

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 9, 2015

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: CALPINE HIDALGO ENERGY CENTER, L.P., BROWNSVILLE
PUBLIC UTILITIES BOARD, AND CALPINE OPERATING
SERVICES COMPANY, INC.
TCEQ DOCKET NO. 2014-1445-IWD**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

DOCKET NO. 2014-1445-IWD

APPLICATION BY	§	BEFORE THE
CALPINE HIDALGO ENERGY	§	
CENTER, L.P., BROWNSVILLE	§	
PUBLIC UTILITIES BOARD, AND	§	TEXAS COMMISSION ON
CALPINE OPERATING SERVICES	§	
COMPANY, INC. TO AMEND	§	
TPDES PERMIT	§	ENVIRONMENTAL QUALITY
NO. WQ0004138000	§	

**OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO HEARING REQUEST 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 request and request for reconsideration in the above-captioned matter.

I. Background

Calpine Hidalgo Energy Center, L.P., Brownsville Public Utilities Board, and Calpine Operating Services Company, Inc. ("Applicants") own and operate the Hidalgo Energy Center, a combined cycle power plant in the City of Edinburg, Hidalgo County. On October 11, 2013, Applicants submitted to TCEQ an application for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004138000. The proposed amendment would authorize an increase in daily average and daily maximum ammonia limits, authorize the discharge of closed-loop cooling water, and update total chlorine requirements. Effluent from the Hidalgo Energy Center is discharged to North Main Drain III, then to North Main Drain II, then

to North Main Drain I, then to North Floodway Channel, and then to Laguna Madre in Segment No. 2491 of the Bays and Estuaries.

The application was declared administratively complete on December 17, 2013. The first newspaper notice was published in Spanish on January 1, 2014 in *El Periodico U.S.A.* and in English on January 10, 2014 in the *Monitor*. The second newspaper notices were published May 5 and 7, 2014 in the same newspapers. A timely public comment was received from Javier Ledesma. The public comment period closed June 6, 2014. On August 26, 2014, the TCEQ Executive Director's (ED) Response to Comments (RTC) was mailed, and Javier Ledesma timely filed a hearing request and request for reconsideration on August 28, 2014.

For the reasons stated herein, OPIC respectfully recommends the Commission deny both the hearing request and the request for reconsideration.

II. Applicable Law

Hearing Requests

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.

Requests for Reconsideration

Any person may file a request for reconsideration of the ED's decision.¹ 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.² 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.³ A response to a request for reconsideration should address the issues raised in the request.⁴

III. Analysis of Hearing Request

A. Whether the requestor is an affected person

The hearing requestor, Javier Ledesma, owns a 69-acre citrus tree orchard immediately south of the power plant. Though his property is adjacent to the facility, it is not adjacent to the outfall or on the discharge route. Mr. Ledesma states that the Ruby Red Grapefruit trees fronting the facility have suffered major deterioration, decay,

¹ 30 TAC § 55.201(e).

² *Id.*

³ *Id.*

⁴ 30 TAC § 55.209(f).

and death, and he believes emissions from the power plant may be the cause. Mr. Ledesma also states that, at times, he cannot breathe normally on his property because of the facility's emissions of ammonia and other contaminants. Further, Mr. Ledesma states that TCEQ must require Applicants to maintain separate permits to regulate current air emissions. Finally, Mr. Ledesma states that various neighborhoods, commercial businesses, and residences are being impacted by emissions containing hazardous airborne chemicals.

To qualify as an "affected person" in this matter, Javier Ledesma must have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application, and an interest common to the general public does not qualify as a personal justiciable interest.⁵ Using the applicable factors from §55.203(c), OPIC assesses Mr. Ledesma's standing as follows.

Mr. Ledesma's interest in the application is related to air quality. However, this application will be considered under the Texas Water Code, not the Texas Clean Air Act. Therefore, his interest is not protected by the law under which this application will be considered.⁶

The activity being regulated here is the discharge of industrial wastewater. Again, Mr. Ledesma's interest in this application is related to air quality, and he never raises concerns about the quality or quantity of the wastewater discharge. Therefore, OPIC must find that a reasonable relationship does not exist between his interest related to air quality and regulation of the wastewater discharge.⁷

⁵ See 30 TAC § 55.203(a).

⁶ See 30 TAC § 55.203(c)(1).

⁷ See 30 TAC § 55.203(c)(3).

As previously noted, Mr. Ledesma's property is not on the discharge route and not adjacent to the outfall. Given the location of his property relative to the outfall and the discharge route, OPIC finds the discharge is unlikely to impact Mr. Ledesma's health, safety, and use of his property.⁸

Based on § 55.203, OPIC concludes that Javier Ledesma does not qualify as an affected person in this matter.

B. Which issues raised in the hearing request are disputed

All of the issues raised in Mr. Ledesma's hearing request are disputed.

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

All of the disputed issues involve questions of fact.

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

All of the issues 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

The hearing request is 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

All issues raised by Mr. Ledesma are related to air quality and emissions.

Because this application is being considered under the Texas Water Code and the TCEQ

⁸ See 30 TAC § 55.203(c)(4).

regulations which implement the Code, none of Mr. Ledesma's issues are relevant and material to the Commission's decision on this application.

IV. Analysis of Request for Reconsideration

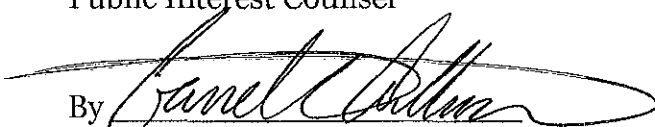
Javier Ledesma's request for reconsideration of the ED's decision is combined with his hearing request. The grounds are the same for both requests. Mr. Ledesma is asking the Commission to reconsider the ED's decision based on air quality issues which the Commission cannot address in a water quality permitting action. Therefore, OPIC cannot support the request for reconsideration.

V. Conclusion

Having found that Javier Ledesma does not qualify as an affected person in this matter, OPIC respectfully recommends the Commission deny his hearing request. OPIC recommends the Commission also deny the request for reconsideration.

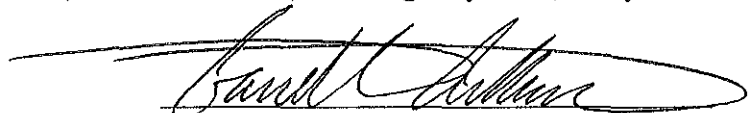
Respectfully submitted,

Vic McWherter
Public Interest Counsel

By 
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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2015, 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
CALPINE HIDALGO ENERGY CENTER, L.P., BROWNSVILLE PUBLIC
UTILITIES BOARD, AND CALPINE OPERATING SERVICES COMPANY, INC.
TCEQ DOCKET NO. 2014-1445-IWD

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