



FPLE Forney, LLC
Forney Energy Center
13770 West Highway 80
Forney, Texas 75126

May 8, 2015

VIA ELECTRONIC FILING

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

**Subject: TCEQ Docket No. 2015-0406-IWD
FPLE Forney LLC's Response to Request for Hearing and Reconsideration
Regarding the Application for TPDES Permit No. TPDES Permit No: WQ0004359000**

Dear Ms. Bohac:

Please find enclosed FPLE Forney LLC's Response to the Request for Hearing and Reconsideration in the above-referenced matter.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Tracy Davis".

Tracy C. Davis
State Bar No. 24045758
Senior Attorney
301 Congress Avenue, Suite 1850
Austin, TX 78701
Tel: (512) 236-3141
Fax: (512) 236-0484
tracy.c.davis@nexteraenergy.com

cc: Service List

TCEQ DOCKET NO. 2015-0406-IWD

APPLICATION BY FPLE FORNEY, LLC	§	BEFORE THE
FOR TPDES PERMIT	§	TEXAS COMMISSION ON
NO. WQ0004359000	§	ENVIRONMENTAL QUALITY

APPLICANT'S RESPONSE TO REQUEST FOR HEARING AND RECONSIDERATION

To the Honorable Commissioners:

FPLE Forney, LLC ("Applicant") files this response to the request for rehearing and reconsideration filed by Mr. Dean Flowers ("Requestor") regarding the Applicant's application for an amendment to its Texas Pollution Discharge Elimination System ("TPDES") Permit No. WQ0004359000 (the "Permit"). For the reasons stated herein, the Applicant requests that the Texas Commission on Environmental Quality ("TCEQ") deny the hearing request submitted by the Requestor and approve the Applicant's application for an amendment to the Permit.

I. FACILITY DESCRIPTION

The Applicant is a combined cycle steam electric power generating facility located at 13770 West U.S. Highway 80, on the south side of U.S. highway 80, 1.3 miles northwest of the intersection of Farm-to-Market Road 740 and U.S. Highway 80, northwest of the City of Forney, Kaufman County, Texas.

The Applicant applied to the TCEQ for an amendment to the Permit to authorize increased ammonia limits at Outfall 001 and to include Outfall 002 with authorization to discharge from its stormwater pond during extreme weather events.

II. PROCEDURAL BACKGROUND

The Applicant submitted the Permit amendment application on January 13, 2014 and TCEQ declared it administratively complete on January 31, 2014. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published on February 27, 2014 and TCEQ's technical review completed on March 26, 2014. The Requestor submitted a comment on May 24, 2014. The Notice of Application and Preliminary Decision for a Water Quality Permit was published on June 5, 2014 with the public comment period ending July 7, 2014.

The Executive Director of TCEQ issued a decision and Response to Comment on January 27, 2015. The Requestor's request for reconsideration was received by TCEQ on February 20, 2015. TCEQ then received Requestor's separate request for rehearing electronically on February 24, 2015 and by mail on February 27, 2015.

III. LEGAL STANDARD FOR HEARING REQUEST

The Applicant's application was administratively complete on or after September 1, 1999, therefore it is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999, and TCEQ rules at 30 Tex. Admin. Code Chapter 55, Subchapter G, §§55.200-55.211.

The Texas Administrative Code, 30 Tex. Admin. Code §55.203, defines an “affected person” as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.

A request for a contested case hearing will be granted if the request is filed by an “affected person”, received no later than 30 days after the chief clerk mails the executive director’s decision, and substantially complies with the factors listed in 30 Tex. Admin. Code §55.201, including the requirement to:

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.

30 Tex. Admin. Code §55.201(d)(4).

IV. ANALYSIS OF HEARING REQUEST

A. *The Requestor has failed to establish that he is an Affected Person.*

The Requestor is not an affected person under the TCEQ rules since there is no negative impact on his property use or his use of the surrounding natural resources from the Permit amendment.

Outfall 001: The Applicant receives treated domestic wastewater (reclaimed water) from the City of Garland’s Duck Creek Wastewater Treatment Plant (the “WWTP”) for use in its cooling towers. This is the Applicant’s only source of cooling water. The reclaimed water received by the Applicant contains an ammonia concentration that is strictly dependent upon the efficiency of the WWTP’s system. This increase in ammonia concentration is directly passed to the Applicant. After receipt of the water from the WWTP, the Applicant does not increase the amount of ammonia in the water. In fact, as outlined in the TCEQ Technical Report, the Applicant’s use of the reclaimed water actually *reduces* the ammonia in the water by 85% as the water passes through the Applicant power plant.

