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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 9, 2014

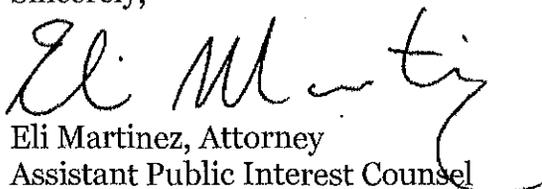
Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: FREEPORT LNG DEVELOPMENT, L.P.
TCEQ DOCKET NO. 2014-0692-AIR**

Dear Ms. Bohac:

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

Sincerely,


Eli Martinez, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2014-0692-AIR

APPLICATION OF	§	BEFORE THE
FREEPORT LNG	§	
DEVELOPMENT, L.P.	§	TEXAS COMMISSION ON
FOR PRETREATMENT	§	
FACILITY	§	ENVIRONMENTAL
AIR QUALITY PERMIT	§	
104840, PSDTX1302, N170	§	QUALITY

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUESTS AND
REQUEST FOR RECONSIDERATION**

**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 and request for reconsideration 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 pretreatment facility, which would work in combination with a liquefaction plant to produce liquefied natural gas (LNG). The liquefaction plant would be

permitted under a separate authorization. The pretreatment facility is located on County Road 690, approximately 0.25 miles north of the intersection of County Road 690 and County Road 891, in Freeport, 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 No. 104840, PSDTX1302, and N170.

The application was received July 20, 2012, and declared administratively complete August 6, 2012. The Notice of Receipt and Intent to Obtain an Air Quality Permit was published August 20, 2012, in *The Facts*. The Notice of Application and Preliminary Decision for an Air Quality Permit 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 was extended until March 26, 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 or reconsideration ended May 12, 2014.

TCEQ received timely hearing requests from Harold Doty, Laura Jones, Melanie Oldham, and Diana Stokes. TCEQ also received a request for reconsideration from Robert Pratt. For the reasons stated herein, OPIC recommends the Commission grant the hearing requests of Laura Jones and Diana Stokes and refer the matter to the State Office of Administrative Hearings (SOAH) on the issues outlined below. OPIC further recommends that the request for reconsideration by Robert Pratt be denied.

II. APPLICABLE LAW

Hearing Request

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.

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.

Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision. 30 TAC § 55.201(e). The request must be in writing and be filed with the TCEQ no later than 30 days after the TCEQ mails the ED's decision and RTC. *Id.* The request for reconsideration must expressly state that the person is requesting reconsideration of the ED's decision, and give reasons why the decision should be

reconsidered. *Id.* A response to a request for reconsideration should address the issues raised in the request. 30 TAC § 55.209(f).

III. ANALYSIS OF HEARING REQUESTS

A. Determination of Affected Person Status

Laura Jones

According to a map prepared by ED staff, Laura Jones resides approximately 1.5 miles from the closest boundary of the proposed facility. As stated in her hearing request, Ms. Jones' concerns include:

- air emissions
- health effects
- welfare
- proposed location of the facility
- lack of air quality monitoring systems
- construction vehicle emissions
- dust emissions during construction of the proposed facility
- traffic
- wildlife
- vegetation
- groundwater quality
- surface water quality
- light pollution
- noise pollution
- control technology, including carbon capture
- export of LNG

Ms. Jones' proximity to the proposed facility, when combined with her concerns regarding air emissions, health effects, welfare, wildlife, and vegetation, 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. Jones qualifies as an affected person. First, her interests concerning air emissions, health effects, welfare, wildlife, and vegetation 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. Jones to the proposed facility increases the likelihood of impacts on her health, safety, and use of property. OPIC finds that under § 55.203, Laura Jones qualifies as an affected person.

Diana Stokes

According to a map prepared by ED staff, Diana Stokes resides approximately 1.5 miles from the closest boundary of the proposed facility. As stated in her hearing request, Ms. Stokes' concerns include:

- air emissions
- health effects
- proposed location of the facility
- lack of air quality monitoring systems
- construction vehicle emissions
- dust emissions during construction of the proposed facility
- light pollution
- noise pollution

Ms. Stokes' proximity to the proposed facility, 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. Stokes qualifies as an affected person. First, her interests concerning air emissions 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. Stokes to the proposed facility increases the likelihood of impacts on her health, safety, and use of property. OPIC finds that under § 55.203, Diana Stokes qualifies as an affected person.

