rulemaking, not through an individual permit proceeding. This issue is not appropriate for referral.

2. March 31, 2006 Request

The second hearing request was submitted at the end of the public comment period on March 31, 2006, by David Frederick, attorney with Lowerre & Frederick, on behalf of SEED. This request identifies nine issues regarding the Application and the draft permit. As in the case of the September 12, 2005 request, SEED did not make an additional filing after the Executive Director considered and addressed these issues in the RTC. As with the September 12, 2005 letter, the issues raised in this request do not constitute relevant and material disputed issues of fact.

Issue No. 1. *“The emission limits for nitrogen oxides, particulate matter and sulfur dioxide are not protective of the public health.”*

This is not a relevant and material disputed issue of fact. This issue is identical to Issue No. 1 in the September 12, 2005 hearing request. As pointed out above, this issue is not appropriate for referral.

Issue No. 2. *“The BACT analysis is incomplete, in that technologies not favored by the applicant were not evaluated for their abilities to limit emissions in technically and economically reasonable fashions.”*

This is not a relevant and material disputed issue of fact. This issue is similar to Issue No. 4 of the September 12, 2005 hearing request. As pointed out above, this issue is not appropriate for referral.

Issue No. 3. *“The dispersion modeling used to demonstrate compliance with the NAAQS and to generate off-site receptor impacts improperly estimated SO₂ emissions during startup and shutdown and was not based on the appropriate PSDB sources and did not properly model the impacts of H₂SO₄ emissions or NO_x emissions.”*

This is not a relevant and material disputed issue of fact. The Requestors do not provide any specific information regarding this alleged deficiency in the air modeling. The Applicant performed modeling of SO₂ emissions during startup and shutdown using the most current EPA and Commission modeling guidance and methodology. This modeling demonstrated compliance with the applicable NAAQS and Texas state standards. In addition, H₂SO₄ was appropriately modeled and shown to be in compliance with the state standard. NO_x emissions were also appropriately modeled and shown to be in compliance. The NAAQS and PSD increment levels were addressed using a Point-Source Data Base (“PSDB”) retrieval. An NAAQS PSDB retrieval was used for both the NAAQS and the PSD increment analysis. This methodology resulted in a conservative estimate of the PSD increment consumption. The background concentrations for SO₂ and PM₁₀ were estimated using conservative screening background

concentrations for the area. These screening concentrations provide representative estimates of the "worst-case" background concentrations. In the absence of Requestors providing specific information regarding any alleged deficiency, this issue is not appropriate for referral.

Issue No. 4. *"The vanadium ESL exceedances dictated additional modeling and toxicological work that was not performed."*

This is not a relevant and material disputed issue of fact. The Requestors do not dispute the emission calculations for vanadium nor the results of the air modeling. The Requestors dispute the health-effects review methodology and long-standing practice of the Commission. The air modeling performed by the Applicant predicted an off-property exceedance of the ESL for vanadium. The Commission's Toxicological Section performed a detailed "health impacts" review for vanadium. The model predicted that all locations where vanadium did exceed the ESL are on nearby industrial property. The Toxicological Section determined that the off-property impacts for vanadium, with a value exceeding the short term ESL by 1.15 times, is not expected to cause adverse health effects among the general public. The Requestors seek to challenge the Commission's health-effects review methodology, which is not an appropriate issue for referral.

Issue No. 5. *"The impacts of mercury and, probably, certain other heavy metal emissions were not adequately considered."*

This is not a relevant and material disputed issue of fact. The Requestors have not challenged the emission calculations nor the results of air modeling. Attachment 3 includes a listing of the maximum off-property ground-level concentrations ("GLC"), as well as the ESL for mercury and other metals. With the exception of vanadium, the predicted concentrations are a small fraction of the ESLs (e.g. the predicted mercury maximum GLC is less than 3% of the ESL (1-hr) and less than 2% (annual)). The Requestors are simply challenging the health-effects review methodology, which is not an appropriate issue for referral.

