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Jon Niermann, *Commissioner*
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Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 26, 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: TEXAS EASTERN TRANSMISSION, LP
TCEQ DOCKET NO. 2015-1381-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,

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2015-1381-AIR

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION OF TEXAS	§	
EASTERN TRANSMISSION, LP	§	TEXAS COMMISSION ON
FOR RENEWAL OF AIR QUALITY	§	
PERMIT NO. 56610	§	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

Texas Eastern Transmission, LP (Applicant) has applied to the TCEQ for the renewal of Air Quality Permit No. 56610. The renewal would authorize the continued operation of an existing facility, which includes three natural gas-fired reciprocating engines at a natural gas compressor station. The facility is located at 3009 Lilly Street, Longview, Gregg County, Texas. Contaminants authorized under this permit include volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂) and particulate matter (PM) including particulate matter less than 10 microns in diameter (PM₁₀) and particulate matter less than 2.5 microns in diameter (PM_{2.5}).

B. Procedural Background

TCEQ received Applicant's application on December 9, 2014. On December 15, 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 January 15, 2015 in the *Longview News-Journal* and in Spanish on January 21, 2015 in *La Opinion*. A copy of the permit application was placed at the Longview Public Library on January 15, 2015. However, the application was misfiled and consequently, it was unavailable when Ms. Sheila Maxey requested to view it. Therefore, the comment period ending on February 5, 2015 was extended until February 20, 2015 and the permit application remained on file at the Longview Public Library until February 20, 2015. The Executive Director's Response to Comments was filed with the Chief Clerk on September 2, 2015 and mailed on October 14, 2015.

TCEQ received a timely comment and a request for a contested case hearing from Ms. Sheila Maxey (Ms. Maxey or Requestor) on January 30, 2015. OPIC recommends denying the hearing request.

II. APPLICABLE LAW

This application was declared administratively complete on December 15, 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, 2010 and August 31, 2015, the site rating was high/0.0 and the company rating and classification was satisfactory/1.25. 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, OPIC offers the following analysis set forth below.

B. Determination of Affected Person Status

If the Commission decides that a right to hearing exists on this application, Requester has a personal justiciable interest related to a legal right affected by this application. The Requester mentioned in her hearing request that she lives in a residential community near the Longview Compressor Station (approximately 3 blocks) north off Lilly. The hearing request raises concerns about pollution due to emissions from the Applicant's facility causing adverse lung problems and

visibility problems for the surrounding neighbors. The Requester also raised concerns about damage to soil, trees and building structures because of the emissions of carbon monoxide, nitrogen oxides and sulfur dioxide from the Applicant's existing facility.

The TCEQ does not prepare maps locating requesters relative to facilities seeking no increase air permit renewals. However, from the information in the request and OPIC's independent research, it appears that Ms. Maxey resides approximately 0.6 miles away from the Applicant's facility. The proximity of the Requester to the Facility combined with her concerns regarding health problems and adverse effects on the surrounding soil and trees support a finding that Ms. Maxey is an affected person. 30 TAC § 55.203(c). The hearing request states concerns protected by the law under which the application will be considered. THSC § 382.0518(b)(2). Such interests reasonably relate to the potential effects of facility operations. 30 TAC § 55.203(c)(3). In addition, the Requester's location relative to the facility shows a reasonable relationship between the interest stated and the activity regulated. *Id.* Therefore, if the Commission finds a right to hearing exists on this application, OPIC recommends that the Commission find that Ms. Maxey is an affected person.

C. Issues raised in the hearing request

1. Whether emissions from Applicant's facility are causing or will cause Chronic Obstructive Pulmonary Disease and other damage to lung tissues?
2. Whether emissions from Applicant's facility are causing or will cause damage to neighboring property including surrounding soil, trees or building structures?
3. Whether emissions from Applicant's facility interfere with Requester's use and enjoyment of her property and create nuisance condition including visibility problems?

4. Whether the Longview Compressor Station is in compliance with the applicable requirements for PM_(2.5)?

D. Which issues raised in the hearing request are disputed

All of the issues raised in the hearing request are disputed.

E. Whether the dispute involves questions of fact or of law

The disputed issues involve questions of fact.

F. Whether the issues were raised during the public comment period

All of the issues were raised during the public comment period.

G. Whether the hearing request is based on issues raised solely in a public comment which has been withdrawn

The hearing request is not based on issues raised solely in a public comment which has been withdrawn.

H. Whether the issues are relevant and material to the decision on the application

In order to refer an issue to the State Office of Administrative Hearings (“SOAH”), the Commission must find that the issue is relevant and material to the Commission’s decision to issue or deny this permit. See 30 TAC §§ 55.201(d)(4), 55.209(e)(6) and 55.211(c)(2)(A).

Relevant and material issues are those governed by the substantive law under which this permit is to be issued. See *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 248-251 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material. ... it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs.”)

Pursuant to 30 TAC § 101.4, the Applicant shall not “discharge...air contaminants...in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” “Air contaminant” is defined in 30 TAC § 382.003(2), to include “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor.” Therefore, any adverse effects of Applicant’s emissions on human health, animal life or physical property must be taken into account in the Commission’s determination of this application. Therefore issue nos. 1, 2 and 3 are relevant and material.

Issue no. 4 concerns compliance with National Ambient Air Quality Standards (NAAQS) for emissions of particulates less than 2.5 micron and smaller which is an issue that is relevant and material to the Commission’s decision on this application.

I. Issues for Referral

OPIC recommends that the Commission refer the following disputed issues of fact to SOAH for a contested case hearing:

1. Whether emissions from Applicant’s facility are causing or will cause Chronic Obstructive Pulmonary Disease and other damage to lung tissues?
2. Whether emissions from Applicant’s facility are causing or will cause damage to neighboring property including surrounding soil, trees or building structures?
3. Whether emissions from Applicant’s facility interfere with Requester’s use and enjoyment of her property and create nuisance condition including visibility problems?
4. Whether the Longview Compressor Station is in compliance with the applicable requirements for PM_(2.5)?

IV. MAXIMUM EXPECTED DURATION OF HEARING

Commission Rule 30 TAC § 55.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be six months from the first date of the preliminary hearing until the proposal for decision is issued.

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. Should the Commission disagree and find that a right to hearing exists on this application, OPIC would recommend finding that Ms. Maxey is an affected person and referring this matter to SOAH for a hearing on the issues listed in Section III. I above. OPIC would further recommend a hearing duration of six months.

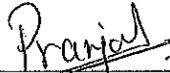
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 26, 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 M. Mehta

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TCEQ DOCKET NO. 2015-1381-AIR

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