TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 23, 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: **GULF SOUTH PIPELINE COMPANY, LP**
TCEQ DOCKET NO. 2015-0257-AIR

Dear Ms. Bohac:

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

Sincerely,

Pranjal

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-0257-AIR

IN THE MATTER OF THE APPLICATION OF GULF SOUTH PIPELINE COMPANY, LP FOR RENEWAL OF AIR QUALITY PERMIT NO. 56414	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

TO THE HONORABLE MEMBERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

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

I. INTRODUCTION

A. Background of Facility

Gulf South Pipeline Company, LP (Applicant) has applied to the TCEQ for the renewal of Air Quality Permit No. 56414. The renewal would authorize the continued operation of an existing permitted plant consisting of three natural gas-fired reciprocating engines at a natural gas compressor station. The plant is located at 228 East FM 1988, Goodrich, Polk County. Emissions authorized under this permit include organic compounds, nitrogen oxides (NO_X), carbon monoxide (CO), sulfur dioxide (SO_2) and particulate matter including particulate matter less than 10 microns in diameter (PM and PM_{10}) and particulate matter less than 2.5 microns in diameter ($PM_{2.5}$).

B. Procedural Background

TCEQ received Applicant's application on April 10, 2014. On May 1, 2014, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt and Intent to Obtain (NORI) an Air Quality Permit was published in English on May 22, 2014 in the *Polk County Enterprise*. The NORI was republished on July 17, 2014 in the *Polk County Enterprise* after correcting formatting errors in the initial publication. No alternative language publication is available in this area. The ED completed technical review of the application and prepared a draft permit. The public comment period for this application ended on August 1, 2014. The Chief Clerk's office mailed the ED's Response to Public Comments and Preliminary Decision on March 11, 2015.

TCEQ received a timely comment and a request for a contested case hearing from Ms. Dee M. Knipe (Requester) on June 6, 2014. OPIC recommends denying the hearing request.

II. APPLICABLE LAW

This application was declared administratively complete on May 1, 2014. Because 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 the Texas Health and Safety Code (THSC) section 382.056 added by Act of May 30, 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 the application. 30 TEX. ADMIN. CODE (TAC) § 55.201(d).

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." 30 TAC § 55.203(a). This justiciable interest does not include an interest common to the general public. *Id.* Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.203(b). Relevant factors considered in determining whether a person is affected 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 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 TAC § 55.203(c).

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, 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 TAC § 55.209(e).

There is no right to a contested case hearing for an amendment, modification, or renewal of an air application that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. THSC § 382.056(g). However, notwithstanding THSC section 382.056(g), the Commission may hold a hearing on a permit renewal "if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under Section 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections." THSC § 382.056(o). Also, the regulatory provisions allow the Commission to hold a contested case hearing in the following circumstances: "if the application involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

30 TAC § 55.201(i)(3)(D), 30 TAC § 55.211(d)(2).

III. DISCUSSION

A. Right to Hearing

As an initial matter, the Commission must determine whether a right to a contested case hearing exists on this application. According to the technical review of this application, there would be no increase in emissions because no new sources have been constructed and controls will remain the same. Based on this technical review, OPIC cannot find that this permit renewal would result in increased allowable emissions or the emission of an air contaminant not previously emitted.

Regarding Applicant's compliance history, between September 1, 2009 and August 21, 2014, the site rating was high/0.0 and the company rating and classification was satisfactory/1.81. Therefore, based on a review of the criteria set forth in THSC section 382.056(g) and (o), the Applicant's compliance history does not trigger an opportunity for a hearing on this renewal application.

For these reasons, OPIC concludes that there is no right to a contested case hearing on this renewal application, pursuant to THSC § 382.056(g), 30 TAC § 55.201(i)(3)(D) and 30 TAC § 55.211(d)(2). In the event the Commission disagrees, the OPIC offers the following analysis set forth below.

B. Determination of Affected Person Status

Even if the Commission decides that a right to hearing exists on this application, Requester does not have a personal justiciable interest related to a legal right affected by this application. The Requester mentioned in her hearing request that she lives approximately 8 miles north from the plant. The Requester stated that the emissions from the plant have an adverse effect on her health because she is highly sensitive to air-borne chemicals. The Requester has

raised specific concerns about the air quality near her home because she suffers from allergies, swelling, breathing difficulties, and infections. But the location of the Requester's property in relation to the proposed facility does not support a finding that the Requester is an "affected person." 30 TAC § 55.203(c).

The Requester also observed that children in the community suffered from breathing difficulties and swelling. The Requester noted that the Applicant did not include any plans to improve the plant or the plant's procedures in its application. However, such concerns do not show that the Requester has a personal justiciable interest. Given her distance from the facility, OPIC cannot find that a reasonable relationship exists between the interests raised by the Requester in her hearing request and the proposed renewal of the Applicant's Air Quality Permit No. 56414. Also, given her eight-mile distance from the plant, OPIC cannot find that the renewed permit would result in a likely impact to the Requester's health. Therefore, OPIC finds that the Requester has no personal justicable interest distinguishable from interests "common to members of the general public." Even if the Commission finds a right to hearing exists on this application, OPIC recommends the Commission find the Requester is not an "affected person".

IV. CONCLUSION

For the reasons set forth above, OPIC respectfully recommends that the Commission find that no right to a hearing exists on this application for renewal of an air quality permit that does not authorize an increase in allowable emissions or the emission of a new contaminant. Further, should the Commission find that a right to hearing exists on this application, OPIC recommends denying Requester's contested case hearing request because she is not an "affected person". Therefore, OPIC recommends the Commission not refer this matter to the State Office of Administrative Hearings.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By: _____

Pranjal M. Mehta
Assistant Public Interest Counsel
State Bar No. 24080488
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-0574 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2015 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Request for Hearing was 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, electronic mail, or by deposit in the U.S. Mail.

Pranjal

Pranjal M. Mehta

MAILING LIST
GULF SOUTH PIPELINE COMPANY, LP
TCEQ DOCKET NO. 2015-0257-AIR

FOR THE APPLICANT:
David F. Goodwin
Gulf South Pipeline Company, LP
9 Greenway Plaza, Suite 2800
Houston, Texas 77046-0926
Tel: 713/479-8235

David F. Nickel
Gulf South Pipeline Company, LLC
P.O. Box 8288
Longview, Texas 75607-8288
Tel: 903/753-7209
Fax: 903/753-0449

FOR THE EXECUTIVE DIRECTOR:
Nicholas Parke Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606

Katherine Stinchcomb, Technical Staff
TCEQ Air Permits Division, MC- 163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-1583 Fax: 512/239-0424

Brian Christian, Director
TCEQ Environmental Assistance
Division, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-4430

FOR ALTERNATIVE DISPUTE RESOLUTION:
Kyle Lucas
TCEQ Alternative Dispute Resolution,
MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4010 Fax: 512/239-4015

FOR THE CHIEF CLERK:
Bridget Bohac
Texas Commission On Environmental
Quality
Office Of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311

REQUESTER:
Dee M. Knipe
420 E Lake Drive
Livingston, Texas 77351-6013