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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 13, 2009

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

2009 FEB 13 PM 3:21
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: **MADISON BELL PARTNERS, LP**
TCEQ DOCKET NO. 2008-1786-AIR

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Assistant 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. 2008-1786-AIR

2009 FEB 13 PM 3:21

APPLICATION BY §
MADISON BELL PARTNERS, LP §
AIR QUALITY PERMIT NO. 83378 §
AND PSD-TX-1105 §

BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CLERKS OFFICE

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or the "Commission") files this response to hearing requests in the above-referenced matter.

I. Introduction

On October 31, 2007, Madison Bell Partners, LP ("Madison Bell" or the "Applicant") applied to the TCEQ for Air Quality Permit No. 83378 and Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-1105. These permits would authorize the construction of a natural gas-fired power plant in Madison County. The proposed site is approximately six miles southwest of Madisonville.

Madison Bell's application was declared administratively complete November 30, 2007, and the first notice was published in the *Madisonville Meteor* on December 19 and 26, 2007. The second notice was published May 21, 2008 in the same newspaper. On August 12, 2008, a public meeting was held in Madisonville, and the Chief Clerk mailed the Executive Director's (ED) Response to Comments (RTC) on October 16, 2008. The deadline for hearing requests was November 17, 2008. TCEQ received timely hearing requests from Angela Fannin and Charles and Patsy Strawther. For the reasons stated herein, OPIC recommends that all hearing requests be granted.

II. Applicable Law

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under Title 30, Texas Administrative Code (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 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. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors 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.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

III. Analysis of Hearing Requests

A. Whether the requestors are affected persons

Angela Fannin

Angela Fannin states that she is located less than two miles from the proposed site and her acreage joins the proposed site. She is concerned about emissions and the addition of contaminants to the air. Ms. Fannin is also concerned about the welfare of her family and cattle. Given her proximity to the proposed plant and her concern regarding air emissions, Ms. Fannin has a personal justiciable interest in this matter which is not

common to the general public. Additionally, Ms. Fannin's interest in air quality is an interest protected by the law under which this application will be considered, and a reasonable relationship exists between an interest in air quality and the regulation of air emissions. Therefore, Angela Fannin should be considered an affected person in this matter.

Charles and Patsy Strawther

Charles and Patsy Strawther filed separate but nearly identical hearing requests. The Strawthers state that their property adjoins the proposed site, and they are concerned about emissions and the addition of contaminants to the air. The Strawthers are also concerned about the welfare of their family, property, and livestock. Given their proximity to the proposed plant and their concern regarding air emissions, the Strawthers have a personal justiciable interest in this matter which is not common to the general public. Additionally, the Strawthers' interest in air quality is an interest protected by the law under which this application will be considered, and a reasonable relationship exists between an interest in air quality and the regulation of air emissions. Therefore, Charles and Patsy Strawther should be considered affected persons in this matter.

B. Which issues raised in the hearing requests are disputed

All issues raised in the hearing requests from Angela Fannin and Charles and Patsy Strawther are disputed.

C. Whether the dispute involves questions of fact or of law

All disputed issues raised by Angela Fannin and Charles and Patsy Strawther involve questions of fact.

D. Whether the issues were raised during the public comment period

All issues raised by Angela Fannin and Charles and Patsy Strawther were raised during the public comment period.

E. Whether the hearing request is based on issues raised solely in a public comment which has been withdrawn

These hearing requests are not based on issues raised solely in a public comment which has been withdrawn.

F. Whether the issues are relevant and material to the decision on the application

Air Quality

The requestors are concerned about air quality and state that a nearby sour gas plant is already emitting air contaminants. The purpose of the Texas Clean Air Act is to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants. Texas Clean Air Act § 382.002. The issue of air quality is therefore relevant and material to the Commission's decision on this application.

Health Effects

The requestors indicate that they are concerned about the welfare of their families. As stated in Texas Clean Air Act § 382.002, the Act is intended to protect public health and general welfare. The issue of health effects is therefore relevant and material to the Commission's decision on this application.

Livestock

The requestors are concerned about the welfare of their livestock. Livestock, including cattle, may be considered property, and Texas Clean Air Act § 382.002 states

that one of the purposes of the Act is the protection of property. Therefore, the issue is relevant and material to the Commission's decision on this application.

Hay Production

The Strawthers are concerned that the proposed plant may affect hay production on their land. This is a concern regarding physical property, and as indicated in Texas Clean Air Act § 382.002 and § 382.0518, the Act is intended to protect physical property. Therefore, the issue is relevant and material to the Commission's decision on this application.

Wildlife

The requestors are concerned about the welfare of wildlife found on their properties and specifically mention wild turkeys, ducks, and deer. Wildlife can be characterized as a state natural resource, and under Texas Clean Air Act § 382.002, one of purposes of the Act is protection of the general welfare of the state's natural resources. The issue is therefore relevant and material to the Commission's decision on this application.

Soil Testing

According to the hearing requestors, the proposed plant site was previously used by a pesticide/herbicide spraying business. Because of this, the hearing requestors believe that soil tests should be run on the land. Soil testing is not a prerequisite to issuance of an air quality permit, and this issue is therefore not relevant and material to the Commission's decision on this application.

Traffic

The requestors are concerned about traffic congestion at the intersection of State Highway 21 and Strawther Road. However, the TCEQ lacks jurisdiction to regulate traffic on public roads, and therefore, this issue is not relevant and material to the Commission's decision.

G. Maximum expected duration for the contested case hearing

For the contested case hearing, OPIC estimates a maximum duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

IV. Conclusion

Having found that Angela Fannin and Charles and Patsy Strawther qualify as affected persons, OPIC recommends the Commission grant their hearing requests.

OPIC further recommends that the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

1. Will the proposed plant adversely impact air quality?
2. Will the proposed plant cause adverse health effects?
3. Will the proposed plant adversely impact livestock?
4. Will the proposed plant adversely impact hay production?
5. Will the proposed plant adversely impact wildlife?

For the contested case hearing, OPIC recommends a duration of nine months from the first day of the preliminary hearing to issuance of the proposal for decision.

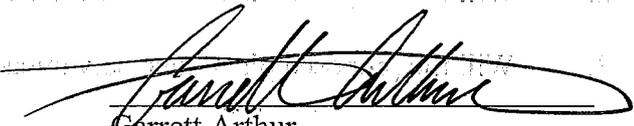
Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2009, the original and seven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.


Garrett Arthur

CHIEF CLERKS OFFICE

2009 FEB 13 PM 3:22

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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