[Although not raised in comments or hearing requests, the air modeling predicted short-term GLC for fused silica to be 4 times the ESL. As addressed by the Executive Director in the RTC, the predicted frequency of 2 times the ESL exceedance is 15 hours per year and the predicted short term concentration is below the ESL at the nearest non-industrial receptor. The Commission's Toxicology Section determined that considering: "(1) the small magnitude and frequency of the short-term ESL exceedance, (2) the worst case ESL for silica being used, (3) the ESLs are set to primarily protect against chronic effects (pulmonary fibrosis), and (4) the long-term ESL is not exceeded, the predicted off property impacts for silica are acceptable". Again, the impact of silica emissions was not subject to any objection, comment or hearing requests.]

Issue No. 6. *“It does not appear that all on-site sources of emissions were modeled, and it does not appear that proper emissions factors (or, occasionally, emission rates derived from proper emission factors) were utilized in the modeling.”*

This is not a relevant and material disputed issue of fact. The Requestors raise this issue with no specificity of the alleged deficiencies in the emission calculations and associated modeling. The Applicant included emission calculations from on-site facilities. A modeling analysis was submitted, which included plant-wide modeling. These emission calculations were reviewed by the Executive Director. The modeling was audited by the Executive Director. How can the Executive Director or the Commission respond to the Requestors when the Requestors do not include any information regarding the alleged issue? Such a general concern, without specificity as to any alleged deficiency is not an appropriate issue for referral.

Issue No. 7. *“The transport of ozone precursors to more remote locales (e.g. Houston/Galveston and Victoria) was not evaluated.”*

This is not a relevant and material disputed issue of fact. This issue is similar to the Issue No. 3 in the September 12, 2005 hearing request in that it concerns impacts in other areas of the State from NOx emissions from the Joslin Project, which is to be located in an attainment area. As discussed above, under current Commission guidelines for the review of sources in attainment areas, the Executive Director has properly concluded that the NOx emissions from the Joslin Project will not cause or contribute to nonattainment in other areas in the State. The Requestors are using this request as an attack on the long-standing practice of the Executive Director in the review of PSD permit applications. A challenge to this practice, and to the prior interpretation of Commission rules and guidance, is not a factual dispute but a dispute of public policy or interpretation of regulations, which does not form an appropriate basis for a referral.

Issue No. 8. *“The compliance history of the applicant was not properly determined or considered the permitting decision.”*

This is not a relevant and material disputed issue of fact. The Requestors do not provide any information to support their claim regarding compliance history. CCND, the owner of the E. S. Joslin Power Station and Power Station, has a compliance history rating that may be found on the Commission's website. The Requestors provide no specific information to place this issue in dispute. This is not an appropriate issue for referral.

Issue No. 9. *“Generally, the requirements of the PSD program approved by EPA for implementation by Texas were not met.”*

This is not a relevant and material disputed issue of fact. Again, the Requestors provide no specific information regarding the issue to permit the Applicant or the Executive Director to respond. In accordance with the program requirements for the State Implementation Plan, implementing the Federal PSD program, the Applicant completed a BACT review for the Joslin Project, its location, and source type (a petcoke-fired power plant using CFB combustion technology, and associated facilities). The Applicant followed the criteria outline in the EPA's New-Source Review Workshop Manual for conducting an impact analysis for the Joslin Project. That impact analysis includes conducting a significance analysis to determine if a full NAAQS impact analysis would be required, conducting a full NAAQS analysis for SO₂ and PM₁₀, and conducting an increment analysis for SO₂ and PM₁₀. The modeling results were reviewed, audited, and accepted by the Executive Director. In the absence of any specific information regarding any alleged deficiency in PSD program implementation, this issue is not appropriate for referral.

CONCLUSION

The hearing requests in this matter should be denied. The Commissioners should adopt the Executive Director's Response to Comments and remand the Application to the Executive Director for issuance of Permit Nos. 45586 & PSD-TX-1055. None of the requests for a contested-case hearing establish a personal justiciable interest distinguishable from an interest common to members of the general public, as is required by law. The requests raise general comments or raise broad policy questions relating to the manner in which the Commission reviews and makes decisions on air quality permit applications. There is no basis under the applicable law and Commission rules from which to derive specific disputed issues of relevant and material fact that could properly be referred to hearing. Therefore, the Applicant respectfully requests that the hearing requests in this matter be denied as lacking proper legal basis.