In the Permit amendment, the Applicant is not requesting to load any additional ammonia to the river beyond what the WWTP would already discharge. The Applicant is simply requesting that its ammonia concentration limit match that of the WWTP. However, again, the Applicant’s use of the reclaimed water will actually improve the quality of the reclaimed water already authorized to be discharged by the WWTP. Therefore, the Requestor will not receive any additional ammonia as a result of the Permit amendment. The Requestor’s assertion that the Permit amendment will adversely affect his property is clearly not supported by the data.

In fact, the TCEQ Technical Report acknowledges that the Applicant will not have any impact on the river, and thus no impact to the Requestor, by the nature of the Permit amendment. Specifically, as stated in the TCEQ Technical Report:

“Given the fact that loadings to the River are significantly reduced as the reclaimed water travels through the Applicant plant cooling system, an argument can be made that the Wastewater Permit should not contain effluent limits for Ammonia. Or at a minimum, the limits should be revised to “Report Only” during upsets at the Duck Creek WWTP, so as not to penalize the plant for conditions beyond the plant’s control.”

TCEQ Technical Report dated October 30, 2014.

In other words, without the Applicant’s use of the reclaimed water, the WWTP would still discharge its permitted level of ammonia into Duck Creek. Indeed, if the Applicant were to have to shut down, the data indicates that the level of ammonia that would be discharged by the WWTP from its outfall would result in a net increase of over 200 pounds per day (lbs/day). Therefore, if the Permit is *not* amended, it is more likely the Requestor’s property could be adversely affected by higher ammonia concentrations into the Trinity River.

Since the Applicant does not increase ammonia in the discharge water, and since, during its process, the Applicant in fact reduces the ammonia in the water, the Applicant, in the Permit amendment, cannot cause harm to the Requestor. Because the Requestor is not, in any way, harmed by the amended ammonia limit, the Requestor is not an affected person under 30 Tex. Admin. Code §55.203. For these reasons, the request for hearing should be denied.

Outfall 002: Outfall 002 allows the Applicant to discharge to the Trinity River if there is a significant rain event and the stormwater holding ponds could overflow. Typically, the Applicant recirculates the water back to the cooling tower. However, in an abundance of caution, the Applicant requested the Permit amendment to effectively allow for a discharge of stormwater from the outfall in an emergency. The Requestor will not be adversely affected by a stormwater discharge event during a significant rain event.

Also, contrary to his allegations, the Permit amendment requires monitoring to ensure that, if minor amounts of low volume wastes (e.g. benign water) are discharged, the Applicant adheres to all water quality limits. Additionally, an antidegradation review determined that existing water quality will not be impaired by the Permit amendment. The Requestor has not presented any new information to support reexamination of this review.

Because the Requestor is not potentially, in any way, harmed by this amendment, the Requestor is not an affected person under 30 Tex. Admin. Code §55.203. Accordingly, this request for hearing should be denied.

B. *The Request for a Contested Case Hearing is insufficient.*

The Requestor has not listed any material disputed issues of fact. The Requestor writes that the Applicant can discharge waste water that is 100 pounds higher than current limits, an increase of 75% over current maximum limits. The Applicant has in fact requested an increase in its ammonia discharge limits and therefore, this is not a disputed issue of fact.

Next, the Requestor states that this “would have a deleterious effect on our property.” While TCEQ would typically accept an applicant’s statement as true, that is not the case if the facts in the record clearly contradict an applicant’s statement. In this case, as outlined above, the

Applicant is not adding any additional ammonia to the river by the Permit amendment so the Requestor's statement is false. Thus, there is no disputed issue of fact.

Further, the Requestor's statement regarding Outfall 002 is again contradicted by the facts. The Requestor claims that "there is no monitoring of this water or the waste products therein." The Statement of Basis/Technical Summary, the Executive Director's Preliminary Decision and the Permit specify daily maximum effluent limits for TSS, Chemical oxygen demand, oil and grease, and pH and require monitoring of these substances. Therefore, the Requestor's claim is false and not a disputed issue of fact.

Lastly, the Requestor sets forth his opinion that there could be potential impacts to his property value. TCEQ does not have jurisdiction over property value issues and therefore this is not a relevant issue for consideration.

The burden is on the Requestor to satisfy the requirements of requesting a contested case hearing and the Requestor has clearly failed to meet his burden. His hearing request should therefore be denied.

