

TCEQ DOCKET NO. 2007-0973-WR

2007 DEC 20 PM 4:15

IN THE MATTER OF THE
WATER RIGHTS APPLICATION
OF TEXAS MUNICIPAL
POWER AGENCY
WATER RIGHTS
PERMIT NO. WRPERM 5858

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TEXAS MUNICIPAL POWER AGENCY'S
RESPONSE TO REQUEST FOR HEARING

COMES NOW, the Texas Municipal Power Agency ("TMPA"), and files this Response to Request for Hearing in the above-referenced matter, and would respectfully show the following:

I. INTRODUCTION

TMPA is a political subdivision of the State of Texas. TMPA is a joint action agency created in 1975 to provide cost-effective, reliable electric power to the cities of Bryan, Denton, Garland, and Greenville. To facilitate its mission, TMPA operates the Gibbons Creek Steam Electric Station (the "Station"), which historically received coal from the Gibbons Creek Lignite Mine (the "Mine"). The Mine was in production from 1982 to 1996 but no longer provides coal for the Station. TMPA is currently in the process of reclaiming property associated with the Mine so it may be released from regulation by the Railroad Commission of Texas.

On or about August 9, 2004, TMPA submitted an application (the "Application") to the Texas Commission on Environmental Quality ("TCEQ") for a water use permit requesting authorization to maintain a number of existing on-channel reservoirs located within the Mine. These impoundments were associated with historical mining activities and are now proposed to be included within final reclamation of the Mine property. In submitting the Application, TMPA requested the authority to impound a total of 3,515.4 acre-feet of water in 26 reservoirs with a

- (4) Likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) Likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) For governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c). In addition, governmental entities with authority under state law over issues contemplated by the application may be considered affected persons.

The Commission shall grant a request for a contested case hearing if (1) the request is made by an affected person, (2) the request is timely filed with the chief clerk, and (3) the request is made pursuant to a right to hearing authorized by law. 30 TAC § 55.255(b).

III. EVALUATION OF HEARING REQUESTS

Chocolate Bayou's hearing request was in writing and timely filed. Notwithstanding this fact, Chocolate Bayou subsequently voluntarily withdrew its request for hearing in writing, which means that there is no need to further brief the request.

BRA's request for hearing was in writing and timely filed. In its request for hearing, BRA restated its existing surface water rights in the Brazos River Basin, noting that one or more of said rights may be impaired by granting the Application. However, notwithstanding these efforts, BRA's request for hearing is vague at best. BRA's request for hearing lacks specificity regarding i) how and why BRA believes it may be affected by the Application in a manner not common to members of the general public, and ii) the location and distance of its interests relative to the Application so the Commission may determine whether BRA in fact may be impacted by the Application. BRA has provided no foundation for harm, other than to recite the existing permits and rights it holds to impound and use state water within the Brazos River Basin. Given that there are no planned diversions associated with the Application, and that the draft permit (the "Permit") attached hereto as prepared by the Executive Director requires TMPA

to pass all inflows it is otherwise not entitled to capture, TMPA submits that there is no harm that could befall BRA by granting the Application.

IV. CONCLUSION

For the reasons set forth herein, TMPA respectfully requests that the Commission i) acknowledge Chocolate Bayou's written request for withdrawal of its hearing request; ii) deny BRA's request for hearing on the basis that it does not meet the requirements of 30 TAC § 55.251; and iii) issue the Permit as prepared by the Executive Director. In the alternative, if the Commission grants any requests for hearing, TMPA would respectfully request referral to the Commission's Alternative Dispute Resolution ("ADR") group so the parties may attempt to reach resolution regarding any and all disputed matters before the Application is referred for a hearing duration of up to six (6) months. TMPA further prays for any and all other relief that it may be entitled to as a matter of law.

Respectfully submitted,

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**ATTORNEYS FOR THE TEXAS MUNICIPAL
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CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of December, 2007, a true and correct copy of the foregoing was sent via first-class mail, electronic mail, facsimile, or hand-delivery to the following persons:

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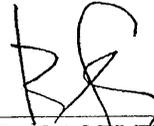
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