

From: PUBCOMMENT-OCC2
To: wq
Date: 4/28/2009 4:00 PM
Subject: Re: Fwd: Public comment on Permit Number WQ0002430000
Place: PUBCOMMENT-ELD
Attachments: April 24 Limestone PC Comments1.doc

>>> PUBCOMMENT-OPA 4/27/2009 2:59 PM >>>

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>>> PUBCOMMENT-OCC 4/27/2009 1:29 PM >>>

>> 4/27/2009 1:17 PM >>>

REGULATED ENTY NAME:LIMESTONE ELECTRIC GENERATING STATION

RN NUMBER:RN100542927

PERMIT NUMBER:WQ0002430000

DOCKET NUMBER:Not Found

COUNTY:LIMESTONE

PRINCIPAL NAME:NRG TEXAS POWER LLC

CN NUMBER:CN603207218

FROM

NAME:Nakisha Nathan

COMPANY:Lowerre, Frederick, Perales, Allmon, & Rockwell

ADDRESS:707 RIO GRANDE ST STE 200

AUSTIN TX78701-2733

PHONE:512.469.6000

FAX:512.482.9346

COMMENTS:

MW

April 14, 2009

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

Re: Application of NRG Texas Power LLC for TPDES Permit No. WQ0002430000

Ms. Castañuela:

On behalf of Public Citizen, SEED Coalition, Sierra Club (Lone Star Chapter) and Robertson County: Our Land Our Lives (Collectively "commenters"), non-profit organizations with purposes including seeking clean, safe and sustainable energy sources and promoting strong health, safety and environmental protections for its members and the public, I am submitting these comments on the above-referenced application. Members of the aforementioned groups will be affected by the proposed application. For the reasons set forth below, commenters request that the processing of the permit be delayed until all required information has been submitted and reviewed or that the permit be denied, and Robertson County: Our Land Our Lives requests that the TCEQ hold a public meeting and requests a contested case hearing on the application.

I. INTRODUCTION

NRG Texas Power, LC ("NRG"), is seeking to construct a new coal-fired power plant at their Limestone Electric Generating Station located in Limestone County near Jewett, Texas. This project has been called "Limestone 3." At the same time, NRG has submitted an application to renew Texas Pollution Discharge Elimination System (TPDES) Permit No. WQ0002430000. Additional clarification is needed regarding whether any wastewater produced by the operation of Limestone 3 will be authorized to be discharged under the permit action being considered. If the discharge of such wastewater is intended to be authorized, then the TPDES permit notice should be clarified, and the application must be treated as a permit amendment, not a simple renewal.

II. The Draft Permit, as Proposed, Does not Authorize Discharges from the Operation of the Proposed Limestone 3 Unit

Clarification is needed regarding the activities authorized by the draft permit. The draft permit authorizes the discharge of wastes from "Limestone Steam Electric Generating Station."¹ The permit application describes the facility being authorized as "two lignite/coal fired steam electric generating units."² By permit condition l(b) in the draft permit; representations made during the application process are binding for purposes of the permit itself. So, the term "Limestone Steam Electric Generating Station" for purposes of the permit is properly treated as including only the two existing electric generating stations at the Limestone site. As a consequence of this representation regarding the nature of the facility involved in the permitting action, the permit does not authorize the discharge of wastewater associated with the operation of a new generating unit at the Limestone Electric Generating Station. Since this is the case, TCEQ should be clear that an additional application for a new TPDES permit or an amendment of the 2-unit permit will be required prior to the startup of Limestone 3, if the construction or operation of that facility will result in the production of any wastewater that is to be either combined with the waste streams authorized to be discharged by the existing permit or intended to be discharged via a new discharge point.

If, instead, TCEQ is intending the proposed renewal to encompass the authorization of the discharge of wastewater produced at the Limestone 3 unit, then it is important for TCEQ to realize that this is not what is indicated by the materials in the application and the accompanying draft permit which have been made available to the public. Any change in the definition of "facility" or "Limestone Steam Electric Generating Station" from the definition in the current permit of two lignite/coal fired steam generating units and associated activities (based on the representations in the application for that permit) to a new definition of *three* lignite/coal fired steam generating units and associated activities would be a change to a substantive term of the permit application and would require that the application be considered a major amendment. If the new permit authorizes the discharge of wastewater produced at Limestone 3, then the permit involves the authorization of wastewater generated by new and independent processes. If these new processes are now authorized by the permit being issued, then the permit is authorizing a new source, which certainly constitutes more than a mere renewal of the application.

