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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*

March 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: DECORDOVA POWER COMPANY, LLC AND LUMINANT GENERATION  
COMPANY, LLC  
TCEQ DOCKET NO. 2015-0019-IWD**

Dear Ms. Bohac:

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

Sincerely,

A handwritten signature in cursive script that reads "Aaron Tucker".

Aaron Tucker, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



**TCEQ DOCKET NO. 2015-0019-IWD**

<b>IN THE MATTER OF THE</b>	<b>§</b>	<b>BEFORE THE</b>
<b>APPLICATION OF</b>	<b>§</b>	
<b>DEDORDOVA POWER</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>COMPANY, LLC AND</b>	<b>§</b>	
<b>LUMINANT GENERATION</b>	<b>§</b>	<b>ON</b>
<b>COMPANY, LLC FOR</b>	<b>§</b>	
<b>RENEWAL OF</b>	<b>§</b>	<b>ENVIRONMENTAL</b>
<b>TPDES PERMIT</b>	<b>§</b>	
<b>NO. WQ001481000</b>	<b>§</b>	<b>QUALITY</b>

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO  
REQUESTS FOR HEARING**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully shows the following.

**I. INTRODUCTION**

**a. Background of Facility**

Applicants DeCordova Power Company LLC and Luminant Generation Company LLC ("Applicants") have applied to the TCEQ to renew their existing Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001481000, which authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastes, stormwater runoff from yard drains and the diked oil storage area, and metal cleaning wastes) at a daily average flow not to exceed 1,041,480,000 gallons per day. The facility is located at 4950 Power Plant Court, Granbury, in Hood County, Texas 76048, on the southwest shore of Lake Granbury along County Road 312, approximately seven miles southeast of the intersection of U.S. Highway 377 and State Highway 144 in

the City of Granbury, Hood County, Texas 76408. The effluent is discharged directly to Lake Granbury in Segment No. 1205 of the Brazos River Basin. The designated uses for Segment No. 1205 are high aquatic life use, primary contact recreation, and public water supply.

**b. Procedural Background**

The Applicants submitted an application to renew the facility's existing permit on November 5, 2013. On November 27, 2013, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt of Application and Intent (NORI) to Obtain a Water Quality Permit was published on December 14, 2013 in the *Hood County News*. The ED completed the technical review of the application on January 8, 2014, and prepared a draft permit, which if approved, would establish the conditions under which the facility must operate. The Applicant published the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) on March 29, 2014, in the *Hood County News*. The Applicant published the Notice of Public Meeting on June 7, 2014 in the *Hood County News*. On July 8, 2014, the TCEQ held a public meeting in the City of Granbury, Texas. This application's comment period closed at the end of the public meeting on July 8, 2014. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76<sup>th</sup> Legislature, 1999 because the application was administratively complete on or after September 1, 1999.

TCEQ received timely comments and requests for a contested case hearing from the Lake Granbury Coalition, Jim Boots, Larry Boyd, Darrell Cockerham, Fred Doyle, Edward Philip Ferrero, Jr., Grant Mackie, Dr. Bill Miller, Daniel

Myers, Charles Peoples, Rene Poe, Brad Reynolds, Brad Wayne Reynolds, William David Rhodes, Douglas Rood, Jan Seifert, Edwin J. Seilheimer, Rev. Icemaaur Simpson, James Veale, Jerry Wackerhagen, Patricia Waddell, Cathy Weeks, and Stan E Williams. OPIC finds that no right to a hearing exists and therefore recommends denying all the hearing requests submitted by requesters.

## II. APPLICABLE LAW

As the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of Texas Water Code Section 5.556, added by Act 1999, 76<sup>th</sup> Leg., ch. 1350 (commonly known as "House Bill 801").

A person may request that the Commission reconsider the ED's decision or hold a contested case hearing. TEXAS WATER CODE § 5.556. The commission may not grant a request for a contested case hearing unless the Commission determines that the request was filed by an affected person as defined by Section 5.115. TEXAS WATER CODE § 5.556(c). The commission may not refer an issue to the State Office of Administrative Hearings for a hearing unless the Commission determines that the issue involves a disputed question of fact, was raised during the public comment period and is relevant and material to the decision on the application. TEXAS WATER CODE § 5.556(d).

A hearing request must substantially comply with the following: give the name, address, and daytime telephone number of the person who files the request; 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 activity that is the

subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; request a contested case hearing; and provide any other information specified in the public notice of application. 30 TEX. ADMIN. CODE § 55.201(d).

An “affected person” means a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. TEXAS WATER CODE § 5.115(a); 30 TEX. ADMIN. CODE § 55.203(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* Governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons. 30 TEX. ADMIN. CODE § 55.203(b). In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

- (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 and safety of the person, and on the 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.

30 TEX. ADMIN. CODE § 55.203(c).

The Commission shall grant an affected person’s timely filed hearing request if the request is made pursuant to a right to hearing authorized by law and 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 TEX. ADMIN. CODE § 55.211(c). 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 of 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.