C. *Required Response Elements of Texas Administrative Code (30 TAC §55.209(e))*

The Texas Administrative Code, 30 Tex. Admin. Code §55.209(e), requires the Applicant to specifically address the following factors in its response:

(1) Whether the Requestor is an affected person.

As stated above, the Requestor is not an affected person under TCEQ rules. The Requestor cannot be injured or affected when the ammonia levels discharged will not be increasing. The WWTP is already approved to discharge ammonia at the requested levels.

(2) Which issues raised in the hearing request are disputed.

The Requestor, as outlined above, does not raise any disputed issues.

(3) Whether the dispute involves questions of fact or law.

The dispute does not involve questions of fact. The Permit amendment will not increase ammonia loading to the Trinity River. Therefore, none of the factual disputes raised by the Requestor are disputed issues of fact.

(4) Whether the issues were raised during the public comment period.

The only comment the Requestor' raised during public comment was with regard to his receipt of information and notification regarding the Permit amendment application. The TCEQ replied to this comment in the Response to Public Comment. The Requestor did not raise issues regarding ammonia or stormwater discharge 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 TCEQ's Response to Comments.

No public comments have been withdrawn.

(6) Whether the issues are relevant and material to the decision on the Application.

The Requestor has not provided sufficient factual basis to support his concerns are relevant and material to the decision on the Permit application. The Requestor has not shown how TCEQ's approval of the Permit amendment will negatively impact his property or his natural resource use. As previously provided, no existing water quality uses will be impaired by the Permit amendment.

(7) A maximum expected duration for the contested case hearing.

If a hearing is granted, the Applicant proposes a period of no greater than 120 days from the date of the preliminary hearing until the final decision. The Applicant expects the hearing to last 2-3 days.

V. CONCLUSION

For the reasons set forth above, the Applicant respectfully requests that the Commission deny the Requestor's hearing request and approve the Applicant's application for the Permit amendment.

Respectfully Submitted,

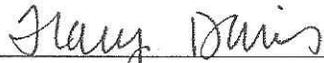
By: Tracy Davis

Tracy C. Davis
State Bar No. 24045758
Senior Attorney
301 Congress Avenue, Suite 1850
Austin, TX 78701
Tel: (512) 236-3141
Fax: (512) 236-0484
tracy.c.davis@nexteraenergy.com

ATTORNEY FOR FPLE FORNEY, LLC

CERTIFICATE OF SERVICE

I certify that on May 8, 2015 a true and correct copy of FPLE Forney, LLC's foregoing Response to Request for Hearing and Reconsideration was filed with the Chief Clerk via TCEQ's eFiling System and served to all parties listed on the attached Mailing List via hand delivery, electronic mail, facsimile transmission, or by U.S. Mail.



Tracy C. Davis

MAILING LIST
FPLE FORNEY, LLC
DOCKET NO. 2015-0406-IWD; PERMIT NO. WQ0004359000

FOR THE APPLICANT:

Jonathan Bain, General Manager
FPLE Forney, LLC
13770 West US Highway 80
Forney, Texas 75126-9143
Tel: (972) 551-5015

Teresa Ponder, Environmental Specialist
FPLE Forney, LLC
13770 West US Highway 80
Forney, Texas 75126-9143
Tel: (972) 551-5026

Timothy Powell
Florida Power & Light
700 Universe Boulevard MC GTA/JB
Juno Beach, Florida 33408-2657
Tel: (561) 694-4015
Fax: (561) 691-2203

FOR THE EXECUTIVE DIRECTOR

Celia Castro, Staff Attorney
TCEQ
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Karen Visnovsky Holligan, Technical Staff
TCEQ
Water Quality Division, MC-148
P.O. Box 13087 Austin, Texas 78711-3087
Tel: (512) 239-4589 Fax: (512) 239-4430

Brian Christian, Director
TCEQ
Environmental Assistance Division Public
Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-5678

FOR PUBLIC INTEREST COUNSEL:

Vic McWherter, Public Interest Counsel
TCEQ
Public Interest Counsel, MC-103
P.O. Box 13087 Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

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 C. Bohac
TCEQ
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S):

Dean A. Flowers
TRBP Ltd.
511 East John Carpenter Freeway, Suite 550
Irving, Texas 75062-8156

INTERESTED PERSONS:

Nancy J. Pierce
10519 County Road 202
Forney, Texas 75126-6609

Patricia Radloff
Texas Parks and Wildlife Department
4200 Smith School Road
Water Resources
Austin, Texas 78744-3218

Adam Whisenant
TXPWD
11942 FM 848
Tyler, Texas 7507-5234