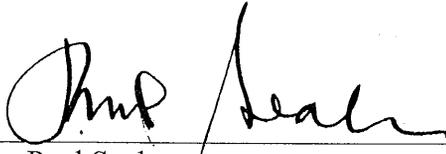
If the Commission were to refer any issue to hearing, the Applicant urges the Commission to specifically and strictly limit the issues and timeline.

WHEREFORE, PREMISES CONSIDERED, Applicant respectfully requests that the Commission deny the contested-case hearing requests, adopt the Executive Director's Response

to Comments and remand the Application to the Executive Director for issuance of Permit Nos. 45586 & PSD-TX-1055 to the Applicant, based on the submitted Application and draft permit prepared by the Executive Director.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

By: 
Paul Seals
State Bar No. 17947900
300 West 6th Street, Suite 2100
Austin, TX 78701
Telephone: (512) 499-6203
Facsimile: (512) 499-6290

**ATTORNEYS FOR CALHOUN COUNTY
NAVIGATION INDUSTRIAL DEVELOPMENT**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served as indicated on the attached Mailing List, on this the 16th day of April, 2007:


Paul Seals

MAILING LIST

**Calhoun County Navigation Industrial Development Authority
DOCKET NO. 2007-0168-AIR; PERMIT NOS. 45586 & PSD-TX-1055**

**VIA FIRST-CLASS MAIL
FOR THE APPLICANT:**

Robert Van Borssum, Port Director
Calhoun County Navigation District
P.O. Box 397
Port Comfort, TX 77978
Tel: (361) 987-2813

Ron Berglum, Senior Engineer
Terracon, Inc.
11555 Clay Road, Suite 100
Houston, TX 77043

**VIA HAND-DELIVERY
FOR THE EXECUTIVE DIRECTOR:**

Andrea Casey, Staff Attorney
TCEQ
Environmental Law Division, MC-173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Erik Hendrickson, Technical Staff
TCEQ
Air Permits Division, MC-163
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-1095
Fax: (512) 239-1300

**VIA HAND-DELIVERY
FOR PUBLIC INTEREST COUNSEL:**

Blas J. Coy, Jr., Attorney
TCEQ
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

**VIA HAND-DELIVERY
FOR OFFICE OF PUBLIC
ASSISTANCE:**

Bridget Bohac, Acting Director
TCEQ
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

**VIA HAND-DELIVERY
FOR ALTERNATE DISPUTE
RESOLUTION:**

Kyle Lucas
TCEQ
Alternate Dispute Resolution, MC-222
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

