

APPLICATION OF CHOCOLATE
BAYOU WATER COMPANY FOR
AMENDMENT TO CERTIFICATE OF
ADJUDICATION NO. 12-5322, AS
AMENDED, BRAZOS RIVER BASIN

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§
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BEFORE THE
TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 MAY 15 PM 12:21
CHIEF OLEFINS OFFICE

**WITHDRAWAL BY INEOS OLEFINS & POLYMERS USA,
A DIVISION OF INEOS USA LLC, OF ITS
PROTEST, COMMENTS, AND REQUEST FOR CONTESTED CASE HEARING**

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, INEOS Olefins & Polymers USA, a division of INEOS USA LLC (formerly known as Innovene USA LLC, being successor-in-interest to BP Amoco Chemical Company, being successor-in-interest to Amoco Chemicals Corporation) (herein "INEOS"), and submits its Withdrawal of the Protest, Comments, and Request for Contested Case Hearing ("Protest") that it filed in this proceeding on October 16, 2006.

INEOS no longer wishes to pursue the matters set forth in its Protest and moreover, fully endorses Chocolate Bayou Water Company's Application for Amendment to Certificate of Adjudication No. 12-5322 and requests expedient granting of same due to Chocolate Bayou Water Company's commitment, in principle, to supply water to INEOS post-2015 through its successor-in-interest, the Gulf Coast Water Authority.

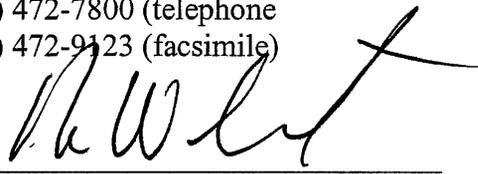
WHEREFORE, PREMISES CONSIDERED, INEOS withdraws its Protest and no longer seeks the procedural and substantive relief sought therein.

WHR OPA
MAY 15 2007
BY *[Signature]*

Respectfully submitted,

BRACEWELL & GIULIANI LLP
800 One Alamo Center
106 S. St. Mary's Street
San Antonio, Texas 78205-3603
(210) 226-1166 (telephone)
(210) 226-1133 (facsimile)

Suite 2300
111 Congress Avenue
Austin, Texas 78701-4061
(512) 472-7800 (telephone)
(512) 472-9123 (facsimile)

By 
Ruben R. Barrera
State Bar No. 01808500
Davison W. Grant
State Bar No. 08300010

ATTORNEYS FOR INEOS OLEFINS &
POLYMERS USA, A DIVISION OF INEOS
USA LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing *Withdrawal by INEOS Olefins & Polymers USA, A Division of INEOS USA LLC, of its Protest, Comments, and Request for Contested Case Hearing*, has been sent by United States Postal Service first class mail, postage prepaid, on this the 15th day of May, 2007, to the following:

David N. Koinm, Project Manager
MC160
Water Rights Permitting Team
Water Rights Permitting & Availability Section
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Lawrence L. Bellatti
Andrews Kurth, LLP
600 Travis, Suite 4200
Houston, Texas 77002
and
Glenn Jarvis
Law Offices of Glenn Jarvis
1801 South Second Street, Suite 550
McAllen, Texas 78503
Attorneys for Chocolate Bayou Water Company

TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY
777 MAY 15 PM 12:21
CHIEF CLEERNS OFFICE

Patricia Hunt Holmes
Vinson & Elkins LLP
First City Tower
1001 Fannin Street, Suite 2300
Houston, Texas 77002-6760
Attorney for Gulf Coast Water Authority

Lauralee Vallon
General Counsel
Brazos River Authority
P. O. Box 7555
Waco, Texas 76714-7555

Carolyn Ahrens
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
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Strom Duke
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Toni and Scott Hairston
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Fred Coogan, Jr.
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Houston, Texas 77056

Norma Coogan
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Terry Hlavinka
Terrance Hlavinka Cattle Company
P. O. Box 1188
East Bernard, Texas 77435