Harold Doty and Melanie Oldham

According to a map prepared by ED staff, hearing requestor Harold Doty resides approximately 4.5 miles from the closest boundary of the proposed facility. The same map indicates that hearing requestor Melanie Oldham resides approximately 3.5 miles from the closest boundary of the proposed facility. Given the intervening distance between the proposed facility and these two requestors, OPIC

finds that their interests cannot be distinguished from interests common to the general public. Therefore, OPIC finds that Harold Doty and Melanie Oldham 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

Both 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 and Welfare Effects

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

Environmental Effects

Laura Jones is concerned that air emissions from the proposed facility will adversely affect the surrounding environment, including wildlife and vegetation. This concern involves the protection of natural resources. One of the purposes of the Texas Clean Air Act is to protect the general welfare of the state's natural resources. TEX. HEALTH & SAFETY CODE § 382.002. The issue of environmental effects is therefore relevant and material to the Commission's decision on this application.

Control Technology

Laura Jones questions whether FLNG is proposing and TCEQ is requiring the most environmentally advanced equipment. The control technology proposed by FLNG is potentially subject to two standards,

BACT (Best Available Control Technology) and LAER (Lowest Achievable Emission Rate). Under the Texas Clean Air Act, FLNG must use at least BACT. TEX. HEALTH & SAFETY CODE § 382.0518(b). Also, FLNG's emissions of nitrogen oxides (NOx) are subject to the LAER standard. See 30 TAC § 116.150. Therefore, control technology is an issue which is relevant and material to the Commission's decision on this application.

Proposed Location of Facility

Both affected requestors state that the proposed location of the facility 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

Both affected requestors want air quality monitoring in the vicinity of the proposed facility. 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.

Construction Emissions

Both affected requestors are concerned about emissions which may occur during the construction phase of the project. The proposed permit is meant to regulate the operation of the facility, not its construction. Emissions from construction vehicles or construction activities are beyond the scope of the permit and application review. This issue is therefore not relevant and material to the Commission's decision.

Traffic

Laura Jones is concerned about increased traffic. However, under the Texas Clean Air Act, the TCEQ lacks jurisdiction to regulate traffic on public roads, and therefore, this issue is not relevant and material to the Commission's decision.

Water Quality

Laura Jones has raised the issue of water quality, both groundwater and surface water. Any required water quality authorizations would be evaluated and issued through a separate permitting process. FLNG is not required to address water quality issues in the current air quality permit application, and water quality issues are beyond the scope of TCEQ's review of the air application.

Therefore, water quality is not a relevant and material issue in this matter.

Light and Noise Pollution

Both affected requestors are concerned that the proposed facility will cause light and noise pollution. TCEQ's regulatory jurisdiction is set in statute by the Texas Legislature. The Texas Legislature has not given TCEQ the authority to address light or noise pollution. This issue is therefore not relevant and material to the Commission's decision.

Export of LNG

Finally, Laura Jones objects to the export of LNG. TCEQ has no authority to control whether Applicant sells LNG to foreign or domestic customers. Therefore, the issue is not relevant and material in this matter.

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. ANALYSIS OF REQUEST FOR RECONSIDERATION

Robert Pratt has requested reconsideration of the ED's decision. Mr. Pratt notes that FLNG is predicting 24.96 tons per year of VOC (volatile organic compound) emissions, and the trigger threshold is 25 tons per year. He states that normal scientific protocol and established emission reporting methodology indicate that 24.96 should be rounded up to 25.

Predicted VOC emissions and which standard should apply to those emissions are issues which are relevant and material to the Commission's decision on this application. However, an evidentiary record on these issues would be necessary for OPIC to make a recommendation to the Commission as to whether the ED's decision should be reconsidered. At this time, an evidentiary record does not exist, and therefore, OPIC cannot recommend that the request for reconsideration be granted. OPIC is recommending a contested case hearing in this matter, and if a hearing is granted, Robert Pratt could seek to be admitted as a party to the hearing. See 30 TAC § 55.211(e).

V. CONCLUSION

OPIC finds that Laura Jones and Diana Stokes qualify as affected persons. Also, each of these hearing requestors has raised issues which are 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 pretreatment facility will adversely impact air quality?
2. Whether the proposed pretreatment facility will adversely impact public health and welfare?
3. Whether the proposed pretreatment facility will adversely impact the environment?
4. Whether the proposed pretreatment facility will use appropriate control technology to achieve BACT and LAER emission limits?

Respectfully submitted,

Office of Public Interest Counsel

By  FOR

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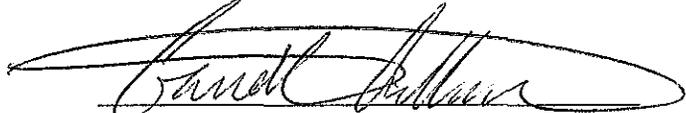
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CERTIFICATE OF SERVICE

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

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TCEQ DOCKET NO. 2014-0692-AIR

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