**VIA HAND-DELIVERY
FOR THE CHIEF CLERK:**

LaDonna Castañuela
TCEQ
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

**VIA FIRST-CLASS MAIL
TO THE FOLLOWING REQUESTERS:**

Becky Bornhorst
Blue Skies Alliance
400 N. Main St.
Duncanville, TX 75116-3653

**VIA FIRST-CLASS MAIL
TO THE FOLLOWING REQUESTERS:**

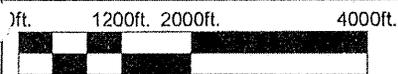
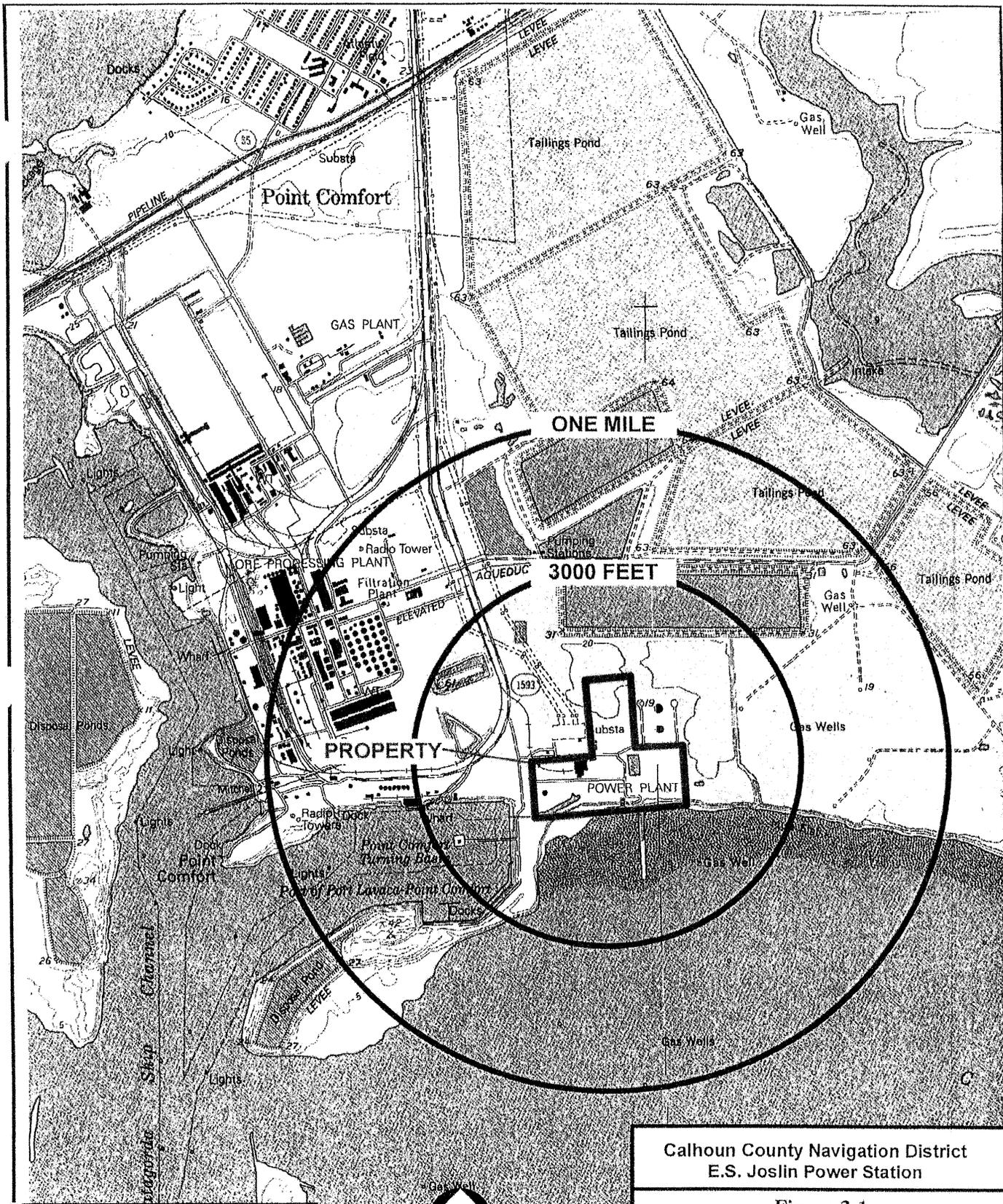
Neil Carman
Texas State Sierra Cub & Local Regional
Groups
1202 San Antonio St.
Austin, TX 78701-1834

David O. Frederick
Frederick-Law
44 East Ave., Ste. 100
Austin, TX 78701-4384

Karen Hadden
611 S. Congress Ave., Ste. 200
Austin, TX 78704-1700

Ed Parton
Texas Black Bass Unlimited
1102 Lisa Ln.
Kingwood, TX 77339-3430

Tom "Smitty" Smith, Director
Public Citizen – Texas
1002 West Ave., Ste. 300
Austin, TX 78701-2056



Map Source: Ppoint Comfort (1995) Quadrangles.

Calhoun County Navigation District
E.S. Joslin Power Station

Figure 3-1
Area Map

JDC JD Consulting, LP
404 Camp Craft Rd
Austin, Texas 78746

**PERMIT COMPARISON
FORMOSA PROJECT AND JOSLIN PROJECT**

Formosa (All EPN's)		lb/hr	TPY		Joslin		lb/hr	TPY	Comparison of Emissions (bold indicates NuCoastal project emits less)	
									lb/hr	TPY
	NOx	300	920		ESJ-1A	NOx	185.54	812.6	-114.46	-107.4
	SO2	712	2608			SO2	472.8	2070.86	-239.2	-537.14
	PM/PM10 (5)	142	544			PM/PM10	136.29	596.71	-5.71	52.71
	CO	330	1446			CO	397.58	1741.38	67.58*	295.38*
	VOC	15.4	68			VOC	13.25	58.05	-2.15	-9.95
	H2SO4	108	400			H2SO4	96.53	422.8	-11.47	22.8
	NH3	19.2	42.1			NH3	16.47	36.08	-2.73	-6.02
	HF	8.4	10.4			HF	0.27	1.18	-8.13	-9.22
	HCl	30.8	26			HCl	2.03	8.87	-28.77	-17.13
	Pb	0.06	0.16			Pb	0.01	0.026	-0.05	-0.134
	Hg	0.06	0.04			Hg	0.01	0.035	-0.05	-0.005

