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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 15, 2008

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 SEP 15 PM 3: 59
CHIEF CLERKS OFFICE

**RE: TXU GENERATION COMPANY, L.P.
TCEQ DOCKET NO. 2008-0747-IHW**

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in cursive script that reads "Vic McWherter".

Vic McWherter, Senior Attorney
Public Interest Counsel

cc: Mailing List

Enclosure

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

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TCEQ DOCKET NO. 2008-0747-IHW

2008 SEP 15 PM 3:59

IN THE MATTER OF THE
APPLICATION OF TXU
GENERATION COMPANY, L.P. FOR
RENEWAL OF HAZARDOUS WASTE
PERMIT NO. 50163

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST FOR HEARING**

COMES NOW, the Office of Public Interest Counsel ("OPIC") of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") and files this Response to Hearing Request in the above-referenced matter, and would respectfully recommend referring this matter to the State Office of Administrative Hearings ("SOAH").

I. INTRODUCTION

TXU Generation Company, L.P. (TXU) operates the Comanche Peak Steam Electric Station, a nuclear-fueled electric generation plant located on approximately 4,170 acres near Glen Rose, Somervell County, Texas. TXU's permit authorizes the facility to manage the following wastes generated on-site: mixed waste (containing both low-level radioactive waste and hazardous waste); hazardous waste; and Class 1 and Class 2 non-hazardous industrial solid wastes. These wastes are stored at the facility's mixed waste container storage area. The facility also conducts post-closure care of its Landfill 1 and Landfill 2, both of which contain hazardous and non-hazardous wastes that were generated on-site. The original permit authorizing these activities was issued on February 14, 1997 for a term of ten years. TXU has applied for a permit renewal which would authorize continued operation of the mixed waste container storage area and continued post-closure care activities at Landfills 1 and 2.

TXU filed its renewal application on August 14, 2006 and the executive director declared the application administratively complete on September 5, 2006. The notice of receipt of application and intent to obtain permit was published in the *Glen Rose Reporter* on September 21, 2006. Following the executive director's technical review, the notice of application and preliminary decision was published in the same newspaper on September 13, 2007. On September 20, 2007, Ms. Debbie Harper filed a request for a meeting and a hearing. No additional hearing requests were received following the mailing of the executive director's decision and response to comments on April 4, 2008. For the reasons discussed below, OPIC recommends deny Ms. Harper's hearing request.

II. APPLICABLE LAW

Because this application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Water Code section 5.556, added by Act 1999, 76th Leg., ch. 1350 (commonly known as "House Bill 801"). Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application. 30 TEXAS ADMIN. CODE ("TAC") §55.201(d).

Under 30 TAC section 55.203(a), an “affected person” is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” This justiciable interest does not include an interest common to the general public. *Id.* Relevant factors that will be considered in determining whether a person is affected include:

- (1) whether the interest claimed is one 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, 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 § 55.203(c).

The Commission shall grant an affected person’s timely filed hearing request if: (1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission’s decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director’s Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

III. DISCUSSION

During the comment period on this application, Ms. Debbie Harper filed a letter dated September 17, 2007, requesting a public meeting and stating that she "would like a hearing about where the radioactive materials are stored." On April 4, 2008, the chief clerk mailed the executive director's decision and response to comments with instructions regarding how to request a contested case hearing. No additional hearing requests were received. The response to comments described how TXU manages the container storage area at its facility in a building that is 23 feet by 9 feet, with a concrete foundation and a steel roof. The container storage area has three separate compartments, each with its own set of doors and its own secondary containment. The building can store up to 44 55-gallon drums of waste.

OPIC cannot find that Ms. Harper's September 17, 2007 letter provides a sufficient basis for concluding that she is an affected person. Ms. Harper has not stated a specific concern about potential impacts to her health, safety or use of property. The request states only that Ms. Harper resides within 5 miles of the facility and has concerns about "where the radioactive materials are stored." Given the vagueness of her stated interest and her distance from the facility, Ms. Harper has not shown how she would be adversely affected by the facility in a manner not common to the general public. Therefore, OPIC must recommend that the Commission deny Ms. Harper's request for a contested case hearing.

IV. CONCLUSION

For the reasons set forth above, the Office of Public Interest Counsel respectfully recommends that the Commission find that Ms. Debbie Harper is not an affected person and deny her request for a contested case hearing.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By *Vu McWherter*
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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2008, the original and eleven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

Vu McWherter
Vic McWherter

CHIEF CLERKS OFFICE

2008 SEP 15 PM 3:59

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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TCEQ DOCKET NO. 2008-0747-IHW

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