Davison W. Grant

APPLICATION OF CHOCOLATE
BAYOU WATER COMPANY FOR
AMENDMENT TO CERTIFICATE OF
ADJUDICATION NO. 12-5322, AS
AMENDED, BRAZOS RIVER BASIN

§ BEFORE THE
§
§ TEXAS COMMISSION
§
§ ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 OCT 16 PM 2:43
CHIEF CLERKS OFFICE

ADD
5322E

**PROTEST OF, COMMENTS OF, AND REQUEST
FOR CONTESTED CASE HEARING OF
INEOS OLEFINS & POLYMERS USA, A DIVISION OF INEOS USA LLC**

OPA
OCT 17 2006
BY *DL*

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, INEOS Olefins & Polymers USA, a division of INEOS USA LLC (formerly known as Innovene USA LLC, being successor-in-interest to BP Amoco Chemical Company, being successor-in-interest to Amoco Chemicals Corporation) (hereafter "INEOS"), % Charles Saunders, External & Legal Affairs, 2600 South Shore Boulevard, League City, Texas 77573, (281) 535-6630, and submits this its Protest of, Comments of, and Request for Contested Case Hearing of INEOS (hereafter "Request for Contested Case Hearing") in connection with the above-captioned Application No. 12-5322E to Amend Certificate of Adjudication 12-5322 filed by Chocolate Bayou Water Company (hereafter "CBWC") (CN400539696, RN104059472, RN104984992), and in support of its Request for a Contested Case Hearing states as follows:

1. INEOS owns and operates a chemicals manufacturing complex and supporting facilities near Chocolate Bayou in Brazoria County, consisting primarily of two olefins crackers and three polypropylene units and employing 480 workers (hereafter "INEOS Chocolate Bayou"). INEOS Chocolate Bayou is located two miles south of FM 2917 on FM 2004, approximately 25 miles southeast of Alvin, Texas. Operations at INEOS Chocolate Bayou require a consistent supply of water, which is currently provided by CBWC. A take-or-pay water supply contract currently exists between CBWC and INEOS for 17,400 acre-feet of water annually through 2015. Interruption or failure of this water supply will have severe economic

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and financial consequences for INEOS and the 480 workers at INEOS Chocolate Bayou and its supporting facilities.

2. CBWC owns and operates a water supply system, including pumping stations and canals. CBWC's primary pumping station is located on the Brazos River near Juliff, Texas. The Brazos River is the primary water source for the CBWC canal system. CBWC obtains water from the Brazos River pursuant to Certificate of Adjudication No. 12-5322. The point of diversion from which CBWC delivers water to INEOS is the Juliff pumping station located at River Mile 67.5 on the Brazos River, William Pettus Grant, Abstract 68. INEOS Chocolate Bayou is located approximately 35 miles from the Juliff pumping station and diversion point.

3. CBWC has requested an amendment to Certificate of Adjudication 12-5322 so as to add a diversion point at River Mile 71.4 on the Brazos River, approximately four miles upstream from the current Juliff pumping station and diversion point. The requested new diversion point is at the System B pumping station of the Gulf Coast Water Authority (hereafter "GCWA"), approximately 14 miles southeast of Richmond, Fort Bend County, Texas, at latitude N. 29° 30' 13.89" and longitude W. 95° 33' 12.25". INEOS Chocolate Bayou is located approximately 40 miles from the requested new pumping station and diversion point.

4. INEOS is deeply concerned authorization of the new diversion point will jeopardize the supply of water to the users on the CBWC system, particularly during drought conditions.

5. INEOS is an "affected person" for purposes of 30 TEX. ADMIN. CODE § 55.256. INEOS has a personal, justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by CBWC's requested amendment to Certificate of Adjudication 12-5322. INEOS is the single largest user and single largest industrial customer served by the

CBWC system and has a long-term take-or-pay contract with CBWC for 17,400 acre-feet of water annually through 2015. CBWC's application could directly affect INEOS' use of its property and severely impact INEOS Chocolate Bayou's economic interests and those of its 480 workers. INEOS' interests are ones protected by the law under which CBWC's application will be considered.

