

TCEQ DOCKET NO. 2015-1170-AIR

APPLICATION BY NAVASOTA SOUTH §
§ BEFORE THE TEXAS COMMISSION
PEAKERS COMPANY I, L.L.C. §
§ ON ENVIRONMENTAL QUALITY
FOR AIR QUALITY PERMIT §

**HEARING REQUESTOR LORNNAL TALLEY'S REPLY TO APPLICANT NAVASOTA SOUTH PEAKERS
OPERATING COMPANY I LLC'S RESPONSE TO HEARING REQUEST REGARDING APPLICATION FOR AIR
QUALITY PERMIT NO. 120973 AND PSD-TX-1420**

TO THE COMMISSIONERS OF THE TCEQ:

Lorinna Talley ("Requestor" or "Talley") submits this Reply to Applicant Navasota South Peakers Operating Company I LLC's Response to Hearing Request Regarding Application for Air Quality Permit No. 120973 and PSD-TX-1420, which would authorize construction of the Union Valley Energy Center (UVEC) in Nixon, Wilson County, Texas.

Requestor respectfully requests that the Texas Commission on Environmental Quality consider the following facts in support of her position that the requirements of a valid and approvable hearing request have been met and the Requestor's contested case hearing request should be granted.

I. Reply to Navasota's Positions Stated in Section II A:

A. As confirmed in the TCEQ Executive Director's Response to Hearing Requests filed in this matter, in Section III, Analysis of Hearing Requests:

(1) Requestor Talley's request for a contested case hearing was timely and is in proper form in compliance with TAC § 55.201(d);

(2) Requestor Talley is an affected person as defined in 30 TAC § 55.203 and has a personal justiciable interest affected by the application;

(3) A reasonable relationship exists between the interests claimed by Requestor Talley and the activity the Commission regulates and such issue is relevant and material to the decision on the subject of air quality application; and

(4) Requestor Talley has an address that is within less than one mile of the proposed plant and thus may be affected in a manner different from the general public.

B. Additionally, the ED found the following issues relevant and material to the decision on the application:

(1) Possible health effects from air emissions from the proposed plant; and

(2) Possible effects on the environment, native wildlife, and migratory sandhill cranes from air emissions from the proposed plant.

C. Further support of Requestor's compliance with applicable TCEQ regulations is stated in the Office of Public Interest Counsel's Amended Response to Hearing Requests filed in this matter. The OPIC submits that the following issues raised by Requestor Talley are relevant and material to the Texas Commission on Environmental Quality's decision: (a) Air quality; (b) health effects; and (c) effects on wildlife.

II. Reply to Navasota's Response, Section II B

Requestor emphasizes that while the July 3, 2015 Decision of the Executive Director does state that the referenced permit application meets the requirements of applicable law, the ED specifically states that he does not authorize construction or operation of the UVEC facilities and that the decision "will be considered by the commissioners at a regularly scheduled public meeting before any action is taken." The ED is considering Requestor's request for a contested case hearing and the decision on Navasota's application will be made in due course.

III. Partial List of Requestor's Concerns to be Considered at Contested Case Hearing

A. At least one issue with respect to granting Navasota's application for permit has been identified in the TCEQ Executive Director's Response to Public Comments. The Commission's Response 1 states, "The *de minimis* analysis modeling results indicate that 1-hr nitrogen dioxide (NO₂) exceeds the interim *de minimis* concentration and requires a full impacts analysis." That assessment is restated below the table under Response 1 entitled "Modeling Results for PSD Monitoring Significant Levels." Requestor asks that the ED take this into consideration when determining whether to allow the contested case hearing.

B. A United States Environmental Protection Agency EPA article states, "Current scientific evidence links short-term exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Also, studies show a connection between breathing elevated short-term NO₂ concentrations, and increased visits to emergency departments and hospital admissions for respiratory issues, especially asthma." (<http://www.epa.gov/airquality/nitrogenoxides/health.html>)

C. In addition to the threats to asthmas sufferers and other at-risk parties posed by NO₂ are the threats posed by sulfur dioxide (SO₂) and other pollutants that will be introduced by the UVEC plant. An EPA article concerning SO₂ states, "Current scientific evidence links short-term exposures to SO₂, ranging from 5 minutes to 24 hours, with an array of adverse respiratory effects including bronchoconstriction and increased asthma symptoms. These effects are particularly important for asthmatics at elevated ventilation rates (e.g., while exercising or playing.)" (<http://www.epa.gov/airquality/sulfurdioxide/health.html>)

D. Requestor is in the process of further research on and confirmation of the effects of each of the identified pollutants and other potentially harmful products of the proposed UVEC plant including, without limitation, ozone, nitrogen dioxide, sulfur dioxide, sulfuric acid mist and other pollutants specified in Navasota's application for permit – both on human health and on the environment, animal

life, native wildlife, and migratory wildlife including sandhill cranes. Requestor will present those findings, along with other relevant findings if discovered during research, as required for the contested case hearing.

