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Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 20, 2015

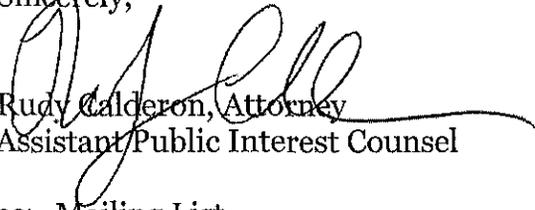
Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: LUMINANT GENERATION COMPANY, LLC
TCEQ DOCKET NO. 2015-0496-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,


Rudy Calderon, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



TCEQ DOCKET NO. 2015-0496-AIR

**IN THE MATTER
OF THE APPLICATION OF
LUMINANT GENERATION
COMPANY LLC, MARTIN LAKE
STEAM ELECTRIC STATION,
PERMIT NO. 933**

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**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 shows the following.

I. INTRODUCTION

A. Background of Facility

Luminant Generation Company, LLC (Luminant or Applicant) has applied to the TCEQ for a New Source Review (NSR) Authorization under Texas Clean Air Act (TCAA), §382.0518 for a renewal of Air Quality Permit Number 933. This will authorize the continued operation of an existing plant, Martin Lake Steam Electric Station (MLSES), that may emit air contaminants. If renewed, this permit will authorize the applicant to continue operation of an existing permitted facility, which includes three lignite/western coal-fired steam generators and appurtenant equipment which operate in order to provide electricity to the grid.

The facility is located at 8850 Farm to Market Road 2658 North, Tatum, Rusk County, Texas. Contaminants authorized under this permit include carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM) including particulate matter with diameters of 10 microns

or less (PM10) and 2.5 microns or less (PM2.5), sulfur dioxide (SO2), organic compounds, sulfuric acid (H2SO4), and hazardous air pollutants including (but not limited to) hydrogen fluoride (HF) and lead (Pb).

B. Procedural Background

TCEQ received this application on March 3, 2014. On March 10, 2014, the Executive Director of the TCEQ (ED) declared the application administratively complete. The Applicant published the Notice of Receipt and Intent to Obtain an Air Quality Permit (NORI) in Rusk County, Texas on April 2, 2014, in English in the *Henderson Daily News* and in Spanish in *La Opinion*. The ED completed the technical review of the application, and prepared a draft permit. The application submitted is for a renewal of Permit No. 933 with no increase in allowable emissions rates and no emission of any new contaminants. The Applicant does not have a “poor performer” compliance history classification, therefore, pursuant to 30 TAC §39.419(e), a public Notice of Application and Preliminary Decision (NAPD) was not required. The public comment period ended on April 17, 2014. The deadline to request a contested case hearing was April 17, 2014. On April 8, 2015, the Chief Clerk mailed the ED’s Response to Comment (RTC).

TCEQ received timely comments and requests for contested case hearing from the Environmental Integrity Project/Sierra Club and the Caddo Lake Institute (Protestants). OPIC recommends denying these hearing requests.

II. APPLICABLE LAW

“No Increase Renewals”

There is no right to a contested case hearing on a renewal application under Chapter 382 of the Texas Health and Safety Code (THSC), if the application would not

result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.¹

However, notwithstanding THSC § 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 §5.753 and 5.754 of the Texas Water Code, and rules adopted and procedures developed under those sections.”² TCEQ rules also allow the Commission to hold a contested case hearing “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.”³

III. DISCUSSION

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.

Additionally, Applicant’s compliance history between September 1, 2009 and August 31, 2014, was classified as “High” with a rating of 0.02 for the site and a classification of “High” with a rating of 0.00 for the company. Therefore, based on a review of the criteria set forth in

¹ THSC § 382.056(g); 30 TAC §§ 55.201(i)(3)(C); 55.211(d)(2).

² THSC § 382.056(o).

³ 30 TAC § 55.201(i)(3)(D); *see also* 30 TAC § 55.211(d)(2).

THSC § 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).

Environmental Integrity Project/Sierra Club

A joint hearing request was timely received from the Environmental Integrity Project/Sierra Club (EIP/SC). In their request, EIP/SC raise the issue of the application being improperly processed as a "no increase renewal" because the application fails to comply with the renewal requirements in 30 TAC § 116.311(a)(2) – (a)(6). As part of the RTC and technical review conducted for this application, the issues concerning renewal requirements were addressed. In the RTC, the ED shows that as part of Luminant's original permit application, a review was conducted to evaluate Luminant's assertion that the pollution controls to be employed at the facility met the Best Available Control Technology (BACT) requirements. It was determined that the BACT requirement was met. The RTC goes on to state that the generators that are used were subject to New Source Performance Standards (NSPS) Subchapter D at the time of their original authorization, which limited emissions of PM, NO_x, and SO₂ and that these processes and controls were BACT at the time the permit was issued. Additionally, Special Condition No. 2 specifies provisions of 40 CFR 60 (Subparts A and D) and 63 (Subparts A, DDDDD, and UUUUU) with which the facility must comply and Special Condition No. 3 requires retention of emission records to demonstrate compliance. Emissions will be monitored using a Continuous Emission Monitoring System (CEMS) which will measure NO_x, SO₂, and

diluent gases. Recordkeeping and CEMS are used for periodic monitoring of other emissions, which are determined based on the duration and frequency of each event and, because the site is subject to Title V (federal) requirements, its owner is required to submit annual compliance certifications and deviation reports. Also, individuals are encouraged to report concerns about suspected noncompliance with the terms and conditions of any permit or other environmental regulation and if the facility is found to be out of compliance with the terms and conditions of the permit, it will be subject to possible enforcement action.

After a review of the ED's Response to Comment and the technical review conducted for this application, OPIC concludes that the application meets all the requirements of 30 TAC § 116.311 and was properly processed as a "no increase renewal". Therefore, under THSC § 382.056(g), EIP/SC are not entitled to a hearing.

Caddo Lake Institute

A hearing request was timely received from the Caddo Lake Institute (CLI). In its request, CLI adopted the issues raised by the EIP/Sierra Club concerning the Applicant's failure to meet the renewal requirements in 30 TAC § 116.311(a)(2) – (a)(6). For the reasons discussed above, the requirements of 30 TAC § 116.311 were satisfied and this application was correctly classified as a "no increase renewal". Additionally, CLI raises the issue of adequate controls and monitoring for mercury. As stated in the ED's Response to Comment, the facility has a mercury sorbent injection system authorized by Standard Permit Registration No. 85302 which ensures control of mercury. The installation of the injection system was required in order to meet standards associated with federal rules for Coal- and Oil-Fired Electric Utility Steam Generating Units.

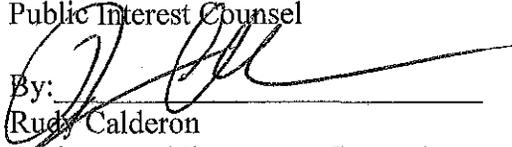
OPIC concludes that the application meets all the requirements of 30 TAC § 116.311 and was properly processed as a “no increase renewal”. Therefore, under THSC § 382.056(g), CLI is not entitled to a hearing.

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 and deny the hearing requests submitted by the Environmental Integrity Project/Sierra Club and the Caddo Lake Institute.

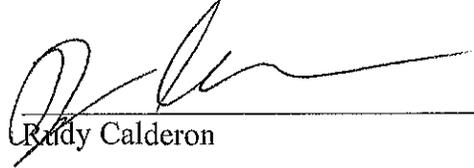
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 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.



Rudy Calderon

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TCEQ DOCKET NO. 2015-0496-AIR

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