6. The CBWC and GCWA canal systems are unconnected. As such, any water diverted to the GCWA system materially impacts the CBWC system. Given current demands on the CBWC system, including industrial, agricultural, recreational, and ecological, any diminution in flow could cause significant harm to the CBWC system and its users. Moreover, permitting CBWC to divert additional acre-feet away from an already burdened and fragile canal system, particularly during drought conditions, could result in severe economic and financial harm to existing and future water users and irreparable harm to the environment, including lasting impacts to water quality and fish and wildlife in and along the CBWC canal system in a way not common to the general public.

7. Pursuant to §§ 11.122 and 11.150 of the Texas Water Code, this Commission is required to consider the effects on water quality from the exercise of a water right permit. Under §§ 11.122 and 11.152 of the Texas Water Code, this Commission is also required to consider the effects on fish and wildlife in an application for a permit to store, take, or divert in excess of 5,000 acre-feet of water per year. CBWC's application neither addresses the potential effects adding a new diversion point may have on the environment, including adverse impacts to water quality and fish and wildlife in and along the CBWC canal system, nor is there any indication CBWC took these matters into account in preparing its application.

8. Pursuant to §§ 11.1271 and 11.1272 of the Texas Water Code, this Commission shall require from an applicant for a new or amended water right permit the formulation and submission of a water conservation plan and drought contingency plan. In response to data requests from the Commission's Water Rights Permitting Team, CBWC furnished a Water Conservation Plan and Drought Contingency Plan, but **failed to address the implications and consequences of its request to add a diversion point at the GCWA System B pumping facilities on water conservation or on its ability to serve its existing customers under drought conditions.** This deficiency renders CBWC's application incomplete and inadequate on its face. The law under which CBWC's requested amendment to Certificate of Adjudication 12-5322 will be considered mandates CBWC's obligation to prevent adverse impacts to the environment and adequately plan for conservation of water and drought conditions.

9. As is apparent from the foregoing, there are substantial unexplored and unexplained aspects of CBWC's requested amendment to Certificate of Adjudication 12-5322. In order for INEOS to address these issues and assist the Commission in fulfilling its statutory responsibilities under §§ 11.122, 11.1271, 11.1272, 11.150, and 11.152 of the Texas Water Code, INEOS requests a contested case hearing under 30 TEX. ADMIN. CODE § 55.251.

10. INEOS is represented by the following counsel:

Name: Ruben Barrera
Address: Bracewell & Giuliani LLP
800 One Alamo Center
106 St. Mary's Street
San Antonio, Texas 78205-3603
Daytime Tel.: (210) 226-1166
Facsimile: (210) 226-1133
Email: ruben.barrera@bracewellgiuliani.com

All official communications and documents relating to INEOS' participation in this matter should be directed to Mr. Barrera.

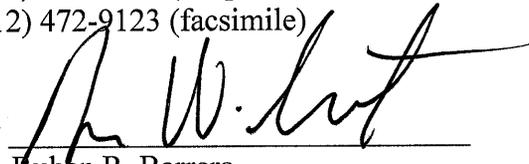
WHEREFORE, PREMISES CONSIDERED, INEOS respectfully requests the Commission grant this Request for Contested Case Hearing, deny the above-captioned Application No. 12-5322E of Chocolate Bayou Water Company to amend Certificate of Adjudication No. 12-5322, as amended, and for such other and further relief to which INEOS is entitled.

Respectfully submitted,

BRACEWELL & GIULIANI LLP
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(210) 226-1166 (telephone)
(210) 226-1133 (facsimile)

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By



Ruben R. Barrera
State Bar No. 01808500
Davison W. Grant
State Bar No. 08300010

ATTORNEYS FOR INEOS OLEFINS &
POLYMERS USA, A DIVISION OF INEOS
USA LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing *Protest of, Comments of, and Request for Contested Case Hearing of INEOS Olefins & Polymers USA, A Division of INEOS USA LLC*, has been sent by Certified Mail, Return Receipt Requested, on this the 16th day of October, 2006, to the following:

David N. Koinm, Project Manager
MC160
Water Rights Permitting Team
Water Rights Permitting & Availability Section
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

Lawrence L. Bellatti
Andrews Kurth, LLP
600 Travis, Suite 4200
Houston, Texas 77002
and
Glenn Jarvis
Law Offices of Glenn Jarvis
1801 South Second Street, Suite 550
McAllen, Texas 78503
Attorneys for Chocolate Bayou Water Company

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Attorney for NRG Texas, LP

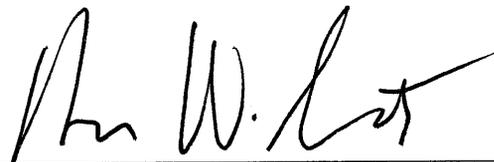
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Davison W. Grant

OPA

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OCT 17 2006

APPLICATION OF CHOCOLATE BAYOU WATER COMPANY FOR AMENDMENT TO CERTIFICATE OF ADJUDICATION NO. 12-5322, AS AMENDED, BRAZOS RIVER BASIN

§ BEFORE THE
§ BY
§ TEXAS COMMISSION
§
§ ON ENVIRONMENTAL QUALITY

CHIEF CLERK OFFICE
OCT 16 2006
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PROTEST OF, COMMENTS OF, AND REQUEST FOR CONTESTED CASE HEARING OF INEOS OLEFINS & POLYMERS USA, A DIVISION OF INEOS USA LLC

ADD
53999

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OCT 16 2006
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10. INEOS is represented by the following counsel:

Name: Ruben Barrera
Address: Bracewell & Giuliani LLP
800 One Alamo Center
106 St. Mary's Street
San Antonio, Texas 78205-3603
Daytime Tel: (210) 226-1166
Facsimile: (210) 226-1133
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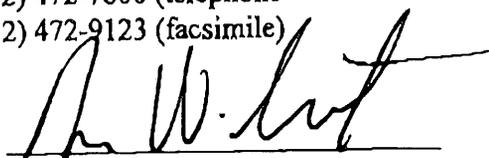
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Respectfully submitted,

BRACEWELL & GIULIANI LLP
800 One Alamo Center
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San Antonio, Texas 78205-3603
(210) 226-1166 (telephone)
(210) 226-1133 (facsimile)

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(512) 472-9123 (facsimile)

By



Ruben R. Barrera
State Bar No. 01808500
Davison W. Grant
State Bar No. 08300010

ATTORNEYS FOR INEOS OLEFINS &
POLYMERS USA, A DIVISION OF INEOS
USA LLC

CERTIFICATE OF SERVICE

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David N. Koinm, Project Manager
MC160
Water Rights Permitting Team
Water Rights Permitting & Availability Section
Texas Commission on Environmental Quality
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Austin, Texas 78711-3087

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600 Travis, Suite 4200
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1801 South Second Street, Suite 550
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Terry Hlavinka
Terrance Hlavinka Cattle Company
P. O. Box 1188
East Bernard, Texas 77435



Davison W. Grant



P.O. Box 4710
Houston, Texas 77210

October 16, 2006

Via Facsimile: 512-239-3311

LaDonna Castanuela
Chief Clerk
TCEQ – MC 204
P.O. Box 13087
Austin, Texas 78711-3087

*ADD
53999*

OPA

OCT 24 2006

BY *[Signature]*

RE: Hearing Request of NRG Texas LP regarding Application No. 12-5322E of
Chocolate Bayou Water Company (“Chocolate Bayou”)

Dear Ms. Castanuela:

By this letter, NRG Texas LP (“NRG Texas”) submits the following comments and
requests a contested case hearing on the above-referenced application.

