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December 4, 2008

Ms. LaDonna Castaneula, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, TX 78711 – 3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 DEC - 5 PM 3: 02
CHIEF CLERKS OFFICE

VIA OVERNIGHT MAIL

Re: TCEQ Docket Number 2008-0850-MIS-U (Use Determination 07-11994 – Freeport Energy Center, L.P.)

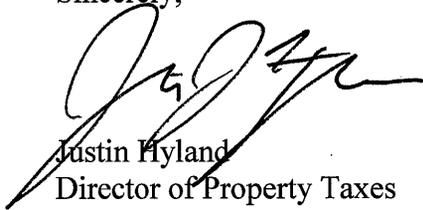
Dear Ms. Castanuela:

Enclosed is our response in the matter regarding the Appeal of The Executive Director’s Use Determinations regarding Freeport Energy Center, L.P. We have enclosed an original and seven (7) copies as requested.

Please return a time-stamped copy to me at the address listed on the letterhead above.

Please feel free to contact me directly at 713-830-8873 with any questions regarding this filing.

Sincerely,



Justin Hyland
Director of Property Taxes
Calpine Corporation
713-830-8873(Direct)
hylandj@calpine.com

cc: Leo Scherrer, Dow Corporation

Enclosures

FREEPORT ENERGY CENTER, L.P. RESPONSE BRIEF (TCEQ Docket No. 2008-0850-MIS-U) DEC -5 PM 3:02

CHIEF CLERKS OFFICE

To: Persons on the Attached Mailing list

Re: Response to Appeal of Executive Director's Use Determinations regarding Freeport Energy Center, L.P., TCCEQ Use Determination No. 07-11994; TCEQ Docket Mo. 2008-0850-MIS-U

Respondent: Justin Hyland, Freeport Energy Center, L.P. / Leo Scherrer, The Dow Chemical Company

Request: We respectively request the confirmation of the positive use determination on the heat recovery steam generator (HRSG) issued by the Executive Director on May 1, 2008 under Use Determination 07-11994 and a consideration of a positive use determination on the steam turbine system.

Legislative History

Texas House Bill (HB) 3732 was passed in the 80th legislative session and became effective September 1, 2007. Section 4 of HB 3732 amends Section 11.31 of the Tax Code and gives guidance to the Texas Commission on Environmental Quality ("TCEQ") to adopt rules establishing a nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution, which must include... (6) enhanced heat recovery systems, (7) exhaust heat recovery boilers, (8) heat recovery steam generators, ... (10) enhanced steam turbine systems: and (18) any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

After the passage of the HB 3732 and the effective date of the legislation, in late 2007 and early 2008 the TCEQ staff conducted meetings regarding the adoption of rules to implement HB 3732.

After the TCEQ adopted the relevant rules to implement HB 3732, Application No. 07-11994 was filed for review and consideration by Freeport Energy Center, L.P. as Pollution Control Equipment that met the criteria in HB 3732 and to obtain a positive Use Determination.

Basis for the Positive Use Determination

The Freeport Energy Center, L.P. facility is located in an ozone non-attainment area, Brazoria County, and therefore NOx reductions were mandatory at the Freeport site of The Dow Chemical Company. In order to meet the NOx reduction an agreement was reached whereby the Freeport Energy Center (Calpine) built a replacement power generation facility to replace Dow's aging Power 4 plant. The Power 4 plant had an effective age of over 40 years. The new power generation facility was built with NOx reduction being the primary driving force. The existing power generation facility owned by The Dow Chemical Company was shutdown. On a parts per million (ppm) basis NOx

concentrations were reduced from 147 ppm at the old existing power facility to a lower level of 3 ppm with the new power generation facility.

The partial percentage was calculated and based on the NOx reduction.

$$\text{Partial Percentage (V\%)} = \text{Fraction Reduced} \times 100$$

$$V \% = \frac{147 \text{ ppm} - 3 \text{ ppm}}{147 \text{ ppm}} \times 100 = 98\%$$

$$V\% = 98\%$$

Per TCEQ staff guidance the applicant was required to demonstrate by calculation the partial or total percentage exemption that would be appropriate. Freeport demonstrated an appropriate percentage calculation. Freeport's application was also timely filed and demonstrated that it met the requirement that the equipment followed a specific environmental rule or regulation (40 CFR 60, Standards of Performance for New Stationary Sources, Subpart A, DV, GG) and included equipment listed on Part B of the TCEQ Equipment and Categories list under Section 11.31(k) of the Texas Tax Code. Equipment at Freeport that appears on the Part B list includes the HRSG unit as well as the steam turbine system.

Subsequent to the filing of the application and technical review of the application by TCEQ staff, a 100% positive Use Determination was granted for the HRSG unit on May 1, 2008.

Appeal by Brazoria County Appraisal District

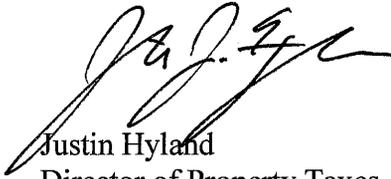
In its letter of appeal of the Use Determination 07-11994, Brazoria County asserts that they "believe that the Heat Recover Steam Generator described in this application is production equipment in that it burns natural gas to create steam to generate electricity. This creates pollutants, not reduces them." Brazoria County provides no technical basis or technical citation of how the equipment at issue in Freeport's use determination does not meet the criteria outlined in HB 3732 or under Texas Tax Code 11.31.

Summary

We believe that the original technical review of the application was appropriate at it relates to the HRSG unit based the current law as established under HB 3732 and respectfully request that the Commission uphold the original 100% positive use determination granted on the HRSG unit and give consideration of a positive use determination on the steam turbine system.

Submitted,

FREEPORT ENERGY CENTER, L.P.

A handwritten signature in black ink, appearing to read "Justin Hyland", written over the printed name.

Justin Hyland

Director of Property Taxes

Calpine Corporation (Parent Company of Freeport Energy Center, L.P.)

713-830-8873(Direct)

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TCEQ Docket No. 2008-0850-MIS-U

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