III. THE DRAFT PERMIT CONSTITUTES A PERMIT AMENDMENT

The draft permit contains changes from the existing permit that render the application, properly considered, one for a major permit amendment. As noted above, if the discharge of wastewater produced at Limestone 3 is to be authorized by the draft permit, then it is a major amendment. Further, the existing permit, at Other Requirement No.9, establishes that there is no mixing zone for *all* the discharges authorized by the permit, and that acute toxic criteria apply at the point of discharge. The new permit, at Other Requirement No. 6, does not include Outfall No.7 in the discharges where no mixing zone is allowed, and does not apply the acute toxic criteria at the point of discharge for this outfall. The change from prohibiting a mixing zone at Outfall No.7 in the current permit, while allowing a mixing zone in the new permit,

¹ Draft Permit WQ0002430000, p. 1

² Technical Report 1.0, at 1.a

along with the relaxation of the applicable point to determine compliance with the acute toxic criteria, constitutes a relaxation of the permit, rendering the new permitting action under consideration a major amendment.

The daily average limit for Selenium at Outfall Number 2 is 0.0168 mg/L in the current permit, while the limit proposed in the draft permit is 0.168 mg/L. With this change, the draft permit is significantly less stringent than the existing permit, rendering the permitting action a major amendment. If this change is a typographical error, it should be corrected.

IV. CONTAMINATION BY AIRBORNE MERCURY AND OTHER HEAVY METALS

The proposed permit does not adequately account for contaminants entering the receiving waters as a result of the deposition of airborne contaminants emitted at the facility. Contaminants such as mercury and other heavy metals will not flow through the outfalls addressed in the permit, but will contaminate the receiving waters and result in adverse impacts on those waters. No analysis of the water quality impacts of the facility is complete without considering the impacts of this contaminant pathway. Yet, the impact of these contaminants has not even been considered or addressed in the issuance of this permit. The impact of the facility on Lake Limestone should be evaluated, with adequate water quality sampling performed to characterize the current mercury levels in that water body. Any biomonitoring at the facility should account for impacts on the receiving waters that result from the deposition of airborne contaminants from the facility.

V. GROUNDWATER IMPACTS

Construction and operation of the facility as proposed in the permit will have adverse impacts on groundwater, including impacts which violate 30 TAC §§ 309.12 and 319.27. The proposed facility is located directly over the Wilcox Aquifer, which is the primary source of groundwater in Limestone County. The permitted facility includes impoundments holding a total of over 73 million gallons of wastewater, and covering approximately 14 acres.³ Yet, no evaluation has been performed to determine whether any of these impoundments will have an appropriate liner to prevent groundwater impacts. Furthermore, no demonstration has been made that any leak detection systems will be present at the facility, nor has consideration been given to the relationship between the seasonal high water table and the water level in these impoundments. A careful examination should be performed regarding the potential for contaminants to leave the facility via migration in the groundwater, but this has not been done. The TCEQ is required to consider such groundwater impacts in implementing the State's groundwater anti-degradation policy.⁴

VI. INADEQUATE TECHNOLOGY-BASED EFFLUENT LIMITATIONS

The permit does not adequately incorporate technology based effluent limitations as

³ Technical Report 1.0, Impoundment Information Table.

⁴ Tex. Water Cod § 26.401

required by 30 TAC § 308.1, incorporating 40 CFR Part 125, Subpart A.

VII. EFFLUENT LIMITATION ISSUES

There are several aspects of the effluent limitations contained in the permit which raise a concern. The draft permit allows the maximum flow at each outfall to be determined simply by "Estimate." This requirement lacks adequate specificity to be enforceable. The Free Available Chlorine limit at Outfall No.1 is stated to apply only to cooling tower blowdown and monitoring requirements apply only when discharging cooling tower blowdown. Given the mixed nature of the ultimate discharge, this limitation allows for inappropriate dilution of the cooling tower blowdown water, and it will be virtually impossible to distinguish between times when cooling tower blowdown is being discharged, as opposed to times when it is not. This limitation should apply either at all times, or there should be an internal monitoring point and compliance point for limitations specifically applicable to cooling tower blowdown. At Outfall No.2, samples are required "during normal working hours when discharge occurs." Sampling should not be limited to discharges occurring during normal working hours, as the contamination is equally as dangerous to the receiving stream at all times of the day.

VIII. ANTI-DEGRADATION DEMONSTRATION

Construction and operation of the facility as proposed will violate TCEQ's Tier 1 anti-degradation requirements because it will impair the existing uses of the receiving waters. It has not been shown that the issuance of the permit will not result in a violation of applicable water quality standards in the receiving waters. The effluent limitations at each outfall have not been shown to account for all types of contaminants that could potentially impact water quality. There's been no demonstration that discharges authorized by the draft permit will not result in a violation of the general criteria and numerical criteria that make up the stream standards set forth in 30 TAC §§ 307.1 – 307.10.

Furthermore, a proper Tier 2 anti-degradation analysis has not been performed, and it has not been shown that the proposed discharge will not result in a more than *de minimis* degradation of the receiving waters.