ATTACHMENT 2

Sitewide Modeling Results for State Property Line			
Pollutant	Averaging Period	Total GLC ($\mu\text{g}/\text{m}^3$)	State Standard ($\mu\text{g}/\text{m}^3$)
H ₂ SO ₄	1-hour	8.1	50
	24-hour	2.7	15
SO ₂	1-hour	200.2	1,021

Sitewide Modeling Results for Health Effects			
Pollutant	Averaging Period	Maximum GLC ($\mu\text{g}/\text{m}^3$)	ESL ($\mu\text{g}/\text{m}^3$)
Ammonia	1-hr	14.7	170
	Annual	0.2	17
Hydrochloric Acid	1-hr	1.68	75
	Annual	0.07	0.1
Hydrogen Fluoride	1-hr	0.22	4.9
	Annual	0.01	0.5
Mercury	1-hr	0.00067	0.25
	Annual	0.00003	0.025
Lead	Quarter (NAAQS)	0.00008	1.5
Aluminum	1-hr	0.01	50
	Annual	<0.001	5
Arsenic	1-hr	0.001	0.1
	Annual	<0.001	0.01
Beryllium	1-hr	<0.001	0.02
	Annual	<0.001	0.002
Cadmium	1-hr	<0.001	0.1
	Annual	<0.001	0.01
Calcium	1-hr	<0.001	20
	Annual	<0.001	2
Chromium	1-hr	0.02	1
	Annual	0.001	0.1
Copper	1-hr	<0.001	10
	Annual	<0.001	1
Iron	1-hr	0.04	50
	Annual	0.002	5

ATTACHMENT 3

Magnesium	1-hr	<0.001	50
	Annual	<0.001	5
Manganese	1-hr	<0.001	2
	Annual	<0.001	0.2
Nickel	1-hr	0.10	0.15
	Annual	0.004	0.015
Potassium	1-hr	<0.001	20
	Annual	<0.001	2
Selenium	1-hr	<0.001	2
	Annual	<0.001	0.2
Silicon	1-hr	<0.001	50
	Annual	<0.001	5
Sodium	1-hr	0.01	20
	Annual	<0.001	2
Titanium	1-hr	<0.001	50
	Annual	<0.001	5
Vanadium	1-hr	0.58	0.5
	Annual	0.026	0.05
Silica (fused)	1-hr	2.0	0.5
	Annual	0.05	0.05

Modeling Results for PSD Area Of Impact			
Pollutant	Averaging Period	Project GLC ($\mu\text{g}/\text{m}^3$)	De Minimis ($\mu\text{g}/\text{m}^3$)
SO ₂	3-hour	159.4	25
	24-hour	75.4	5
	Annual	11.75	1
PM ₁₀	24-hour	21.9	5
	Annual	8.3	1
NO _x	Annual	0.92	1
CO	1-hour	45.7	2000
	8-hour	23.2	500

Modeling Results for PSD Increment			
Pollutant	Averaging Period	PSD Increment Modeling Result ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
SO ₂	3-hr	325	512
	24-hr	78	91
	Annual	4.81	20
PM ₁₀	24-hr	26	30
	Annual	11	17

Modeling Results for PSD NAAQS Analysis					
Pollutant	Averaging Period	NAAQS Modeling Result ($\mu\text{g}/\text{m}^3$)	Background Concentration ($\mu\text{g}/\text{m}^3$)	Total Impact ($\mu\text{g}/\text{m}^3$)	NAAQS Standard ($\mu\text{g}/\text{m}^3$)
SO ₂	3-hr	325.0	260	585	1,300
	24-hr	78.0	75	153	365
	Annual	4.81	12	16.8	80
PM ₁₀	24-hr	26.0	75	101	150
	Annual	11.0	25	36	50