Protestor Information

Jason Fluharty
NRG Texas LP
P.O. Box 4710
Houston, Texas 77210
713-795-6209
713-945-7598 (fax)
jason.fluharty@nrgenergy.com

c/o Carolyn Ahrens
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carolyn@baw.com

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
OCT 23 PM 2:26
CHIEF CLERKS OFFICE

NRG Texas is a Texas limited partnership having its principal place of business in
Houston, Harris County, Texas, and is engaged in the business of generating electric energy.
NRG Texas has invested greatly in its water supplies, including the water supplies necessary for

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the continued operation of power generation at the W.A. Parish Electric Generating Station in Fort Bend County, Texas. The Parish facility is the largest fossil fuel power plant by generating capacity in Texas, and the United States.

NRG Texas owns Certificate of Adjudication No. 12-5320 authorizing diversion and use of water from a point on the Brazos River in the John T. Edwards Grant, Abstract No. 23, in Fort Bend County. That certificate also authorizes use of the bed and banks of Dry Creek to transport water to Smithers Lake, operated in conjunction with the Parish facility.

Applicant Information

Chocolate Bayou Water Company
1920 FM 2917
Alvin, Texas 77511

Applicant proposes, among other things, to amend Certificate of Adjudication No. 12-5322, as amended, to add a diversion point on the Brazos River approximately 3.9 miles upstream of the currently authorized point. Application No. 12-5322E indicates that the proposed additional diversion point is the site of existing diversion facilities owned and operated by Gulf Coast Water Authority under authority of Certificate of Adjudication No. 12-5168 and is intended to facilitate a sale of the underlying water right to Gulf Coast Water Authority.

Effect of Proposed Water Right Amendment

Both Chocolate Bayou's existing diversion point and the proposed additional diversion point are located below NRG Texas' diversion point. Chocolate Bayou's Certificate of Adjudication No. 12-5322 is in all respects junior in time priority to the NRG Texas' water right. However, Gulf Coast Water Authority holds the authority to divert some water from the proposed diversion point at a time priority that is senior to that of NRG Texas. If at any time in the future Gulf Coast Water Authority were to place a call on the river, it would be essential to determine what diversions in any given year are attributable to the senior water right and which to the junior water right, both exercised at the same diversion point. Failure to provide acceptable accounting may impact NRG Texas's permitted water rights, by, among other things, inappropriately causing NRG Texas to be required to forego pumping pursuant to its Certificate of Adjudication No. 12-5320 when it is otherwise entitled to divert water. Any interruption of dependable water supply for the Parish facility would have critical adverse impact on NRG Texas's operations and the customers it serves. In these respects and others, granting Chocolate Bayou's application would directly affect NRG Texas's legal rights, duties, privileges, power and economic interests.

NRG Texas is an affected person with personal justiciable interests in the matters put at issue by Chocolate Bayou's application that are not common to the general public and have standing to make this request as contemplated in TEX. WATER CODE ANN. § 5.115 (Vernon 2000)

and 30 TEX. ADMIN. CODE § 55.256(a) (West 2001.)¹ (for determining who is an affected person, all relevant factors should be considered, including but not limited to whether the interest claimed is one protected by the law under which the application will be considered, the relationship between the interests claimed and the application, the likely impact of granting the application on the health, safety, and use of property of the person, the likely impact of granting the application on use of the impacted natural resource by the person, and, for governmental entities, their statutory authority over or interest in the issues relevant to the application).

Location and Distance of Water Rights from the Proposed Activity:

NRG Texas' diversion point is approximately 15 miles upstream of the proposed additional diversion point.

Conditions in Proposed Permit which may Satisfy Protestant's Concerns:

NRG Texas remains willing to discuss permit conditions that would relieve it from the threatened impacts of the application. Specifically, NRG Texas contemplates that the development of an appropriate accounting plan, and associated special conditions, prior to issuance of the requested amendment would protect NRG's interests. Although the applicant has acknowledged that an accounting plan will be required, its response to requests for information from the Staff indicate no intent to come forward with an accounting plan before the amendment is granted. Also, as technical review of the application is not yet available, NRG Texas also must reserve the right to raise additional issues.

Conclusion

NRG Texas requests that the Commission convene a contested case hearing regarding Chocolate Bayou Application No. 12-5211E. In consideration of the matters discussed above, NRG Texas asks that this request be processed expeditiously, and that a contested case hearing be granted.