IX. FAILURE TO MEET GENERAL DISCHARGE CRITERIA

The draft permit has not been demonstrated to comply with the general criteria for wastewater discharges as set forth at 30 TAC § 307.4. Applicant has failed to address thermal impacts on receiving waters. This includes a failure to demonstrate compliance with 30 TAC § 307.4(f).

X. MONITORING & DILUTION

The proposed permit does not include adequate monitoring requirements to ensure compliance with the terms of the permit, protection of the receiving waters, and compliance

with the requirements of 30 TAC Chapter 319. Additionally, the permit allows the levels of some contaminants produced at the facility to be reduced merely by means of dilution, in violation of 30 TAC § 319.24.

IX. COOLING WATER INTAKE STRUCTURES

The proposed permit has not been shown to meet the requirements of Subchapter I of Chapter 308 of the TCEQ rules, regarding cooling water intake structures (CWIS). The intake structures at the site have the potential to have significant impacts that should be fully addressed prior to issuance of the permit. The Applicant has not demonstrated compliance with 30 TAC § 308.91(1) – (10).

XI. DOMESTIC WASTEWATER REQUIREMENTS

Outfall Numbers 6 and 7 involve the discharge of treated domestic wastewater. NRG has not demonstrated that the proposed discharge meets the applicable requirements of Chapter 309.⁵

XI. ENDANGERED AND THREATENED SPECIES

No demonstration has been made that operation of the facility will not have adverse impacts on endangered and threatened species. TCEQ should consider the impact that the impoundments at the facility will have on migratory birds who may mistake these impoundments for natural water bodies and, thus, be attracted to such impoundments. Given the level of contamination contained in some of these impoundments, their use by migratory birds could have an adverse impact on such species. An adequate examination on these and other threatened and endangered species has not been performed.

XII. COASTAL MANAGEMENT PROGRAM

The authorization requested is being sought in order to facilitate the construction of a new electric generating unit, which will emit carbon dioxide and other greenhouse gases. As previously confirmed by a report prepared by the Texas Water Commission in cooperation with other governmental agencies, Global warming is likely to result in damage to coastal ecosystems and fisheries in the State of Texas.⁶ A predecessor of the TCEQ has noted that, “climate change stands out as a potential dominant influence on the future of Texas estuaries.”⁷ These impacts will occur as a result of a combination of changes in freshwater inflow, changes in sea level, changes in precipitation patterns, and changes in the water

⁵ This includes requirements set forth at 30 TAC §§ 309.1 – 309.4 and 309.10 – 309.14

⁶ “Policy Options: Responding to Climate Change in Texas.” Prepared by Center for Global Studies, Houston Advanced Research Center in cooperation with the U.S. Environmental Protection Agency and the Texas Water Commission, October 1993.

⁷ Id. At p. 3.

temperature.⁸ The global warming caused by a plant such as that involved at this facility will have negative impacts on Texas bays and estuaries. In consideration of these impacts, the proposed issuance of the permit is inconsistent with the Texas Coastal Management Program ("CMP"). Issuance of the proposed permit has not been demonstrated to be consistent with the regulations of the Coastal Coordination Council (CCC), nor is issuance of the permit consistent with the applicable CMP goals and policies.

XII. CONCLUSION

For the reasons stated above, processing of the application by NRG Texas Power LC for TPDES Permit No. WQ0002430000 should be delayed until all required information has been submitted and reviewed, and a final fact sheet and statement of basis for the draft permit has been developed. Furthermore, Robertson County: Our Land Our Lives requests that the TCEQ hold a public meeting with respect to the application, and requests a contested case hearing on the application. The application should be denied for the reasons set forth above.

Respectfully Submitted,

Eric Allmon
State Bar No. 24031819

**LOWERRE, FREDERICK,
PERALES, ALLMON &
ROCKWELL**

707 Rio Grande, Suite 200
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346

Attorneys for Robertson County: Our
Land our Lives

⁸ Id.

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Date: 4/28/2009 3:54 PM
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RN NUMBER:RN100542927
PERMIT NUMBER:WQ0002430000
DOCKET NUMBER:Not Found
COUNTY:LIMESTONE
PRINCIPAL NAME:NRG TEXAS POWER LLC
CN NUMBER:CN603207218
FROM
NAME:Nakisha Nathan

COMPANY:Lowerre, Frederick, Perales, Allmon, & Rockwell
ADDRESS:707 RIO GRANDE ST STE 200
AUSTIN TX78701-2733
PHONE:512.469.6000
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Eric Allmon
State Bar No. 24031819

**LOWERRE, FREDERICK,
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ROCKWELL**

707 Rio Grande, Suite 200
Austin, TX 78701
Tel. (512) 469-6000
Fax (512) 482-9346

Attorneys for Robertson County: Our
Land our Lives

⁸ Id.