30 TEX. ADMIN. CODE § 55.209(e).

### **III. DISCUSSION**

#### **a. Right to a Contested Case Hearing**

Texas Water Code § 26.028(d) states that the Commission may approve an application to renew a permit without a public hearing, under certain conditions.<sup>1</sup> 30 Texas Administrative Code § 55.201(i)(5) provides that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit if the applicant is not trying to:

- (A) increase significantly the quantity of waste to be discharged;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;

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<sup>1</sup> See also 30 TEX. ADMIN. CODE §§ 50.113(d)(4), 55.211(d)(4).

- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

30 TEX. ADMIN. CODE § 55.201(i)(5).

OPIC finds that draft renewal permit satisfies all five elements of Section 55.201(i)(5). First, the draft permit would not increase the quantity of waste that could be discharged from the existing permit. Second, effluent limitations and monitoring requirements would remain the same or be more protective than the existing permit requirements. Third, the ED held a public meeting on July 8, 2014 to discuss the permit in the City of Granbury. At the meeting, the applicant and TCEQ staff, including the Office of Public Interest Counsel, answered questions from the public about the application and the permitting process. Fourth, the ED has filed a response to comments that addresses all timely and significant public comment. Finally, the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit. Therefore, OPIC finds that the Commission may approve the application without holding a contested case hearing on the proposed renewal. For these reasons, OPIC recommends that the hearing requests be denied. If the Commission disagrees, OPIC provides the following analysis of the requests.

**b. Determination of Affected Person Status**

TCEQ received timely comments and requests for a contested case hearing

from the Lake Granbury Coalition, Jim Boots, Larry Boyd, Darrell Cockerham, Fred Doyle, Edward Philip Ferrero, Jr., Grant Mackie, Dr. Bill Miller, Daniel Myers, Charles Peoples, Rene Poe, Brad Reynolds, Brad Wayne Reynolds, William David Rhodes, Douglas Rood, Jan Seifert, Edwin J. Seilheimer, Rev. Icemaaur Simpson, James Veale, Jerry Wackerhagen, Patricia Waddell, Cathy Weeks, and Stan E Williams. OPIC finds that none of the requesters qualify as an affected person.

### **Lake Granbury Coalition**

Ken Ramirez, an attorney for the Lake Granbury Coalition ("Coalition"), timely submitted several hearing requests to TCEQ. The Coalition is an association comprised of the City of Granbury, the County of Hood, and the Lake Granbury Homeowners Association. The Coalition identifies the City of Granbury, the County of Hood, and the Lake Granbury Homeowners Association as persons affected by the application. According to the Coalition, each of these members would be personally affected by water discharged from the facility and its negative impact on water quality.

A group or association may request a hearing if (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Although OPIC finds that one or more members of the Coalition would otherwise have standing to request a hearing in their own right, the Coalition's request did not identify the organization's purpose. By not stating the

organization's purpose, OPIC cannot determine if the interests it seeks to protect are germane in accordance with the requirements of 30 Texas Administrative Code § 55.252(a)(2). At this time, OPIC therefore cannot recommend that the Commission grant the Coalition's hearing request. However, 30 Texas Administrative Code § 55.252(b) authorizes OPIC to request an explanation of how a group or association meets the requirements of Section 55.252(a). If the Coalition provides such an explanation by the reply deadline of March 23, 2015, OPIC may reconsider its recommendation.

### **Individual Requesters**

TCEQ received timely hearing requests from 22 individuals: Jim Boots, Larry Boyd, Darrell Cockerham, Fred Doyle, Edward Philip Ferrero, Jr., Grant Mackie, Dr. Bill Miller, Daniel Myers, Charles Peoples, Rene Poe, Brad Reynolds, Brad Wayne Reynolds, William David Rhodes, Douglas Rood, Jan Seifert, Edwin J. Seilheimer, Rev. Icemaaur Simpson, James Veale, Jerry Wackerhagen, Patricia Waddell, Cathy Weeks, and Stan E Williams.

A hearing request must identify a person's personal justiciable interest affected by the application, including a written statement explaining their location and distance relative to the proposed activity, and how and why they believe they will be adversely affected by the facility in a manner not common to members of the general public. 30 TEX. ADMIN. CODE § 55.201(d)(2). Ultimately, OPIC finds that none of the individual requesters state how or why they will be adversely affected by the proposed discharge, and, thereby, do not state an interest that may be affected by the application. For these reasons all of the individual requesters fail to comply with the basic requirements of a hearing

request in 30 Texas Administrative Code § 55.201(d). Therefore, OPIC recommends that the Commission find that none of the individual requesters qualify as an "affected person."

#### IV. CONCLUSION

For these reasons, OPIC respectfully recommends that the Commission deny all requests for a contested case hearing.

Respectfully submitted,

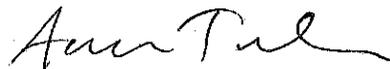
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By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2015 the original and seven true and correct copies of the Office of the Public Interest Counsel's Response to Requests for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.



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Aaron B. Tucker

**MAILING LIST**  
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**COMPANY, LLC**  
**TCEQ DOCKET NO. 2015-0019-IWD**

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