Very truly yours,



Ben Carmine

Director, Environmental Operations

¹ See also *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Env'tl. Justice*, 962 S.W.2d 288 (Tex. App.—Austin 1998, writ den'd) (the standard regarding affected person does not require that a party show it will ultimately prevail on the merits, but simply that it potentially will suffer harm or have a justiciable interest that will be affected); *Texas Rivers Protection Ass'n v. Texas Natural Resource Conservation Comm'n*, 910 S.W.2d 147, 151 (Tex. App.—Austin 1995, writ den'd) (“the right to participate in proceedings is construed quite liberally to encourage varying points of view”).



NRG Texas LLC
1301 McKinney, Suite 2300
Houston, TX 77010

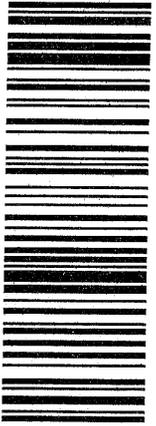
TEXAS
COMMISSION ON
ENVIRONMENTAL
QUALITY
2006 OCT 23 PM 2:26
CHIEF CLERK'S OFFICE

105

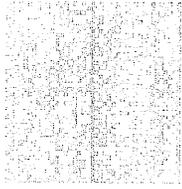
TCEQ
P O Box 13087 MC 204
Austin, TX 78711-3087
ATTN: LaDonna Castanuela

RECEIVED
OCT 23 2006
TCEQ MAIL CENTER
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CERTIFIED MAIL



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11/14/2006 10:00:00 AM
11/14/2006 10:00:00 AM



P.O. Box 4710
Houston, Texas 77210

October 16, 2006

Via Facsimile: 512-239-3311

LaDonna Castanuela
Chief Clerk
TCEQ - MC 204
P.O. Box 13087
Austin, Texas 78711-3087

5/3/99
5/6/00
H

OPA

OCT 17 2006

BY *[Signature]*

CHIEF CLERKS OFFICE
OCT 16 PM 3:11
TCEQ
COMMUNICATIONS
DIVISION

RE: Hearing Request of NRG Texas LP regarding Application No. 12-5322E of Chocolate Bayou Water Company ("Chocolate Bayou")

Dear Ms. Castanuela:

By this letter, NRG Texas LP ("NRG Texas") submits the following comments and requests a contested case hearing on the above-referenced application.

Protestor Information

Jason Fluharty
NRG Texas LP
P.O. Box 4710
Houston, Texas 77210
713-795-6209
713-945-7598 (fax)
jason.fluharty@nrgenergy.com

c/o Carolyn Ahrens
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3263
(512) 473-2609 (fax)
carolyn@baw.com

NRG Texas is a Texas limited partnership having its principal place of business in Houston, Harris County, Texas, and is engaged in the business of generating electric energy. NRG Texas has invested greatly in its water supplies, including the water supplies necessary for

LaDonna Castanuela
October 16, 2006
Page 2

the continued operation of power generation at the W.A. Parish Electric Generating Station in Fort Bend County, Texas. The Parish facility is the largest fossil fuel power plant by generating capacity in Texas, and the United States

NRG Texas owns Certificate of Adjudication No. 12-5320 authorizing diversion and use of water from a point on the Brazos River in the John T. Edwards Grant, Abstract No. 23, in Fort Bend County. That certificate also authorizes use of the bed and banks of Dry Creek to transport water to Smithers Lake, operated in conjunction with the Parish facility.

Applicant Information

Chocolate Bayou Water Company
1920 FM 2917
Alvin, Texas 77511

Applicant proposes, among other things, to amend Certificate of Adjudication No. 12-5322, as amended, to add a diversion point on the Brazos River approximately 3.9 miles upstream of the currently authorized point. Application No. 12-5322E indicates that the proposed additional diversion point is the site of existing diversion facilities owned and operated by Gulf Coast Water Authority under authority of Certificate of Adjudication No. 12-5168 and is intended to facilitate a sale of the underlying water right to Gulf Coast Water Authority.

