

IN THE MATTER OF WHITE
STALLION ENERGY CENTER, LLC
APPLICATION FOR AIR QUALITY
PERMIT NOS. 86088, HAP28, PAL26
AND PSD-TX-1160

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
TCEQ DOCKET NO. 2009-0283-AIR;
SOAH DOCKET NO. 582-09-3008

**WHITE STALLION ENERGY CENTER, LLC'S REPLY TO
SIERRA CLUB'S "RESPONSE" BRIEF**

If the Commission chooses to consider Sierra Club's untimely brief proffering remand evidence,¹ White Stallion respectfully refers the Commission to its previously filed Response Brief as its reply and makes the following three additional points:

First, like EDF, Sierra Club asserts that it is improper for project development to continue through other regulatory programs while an air permit is pending because Sierra Club does not like the Commission's validly enacted rules for later altering or amending permits. Sierra Club's theory is that "the facility for which demonstrations must be made is the facility that will actually be built."² Aside from ignoring the statutory and regulatory ties to *proposed* facilities,³ this interpretation of the law cannot realistically be implemented. Even Sierra Club, after asserting its interpretation, immediately backtracks by conceding that not "every application submitted by

¹ Sierra Club expressly "adopts by reference each objection made by EDF in its Evidence Brief and supports admission of all evidence offered by EDF," which is no different than proffering the evidence themselves. Sierra Club cannot pretend to have misunderstood the Commission's order. It plainly stated:

Briefs with accompanying remand evidence, as authorized by the Court's June 20, 2011 order, must be filed with the Office of the Chief Clerk no later than 5:00 p.m. on Thursday March 22, 2012. White Stallion Energy Center LLC, the Executive Director, and the Office of Public Interest Counsel are encouraged to respond to the briefs and accompanying remand evidence no later than 5:00 p.m. on Thursday April 12, 2012.

Sierra Club, a proponent of the remand evidence, has by cross-reference proffered evidence and is not included in the parties contemplated to "respond." It should have filed on March 22, 2012.

² Sierra Club Brief, p. 5.

³ See e.g., Tex. Health and Safety Code § 382.0518(d) ("*the submitted plans of the proposed facility*" (emphasis added)).

an applicant *must* be reviewed by the Commission for consistency with all other applications for the same facility,”⁴ but it provides no meaningful line for when such review might be required, other than a protesting parties’ assertions that some particular filing suddenly makes the air permit application “outdated.”

Apparently Sierra Club believes that the demonstrations “*must* be made [for] the facility that will actually be built,”⁵ ... but not really; really only if there happens to be a project opponent who is not satisfied with the rights they might have under the alteration or amendment process.⁶ Sierra Club draws its random line so that the Commission may not grant a *pending* air permit application if a protestant presents a filing made to another agency with differences about which the protestant is concerned.⁷ Ironically, Sierra Club would fail its own test: The October 25, 2010 site plan was not filed with the Corps until after the Commission voted to grant White Stallion’s air permit. Sierra Club’s belated brief thus only casts more clarifying light on the wisdom of the Commission’s long-standing and consistent implementation of the air permitting program to grant air permits on the basis of actual applications, limited to the representations in the applications, leaving the authorization of possible changes to the dictates of 30 Texas Administrative Code § 116.116 and special conditions in issued permits.

Second, Sierra Club cites to the Las Brisas case, which has no bearing on this matter. The evaluation of the Las Brisas Energy Center was remanded, in part, because the evaluation of the *actually proposed facility* supposedly was compromised by incorrect background conditions in the dispersion modeling, apparently involving the misplacement of certain existing,

⁴ Sierra Club Brief, p. 6 (emphasis in original).

⁵ Sierra Club Brief, p. 5 (emphasis added).

⁶ See Sierra Club Brief, p. 7.

⁷ Sierra Club Brief, p. 6.

background emissions points by several kilometers.⁸ It had nothing to do with the proposal itself and has no bearing on whether Sierra Club or EDF can force an applicant to change its very proposal or charge the Commission with evaluating an application that no one has filed.

Finally, for the reasons set forth in White Stallion's Response Brief, all discussion of the 2010 SO₂ NAAQS should not only be found inadmissible but be rejected or stricken from the record forwarded to the court for judicial review. This irrelevant and out of scope briefing appears in Sierra Club's Brief at p. 2, l. 18-21; p. 3, l. 1-2; p. 6, l. 22-23; p. 7, l. 13; p. 8, l. 3; p. 9, l. 20; p. 10, l. 1, 3, 12.

Conclusion

White Stallion respectfully requests that the Commission decline to make any changes to its existing, valid order issuing the White Stallion air permit and grant such other relief as described in White Stallion's Response Brief.

⁸ The Executive Director requested remand to audit the rebuttal modeling Las Brisas submitted to correct the background conditions. PFD, Application of Las Brisas Energy Center, SOAH Docket No. 582-09-2005; TCEQ Docket No. 2009-0033-AIR at p. 54-55.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paulina Williams", written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following via hand delivery, facsimile, electronic mail, first class mail, and/or overnight mail on this the **26th** day of **April**, 2012.

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