E. In addition, when considering whether to grant the contested case hearing, if allowed by law, Requestor asks that the Commission take into consideration the cumulative effects of the pollutants specified in the permits named herein; those pollutants specified in Navasota's pending Application for issuance of a Greenhouse Gas (GHG) Prevention of Significant Deterioration (PSD) Air Quality Permit (No. GHGPSDTX117); and those of any other pending Navasota applications for permits for this facility such as for acid rain.

IV. Reply to Navasota's Response, Section III A

A. Navasota relies in part upon the dispersion modeling performed by its environmental consultant, Thomas O. Pritcher, P.E. (Attachment A to Navasota's Request) and in part upon the opinion of toxicologist Dr. Thomas Dydek (Attachment B to Navasota's Requests) based on the data provided by Mr. Pritcher.

B. Mr. Pritcher's Affidavit states that the modeling receptor used for his modeling was placed "near the house associated with the property or the center of the property." This apparent assumption that the residents do not use the remainder of their property, extending to their property lines, for agricultural, recreational and other outdoor activities is incorrect and unacceptable as "proof" that, as stated, the "predicted maximum concentrations at the residences/properties of the requestors are well below the NAAQS or applicable ESL;" nor is it reliable data upon which Dr. Dydek can accurately assess the potential effects that are in question

C. Requestor and other residents on the property raise and manage livestock; raise show animals; ride horses and off-road vehicles; and perform other outdoor activities. Mr. Pritcher's stated conclusion that "this Requestor would not be exposed to concentrations of any contaminants that could adversely affect Requestor" is unsubstantiated, at best, and potentially false as it applies to the remainder of Requestor's property. Requestors asks that the opinions and data stated in the Affidavit of Thomas O. Pritcher, P.E. be disregarded to the extent it is based on the incorrect placement of the receptor. Requestor also asks that the Affidavit of Dr. Thomas Dydek be disregarded to the extent it is based on such data received from Mr. Pritcher.

D. Requestor hereby requests a full, accurate assessment be performed and provided to Requestor, with all tests, modeling and other evaluations being performed at the geographic coordinate that is at the point of Requestor's property line that is nearest the closest source of emissions at the UVEC plant or at such other point as required by law.

V. Conclusion

In summary, Requestor restates her position, and that of the TCEQ Executive Director and Office of Public Opinion, that she has indeed met all necessary standards to qualify for a contested case hearing, and such request is valid and approvable, and she meets the requirement under 30 TAC § 55.203(a) that she "has a justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application."

Requestor is an individual and, due to the nature of the issues raised, including matters that affect the quality of life of her son and matters that affect the environment and animal life surrounding the proposed UVEC plant, Requestor respectfully requests that the TCEQ set a maximum duration of no less than nine months from the first day of the preliminary hearing, as recommended by the Office of Public Interest Counsel at the TCEQ.

RESPECTFULLY SUBMITTED,

Lornna Talley, pro se

L. Talley

1497 CR 476
Nixon, Texas 78140

Attachments Included:
Google Map of Talley Property Location

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 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, or by deposit in the U.S. Mail.

L. Talley

Lornna Talley

MAILING LIST
NAVASOTA SOUTH PEAKERS OPERATING COMPANY I, LLC
TCEQ DOCKET NO. 2015-1170-AIR

FOR THE APPLICANT

Frank Giacalone, Chief Executive Officer
Navasota South Peakers
Operating Company I, L.L.C.
403 Corporate Woods
Magnolia, TX 77354-2758
Tel: 281-252-5202
Fax: 832-442-3259

Jeff Maida
Vice President Asset Management
Navasota South Peakers
Operating Company I, L.L.C.
403 Corporate Woods
Magnolia, TX 77354-2758
Tel: 281-252-5203

Bill Skinner
Navasota South Peakers
Operating Company I, L.L.C.
403 Corporate Woods
Magnolia, TX 77354-2758
Tel: 281-252-5221
Fax: 832-442-3259

FOR THE EXECUTIVE DIRECTOR (ALL VIA FIRST CLASS MAIL)

Amy Browning, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. BOX 13087
Austin, TX 78711-3087
Tel: 512-239-0600
Fax: 512-239-0606

Sean Alexander O'Brien, Technical Staff
Texas Commission on Environmental Quality
Air Permits Division, MC-163
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512-239-1137
Fax: 512-239-7815

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

FOR PUBLIC INTEREST COUNSEL

Vic McWherter, Public Interest Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512-239-6363
Fax: 512-239-6377

FOR ALTERNATIVE DISPUTE RESOLUTION

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512-239-4010
Fax: 512-239-4015

FOR THE CHIEF CLERK

Bridget C. Bohac
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: 512-239-3300
Fax: 512-239-3311

REQUESTERS

Patti Werley
1285 County Road 477
Stockdale TX 78160-6731