Effect of Proposed Water Right Amendment

Both Chocolate Bayou's existing diversion point and the proposed additional diversion point are located below NRG Texas' diversion point. Chocolate Bayou's Certificate of Adjudication No. 12-5322 is in all respects junior in time priority to the NRG Texas' water right. However, Gulf Coast Water Authority holds the authority to divert some water from the proposed diversion point at a time priority that is senior to that of NRG Texas. If at any time in the future Gulf Coast Water Authority were to place a call on the river, it would be essential to determine what diversions in any given year are attributable to the senior water right and which to the junior water right, both exercised at the same diversion point. Failure to provide acceptable accounting may impact NRG Texas's permitted water rights, by, among other things, inappropriately causing NRG Texas to be required to forego pumping pursuant to its Certificate of Adjudication No. 12-5320 when it is otherwise entitled to divert water. Any interruption of dependable water supply for the Parish facility would have critical adverse impact on NRG Texas's operations and the customers it serves. In these respects and others, granting Chocolate Bayou's application would directly affect NRG Texas's legal rights, duties, privileges, power and economic interests

NRG Texas is an affected person with personal justiciable interests in the matters put at issue by Chocolate Bayou's application that are not common to the general public and have standing to make this request as contemplated in TEX. WATER CODE ANN. § 5.115 (Vernon 2000)

LaDonna Castanuela
October 16, 2006
Page 3

and 30 TEX. ADMIN. CODE § 55.256(a) (West 2001.)¹ (for determining who is an affected person, all relevant factors should be considered, including but not limited to whether the interest claimed is one protected by the law under which the application will be considered, the relationship between the interests claimed and the application, the likely impact of granting the application on the health, safety, and use of property of the person, the likely impact of granting the application on use of the impacted natural resource by the person, and, for governmental entities, their statutory authority over or interest in the issues relevant to the application).

Location and Distance of Water Rights from the Proposed Activity:

NRG Texas' diversion point is approximately 15 miles upstream of the proposed additional diversion point.

Conditions in Proposed Permit which may Satisfy Protestant's Concerns:

NRG Texas remains willing to discuss permit conditions that would relieve it from the threatened impacts of the application. Specifically, NRG Texas contemplates that the development of an appropriate accounting plan, and associated special conditions, prior to issuance of the requested amendment would protect NRG's interests. Although the applicant has acknowledged that an accounting plan will be required, its response to requests for information from the Staff indicate no intent to come forward with an accounting plan before the amendment is granted. Also, as technical review of the application is not yet available, NRG Texas also must reserve the right to raise additional issues.

Conclusion

NRG Texas requests that the Commission convene a contested case hearing regarding Chocolate Bayou Application No. 12-5211E. In consideration of the matters discussed above, NRG Texas asks that this request be processed expeditiously, and that a contested case hearing be granted.

Very truly yours,



Ben Carmine
Director, Environmental Operations

¹ See also *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Envtl. Justice*, 962 S.W.2d 288 (Tex. App.—Austin 1998, writ den'd) (the standard regarding affected person does not require that a party show it will ultimately prevail on the merits, but simply that it potentially will suffer harm or have a justiciable interest that will be affected); *Texas Rivers Protection Ass'n v. Texas Natural Resource Conservation Comm'n*, 910 S.W.2d 147, 151 (Tex. App.—Austin 1995, writ den'd) ("the right to participate in proceedings is construed quite liberally to encourage varying points of view")

NRG Texas



ON ENVIROMENTAL
OCT 16 11 31 11
CHIEF CLEANS OFFICE

FACSIMILE TRANSMITTAL SHEET

TO:
LaDonna Castanuela

FROM:
Jason Fluharty

COMPANY:
TCEQ

DATE:
10/16/06

FAX NUMBER
512-239-3311

TOTAL NO. OF PAGES
INCLUDING COVER: 4

PHONE NUMBER:

SENDER'S FAX NUMBER:

RE:
Application No. 12-5322E

SENDER'S PHONE NUMBER
713-795-6209

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS: