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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 9, 2014

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

**RE: FREEPORT LNG DEVELOPMENT, L.P.
TCEQ DOCKET NO. 2014-0691-AIR**

Dear Ms. Bohac:

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

Sincerely,


Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2014-0691-AIR

APPLICATION OF	§	BEFORE THE
FREEPORT LNG	§	
DEVELOPMENT, L.P.	§	TEXAS COMMISSION ON
FOR LIQUEFACTION	§	
PLANT	§	ENVIRONMENTAL
AIR QUALITY PERMIT	§	
100114, PSDTX1282, N150	§	QUALITY

**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) at the Texas Commission on Environmental Quality (TCEQ) files this response to the hearing requests in the above-referenced matter.

I. BACKGROUND

Freeport LNG Development, L.P. (FLNG or Applicant) has applied to the TCEQ for New Source Review authorization under Texas Clean Air Act (TCAA) §382.0518. This permitting action would authorize the construction of new facilities that may emit air contaminants.

The permit would authorize FLNG to construct a liquefaction plant, which would work in combination with a pretreatment facility to produce liquefied natural gas (LNG). The pretreatment facility would

be permitted under a separate authorization. The liquefaction plant would be located at 1500 Lamar Street in Quintana, Brazoria County.

Before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain a permit from TCEQ. This permit application is for the initial issuance of a single permit document which would be numbered Air Quality Permit 100114, PSDTX1282, and N150.

The application was received December 20, 2011, and declared administratively complete December 22, 2011. The first newspaper notice was published January 16, 2012, in *The Facts*. The second newspaper notice was published February 10, 2014, in *The Facts*, and published in Spanish on February 11, 2014, in *La Voz*.

A public meeting was held March 4, 2014 in Lake Jackson. The notice of public meeting was mailed to interested parties on February 19, 2014. The public comment period ended March 13, 2014. The TCEQ Executive Director (ED) prepared a response to comments (RTC), and the RTC was mailed April 11, 2014. The period to request a contested case hearing ended May 12, 2014.

TCEQ received timely hearing requests from Dan Callahan, Commodore Cove Improvement District (CCID), Kathy Davis, Harold Doty, Laura Jones, Christopher Kall, James Kall, Melanie Oldham, Robin Rio, Diana Stokes, and Anthony Zuma. For the reasons stated

herein, OPIC recommends the Commission grant the hearing requests of Harold Doty, Christopher Kall, James Kall, and Melanie Oldham, and refer the matter to the State Office of Administrative Hearings (SOAH) on the issues outlined below.

II. APPLICABLE LAW

This application was declared administratively complete after September 1, 1999, and is subject to the requirements of Texas Water Code (TWC) § 5.556 added by Acts 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 application. 30 TAC § 55.201(d). 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.” This justiciable interest does not include an interest common to the general public. 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; and
- (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.

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, pursuant to 30 TAC § 55.209(e), 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.

III. ANALYSIS OF HEARING REQUESTS

A. Determination of Affected Person Status

Harold Doty

According to a map prepared by ED staff, Harold Doty resides less than 0.5 miles from the closest boundary of the proposed facility. As stated in his hearing request, Mr. Doty's concerns include air emissions; the proposed location of the plant; the lack of air monitoring; and the natural gas and process gases are not odorized.

Mr. Doty's proximity to the proposed plant, when combined with his concern regarding air emissions, gives him a personal justiciable interest in this matter. His proximity also indicates he could be impacted in a manner not common to the general public, and

distinguishes his personal justiciable interest from an interest common to the general public.

Consideration of the § 55.203(c) affected person determination factors further indicates that Mr. Doty qualifies as an affected person. First, his interest concerning air quality is protected by the law under which this application will be considered. Second, a reasonable relationship exists between that interest and the regulation of air contaminants. Finally, the proximity of Mr. Doty to the proposed facility increases the likelihood of impacts to his health, safety, and use of property. OPIC finds that under § 55.203, Harold Doty qualifies as an affected person.

Christopher Kall

According to a map prepared by ED staff, Christopher Kall resides less than 0.5 miles from the closest boundary of the proposed facility. As stated in his hearing request, Christopher Kall's concerns include air emissions; the lack of air monitors; the proposed location of the plant; health effects; and the natural gas and process gases are not odorized.

Christopher Kall's proximity to the proposed plant, when combined with his concerns regarding air emissions and health effects, gives him a personal justiciable interest in this matter. His proximity also indicates he could be impacted in a manner not common to the

general public, and distinguishes his personal justiciable interest from an interest common to the general public.

Consideration of the § 55.203(c) affected person determination factors further indicates that Christopher Kall qualifies as an affected person. First, his interests concerning air quality and health effects are protected by the law under which this application will be considered. Second, a reasonable relationship exists between those interests and the regulation of air contaminants. Finally, the proximity of Christopher Kall to the proposed facility increases the likelihood of impacts to his health, safety, and use of property. OPIC finds that under § 55.203, Christopher Kall qualifies as an affected person.

James Kall

According to a map prepared by ED staff, James Kall resides less than 0.5 miles from the closest boundary of the proposed facility. As stated in his hearing request, James Kall's concerns include air emissions; the lack of air monitors; and the natural gas and process gases are not odorized.

James Kall's proximity to the proposed plant, when combined with his concern regarding air emissions, gives him a personal justiciable interest in this matter. His proximity also indicates he could be impacted in a manner not common to the general public, and

distinguishes his personal justiciable interest from an interest common to the general public.

Consideration of the § 55.203(c) affected person determination factors further indicates that James Kall qualifies as an affected person. First, his interest concerning air quality is protected by the law under which this application will be considered. Second, a reasonable relationship exists between that interest and the regulation of air contaminants. Finally, the proximity of James Kall to the proposed facility increases the likelihood of impacts to his health, safety, and use of property. OPIC finds that under § 55.203, James Kall qualifies as an affected person.

Melanie Oldham

According to a map prepared by ED staff, Melanie Oldham resides approximately 2 miles from the closest boundary of the proposed facility. As stated in her hearing request, Ms. Oldham's concerns include air emissions, health effects, and the lack of air monitors.

Ms. Oldham's proximity to the proposed plant, when combined with her concerns regarding air emissions and health effects, gives her a personal justiciable interest in this matter. Her proximity also indicates she could be impacted in a manner not common to the

general public, and distinguishes her personal justiciable interest from an interest common to the general public.

Consideration of the § 55.203(c) affected person determination factors further indicates that Ms. Oldham qualifies as an affected person. First, her interests concerning air quality and health effects are protected by the law under which this application will be considered. Second, a reasonable relationship exists between those interests and the regulation of air contaminants. Finally, the proximity of Ms. Oldham to the proposed facility increases the likelihood of impacts to her health, safety, and use of property. OPIC finds that under § 55.203, Melanie Oldham qualifies as an affected person.

CCID

CCID is requesting a hearing based on its interest in groundwater quantity, groundwater quality, and surface water quality. Under 30 TAC § 55.203(c)(6), a governmental entity may be an affected person based on its "statutory authority over or interest in the issues relevant to the application." FLNG's application and the ED's review of the application are limited to air issues, and neither the application nor the technical review includes groundwater or surface water issues. Therefore, CCID's hearing request is based on issues which are not relevant to this application, and OPIC must find that CCID is not an affected person, as determined under § 55.203.

Dan Callahan, Kathy Davis, Laura Jones, Robin Rio,
Diana Stokes, Anthony Zuma

According to a map prepared by ED staff, all of these hearing requestors reside at least 3.5 miles from the closest boundary of the proposed facility. Given the intervening distance between the proposed plant and these requestors, OPIC finds that their interests cannot be distinguished from interests common to the general public. Therefore, OPIC finds that Dan Callahan, Kathy Davis, Laura Jones, Robin Rio, Diana Stokes, and Anthony Zuma do not qualify as affected persons under TCEQ rule.

B. Disputed Issues

All of the issues raised in the hearing requests are disputed.

C. Disputed Questions of Fact or Law

All of the disputed issues involve questions of fact.

D. Issues Raised During Public Comment Period

All of the issues were raised during the public comment period.

E. Hearing Request Based on Withdrawn Public Comment

None of the hearing requests are based on issues raised solely in a public comment which has been withdrawn.

F. Relevant and Material Issues

Air Quality

All of the affected hearing requestors have raised the issue of air quality. 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. TEX. HEALTH & SAFETY CODE § 382.002. The issue of air quality is therefore relevant and material to the Commission's decision on this application.

Health Effects

Christopher Kall and Melanie Oldham, both affected requestors, have raised the issue of impacts to human health resulting from or being exacerbated by the proposed air emissions. The Texas Clean Air Act is intended to protect public health. TEX. HEALTH & SAFETY CODE § 382.002. The issue of health effects is therefore relevant and material to the Commission's decision on this application.

Proposed Location of Plant

Some of the affected requestors state that the proposed location of the plant is inappropriate due to the proximity of residential areas. Because TCEQ lacks the jurisdiction to regulate local zoning, the agency cannot control or dictate where an applicant locates. This

issue is therefore not relevant and material to the Commission's decision.

Air Quality Monitoring

All of the affected requestors want air quality monitoring in the vicinity of the proposed plant. TCEQ does not have the authority to require FLNG to install an offsite ambient air monitor as part of this permit application. Therefore, this issue is not relevant and material to the Commission's decision.

Odorized Gases

Some of the affected hearing requestors want the natural gas and refrigerant gases at the FLNG site to be odorized in the same way that gas for household use is odorized. There is no regulatory requirement for FLNG to odorize natural gas or refrigerant gases. This issue is therefore not relevant and material to the Commission's decision on the application.

G. Maximum Expected Duration of Hearing

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

IV. CONCLUSION

OPIC finds that Harold Doty, Christopher Kall, James Kall, and Melanie Oldham qualify as affected persons. Also, each of these hearing requestors has raised at least one issue which is relevant and material to the Commission's decision on this application. Therefore, we respectfully recommend the Commission grant their hearing requests.

We further recommend the Commission refer the following issues to the State Office of Administrative Hearings for a contested case hearing:

1. Whether emissions from the proposed liquefaction plant will adversely impact air quality?
2. Whether the proposed liquefaction plant will adversely impact public health?

Respectfully submitted,

Office of Public Interest Counsel

By  FOR
Eli Martinez

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2014, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.


Garrett Arthur

MAILING LIST
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TCEQ DOCKET NO. 2014-0691-AIR

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