

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 10, 2011

Ms. Amy Jolley
Sandy Creek Energy Associates, L.P. et al.
1000 Louisiana, Suite 5800
Houston, Texas 77002

Re: Negative Use Determination for Application 13256:
Sandy Creek Power Generation Facility
Rattlesnake Road
Riesel (McLennan County)

Dear Ms. Jolley:

The Texas Commission on Environmental Quality (TCEQ or commission) has completed the review for application 13256, received on February 20, 2009. A negative determination is issued for this application because the raw water pretreatment system is necessary for the generation of electricity. Texas Water Code, §11.1272 and Title 30 Texas Administrative Code (TAC) §288.7 require wholesale and retail public water suppliers to develop a water conservation plan. While water conservation plans must include five-year and ten-year targets for water savings, failure to meet those targets does not subject the planning entity to enforcement. A water conservation plan may include the use of state-of-the-art equipment and/or process modifications to improve water use efficiency, but the installation of such equipment is not mandated by federal, state, or local regulations. As such, Sandy Creek has failed to cite an applicable environmental regulation being met or exceeded by the installation of the Raw Water Pretreatment System.

If you wish to appeal this determination, the appeal process can be found at 30 TAC §17.25. Pursuant to §17.25(a)(1), an appeal must be filed with the chief clerk of the commission within 20 days of receipt of this letter.

If you have any questions or require additional information, please contact Ron Hatlett with the Tax Relief for Pollution Control Property Program at the letterhead address, Mail Code 110, by telephone at (512) 239-6348, or by e-mail at rhatlett@tceq.state.tx.us.

Sincerely,

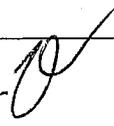
A handwritten signature in black ink, appearing to read "Mark R. Vickery", written over a large, stylized circular flourish.

Mark R. Vickery, P. G.
Executive Director

MV/rh

cc: Chief Appraiser, McLennan County Appraisal District, P. O. Box 2297, Waco, Texas
76703

TCEQ Interoffice Memorandum

To: Zak Covar, Deputy Executive Director 

From: Susana M. Hildebrand, P.E., Chief Engineer 

Date: January 10, 2011

Subject: Sandy Creek Prop 2 Application for a Raw Water Pretreatment System

History

Sandy Creek Energy Associates, L.P., et al, submitted a Prop 2 application on January 29, 2009, for the Sandy Creek Power Generation Facility in McLennan County. The application is for a raw water pretreatment system with an estimated cost of \$50,373,792. The application was submitted as a Tier I using the Equipment and Categories List (ECL) W-58 which is defined as follows: Water Recycling Systems – Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems. The application was declared administratively complete on June 3, 2010.

Project Description

The application property is a raw water pretreatment system consisting of eleven miles of intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, lime and soda ash injection for pH adjustment, storage pond, and post treatment storage tank.

Rule Cited by Applicant

The applicant cites Texas Water Code (TWC) §11.1272 and Title 30 Texas Administrative Code (TAC) §288.7 as the environmental rules, regulations, or statutes that are being met or exceeded by installation of the application property.

TCEQ Interoffice Memorandum

Recommendation

Staff recommends issuance of a negative use determination for the following reasons. The raw water pretreatment equipment is production property, necessary for the generation of electricity. Furthermore, Sandy Creek has failed to cite an applicable environmental regulation being met or exceeded by the installation of the raw water pretreatment system. TWC §11.1272 and 30 TAC §288.7 require wholesale and retail public water suppliers to develop a water conservation plan. Sandy Creek's application indicates that it will purchase a water right from the City of Waco. 30 TAC §288.5(1)(G) requires every water supply contract entered into after the official adoption of the water conservation plan to include in any contract extension, that each successive wholesale customer develop and implement a water conservation plan. Under this provision Sandy Creek will be required to develop a water conservation plan. While water conservation plans must include 5-year and 10-year targets for water savings, failure to meet those targets does not subject the planning entity to enforcement. A water conservation plan may include the use of state-of-the-art equipment and/ or process modifications to improve water use efficiency, but the installation of such equipment is not mandated by state regulations. As such, Sandy Creek has failed to cite an applicable environmental regulation being met or exceeded by the installation of the raw water pretreatment system.

**TAX RELIEF FOR POLLUTION CONTROL PROPERTY:
TECHNICAL REVIEW DOCUMENT**

Reviewed By: RLH **App. No:** 13256 **Date Received:** 01/27/2009
Technical Review Start Date: 06/10/2010
Company Name: SANDY CREEK ENERGY ASSOCIATES L.P. ET AL
Facility Name: SANDY CREEK POWER GENERATION FACILITY
County: MCLENNAN **Outstanding Fees:** N
Batch/Voucher Number: 507624 **Receipt Number:** R918389

PROJECT DESCRIPTION

Sandy Creek Energy Associates, L.P., et al, seeks a 100% positive use determination for its raw water pretreatment system. The estimated cost for this project is \$50,373,792.

ADMINISTRATIVE REVIEW

Administrative NOD Issued: On January 29, 2009, an administrative NOD was sent for application 12874 requesting that the raw water pretreatment system be moved to a separate application. On February 20, 2009, application 13256 was received. Issues related to the application were discussed with applicant during an April 2, 2009, conference call. Applicant sent a written response to the conference call stating a formal response would follow. On April 29, 2009, the applicant sent an email requesting the application be placed on hold. On August 9, 2009, the applicant responded in writing to the issues discussed during the conference call. On August 19, 2009, they were sent an NOD to which they submitted a response on September 8, 2009.

Administrative Complete Date: 6/03/2010

TIER LEVEL

What Tier is this application? Is this the appropriate level?

The applicant submitted a Tier I application seeking a 100% positive use determination for its Raw Water Pretreatment System. The applicant cited Item W-58 on Part A of the ECL, for Water Recycling Systems. The raw water pretreatment equipment is production property, necessary for the generation of electricity. It is not eligible for a positive use determination. The applicant cites Tex. Water Code §11.1272 and 30 TAC §288.7 as the applicable environmental laws or regulations being met or exceeded. Tex. Water Code § 11.1272 and 30 TAC §288.7 require wholesale and retail public water suppliers to develop a water conservation plan. Sandy Creek's application indicates that it will purchase a water right from the City of Waco. 30 TAC §288.5(1)(G) requires every water supply contract entered into after the official adoption of the water conservation plan to include in

any contract extension, that each successive wholesale customer develop and implement a water conservation plan. Under this provision Sandy Creek will be required to develop a water conservation plan. While water conservation plans must include 5-year and 10-year targets for water savings, failure to meet those targets does not subject the planning entity to enforcement. A water conservation plan may include the use of state-of-the-art equipment and/ or process modifications to improve water use efficiency, but the installation of such equipment is not mandated by state regulations. As such, Sandy Creek has failed to cite an applicable environmental regulation being met or exceeded by the installation of the Raw Water Pretreatment System.

RELEVANT RULE, REGULATION, OR STATUTORY PROVISION

The rule listed in the application is: 30 TAC 288. **The appropriate rule is:** There is not a rule, regulation, or statutory provision that is being met or exceeded by installation of this raw water pretreatment system.

BRIEF DESCRIPTION OF PROPERTY

The property is described as:

Raw Water Pretreatment System consisting of eleven miles of intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, lime and soda ash injection for pH adjustment, storage pond, and post treatment storage tank.

Is an adequate description and purpose of the property provided?

Yes

Does it list the anticipated environmental benefits? Yes

Are sketches and flow diagrams provided if needed? Yes

DECISION FLOWCHART (30 TAC 17.15(a)) [Old DFC I=7, II=9, III=10] Mark the appropriate boxes:

Box 3 N Box 5 Box 6(IV) Box 10(III) Box 12(I) Box 13(II)

PART B DECISION FLOWCHART (17.15(b))

Mark the appropriate boxes: Box 1 X Box 2 X Box 3 X

Describe how the property flowed through the Decision Flowchart:

The project is ineligible because the property is not needed to meet or exceed an environmental rule or regulation. The project is deemed ineligible at Box 4 of the Decision Flowchart.

TIER III or IV APPLICATIONS

Does your calculation agree with the applicants? _____

This is a Tier I application; therefore, this question does not apply.

PROPERTY CATEGORIES AND COSTS

Is the table completed correctly? Yes

Has the applicant certified that all listed property became taxable for the first time after January 1, 1994? Yes

Is all information necessary for conducting the technical review included? Yes

TECHNICAL DEFICIENCIES

Is the application technically complete when declared administratively complete? Yes

If the application was not technically complete then:

Provide the language to be used in the Notice of Deficiency (NOD) letter: Not applicable – project was technically complete.

FINAL DETERMINATION

If the property description has been summarized enter the detailed property description:

Raw Water Pre-Treatment System consisting of eleven miles of intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, lime and soda ash injection for pH adjustment, storage pond, and post treatment storage tank.

Provide the reason for your final determination:

The raw water pretreatment equipment is production property, necessary for the generation of electricity. Furthermore, Sandy Creek has failed to cite an applicable environmental regulation being met or exceeded by the installation of the Raw Water Pretreatment System. It is not eligible for a positive use determination.

Provide the language for the final determination.

A negative use determination is being issued.

The technical review was previously signed by Ronald Hatlett on 6/10/2010; Joseph Thomas on 6/11/2010; and by Emmanuel Wada on 6/15/2010. This final version prepared 1/6/2011 includes minor and non-substantive changes made to comport with agency style.

The original signed technical review is in the file and available for review.

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APPLICATION FOR USE DETERMINATION
FOR POLLUTION CONTROL PROPERTY**

The TCEQ has the responsibility to determine whether a property is a pollution control property. A person seeking a use determination must complete the attached application or a copy or similar reproduction. For assistance in completing this form refer to the TCEQ guidelines document, *Property Tax Exemptions for Pollution Control Property*, as well as 30 TAC §17, rules governing this program. For additional assistance please contact the Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, along with a complete copy and the appropriate fee, to: TCEQ MC-214, Cashiers Office, PO Box 13088, Austin, Texas 78711-3088.

Information must be provided for each field unless otherwise noted.

1. GENERAL INFORMATION

A. What is the type of ownership of this facility?

- | | |
|---|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Sole Proprietor |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Utility |
| <input checked="" type="checkbox"/> Limited Partnership | <input type="checkbox"/> Other: |

B. Size of company: Number of Employees

- | | |
|---|---|
| <input checked="" type="checkbox"/> 1 to 99 | <input type="checkbox"/> 1,000 to 1,999 |
| <input type="checkbox"/> 100 to 499 | <input type="checkbox"/> 2,000 to 4,999 |
| <input type="checkbox"/> 500 to 999 | <input type="checkbox"/> 5,000 or more |

C. Business Description: (Provide a brief description of the type of business or activity at the facility)

Generation of electricity.

2. TYPE OF APPLICATION

- | | |
|--|---|
| <input checked="" type="checkbox"/> Tier I \$150 Fee | <input type="checkbox"/> Tier III \$2,500 Fee |
| <input type="checkbox"/> Tier II \$1,000 Fee | <input type="checkbox"/> Tier IV \$500 Fee |

NOTE: Enclose a check, money order to the TCEQ, or a copy of the ePay receipt along with the application to cover the required fee.

3. NAME OF APPLICANT

- | | |
|--|---|
| A. Company Name: | <u>Sandy Creek Energy Associates LP et al</u> |
| B. Mailing Address (Street or P.O. Box): | <u>1000 Louisiana, Suite 5800</u> |
| C. City, State, and Zip | <u>Houston, Texas 77002</u> |

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- | | |
|---|--|
| A. Name of Facility or Unit: | <u>Sandy Creek Power Generation Facility</u> |
| B. Type of Mfg. Process or Service: | <u>Power Generation</u> |
| C. Street Address: | <u>Rattlesnake Road</u> |
| D. City, State, and Zip: | <u>Riesel, TX 76682</u> |
| E. Tracking Number (Optional): | <u>N/A</u> |
| F. Company or Registration Number (Optional): | <u>SC-2008-8</u> |

13257

5. **APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY**

- A. Name of Appraisal District: McLennan County
- B. Appraisal District Account Number: _____

6. **CONTACT NAME**

- A. Company/Organization Name Sandy Creek Energy Associates LP et al
- B. Name of Individual to Contact: Amy Jolley
- C. Mailing Address (Street or P.O. Box): 1000 Louisiana, Suite 5800
- D. City, State, and Zip: Houston, Texas 77002
- E. Telephone number and fax number: (713) 767-0464 / (713) 767-8520
- F. E-Mail address (if available): Amy.Jolley@dynegy.com

7. **RELEVANT RULE, REGULATION, OR STATUTORY PROVISION**

For each media, please list the specific environmental rule or regulation that is met or exceeded by the installation of this property.

| MEDIUM | Rule/Regulation/Law |
|--------|---|
| Air | N/A |
| Water | Title 30 of the Texas Administrative Code, Part 1, Chapter 288 ("30 TAC 288") |
| Waste | N/A |

8. **DESCRIPTION OF PROPERTY (Complete for all applications)**

Describe the property and how it will be used at your facility. **Do not simply repeat the description from the Equipment & Categories List.** Include sketches of the equipment and flow diagrams of the processes where appropriate. Use additional sheets, if necessary.

See descriptions of property attached on the following pages.

Land: If a use determination is being requested for land, provide a legal description and an accurate drawing of the property in question:

N/A

WATER AND WASTEWATER POLLUTION CONTROL EQUIPMENT

Sandy Creek – Raw Water Pre-Treatment System

ECL Item Number W-58

Statutes and Regulations

30 TAC 288 governs the conservation and reuse of water for industrial users.

Property/Equipment Description

The raw water pre-treatment system clarifies, disinfects, and neutralizes water from the Waco Metropolitan Area Regional Sewage System ("WMARSS"). The water supplied by WMARSS is grey water that meets the guidelines as Type I Effluent as specified in the TAC. The equipment included in the raw water pre-treatment is the 11 mile intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, and lime and soda ash injection for pH adjustment. Also, a storage pond prior to treatment and a storage tank post treatment are utilized. By treating and utilizing grey water, the Sandy Creek Power Generation Facility ("Sandy Creek" or the "Facility") eliminates the need to utilize fresh water supplies in the area.

The ECL states that Item Number W-58 includes the following, "*Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or amount of the new water used as process or make-up water including Zero Discharge Sources*" (emphasis added). The raw water pre-treatment system treats grey water (effluent from the WMARSS) in order to reduce the amount of new water that the Facility uses as process or make-up water.

The raw water pre-treatment system does not include equipment that conditions water prior to use in the boiler or cooling towers such as equipment used for demineralization, neutralization, and adding corrosion inhibitors.

The raw water pre-treatment system is currently construction work in progress (CWIP).

9. PARTIAL PERCENTAGE CALCULATION

This section is to be completed for Tier III and IV applications. For information on how to conduct the partial percentage calculation, see the application instructions document. Attach calculation documents to completed application.

10. PROPERTY CATEGORIES AND COSTS

List each control device or system for which a use determination is being sought. Provide additional attachments for more than 3 properties.

| Property | Property Taxable on 1/10/94 | DFC Box | ECL Number | Estimated Cost (Historical Cost) | Partial Percentage |
|--|-----------------------------|---------|------------|----------------------------------|--------------------|
| <i>Land</i> | | | | | |
| <i>Property</i> | | | | | |
| Raw Water Pre-Treatment System | No | 12 | W-58 | \$50,373,792 | 100% |
| Total Pollution Control Exemption | | | | \$50,373,792 | |

11. EMISSION REDUCTION INCENTIVE GRANT

(For more information about these grants, see the Application Instruction document).

Will an application for an Emission Reduction Incentive Grant be filed for this property/project?

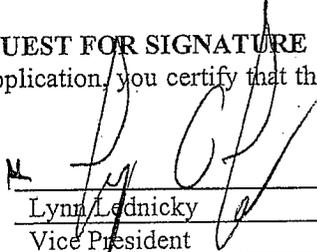
Yes No

12. APPLICATION DEFICIENCIES

After an initial review of the application, the TCEQ may determine that the information provided with the application is not sufficient to make a use determination. The TCEQ may send a notice of deficiency, requesting additional information that must be provided within 30 days of the written notice.

13. FORMAL REQUEST FOR SIGNATURE

By signing this application, you certify that this information is true to the best of your knowledge and belief.

Signature: 

Date: 2/17/09

Name:

Lynn Lednicky

Title:

Vice President

Company:

Sandy Creek Energy Associates LP et al

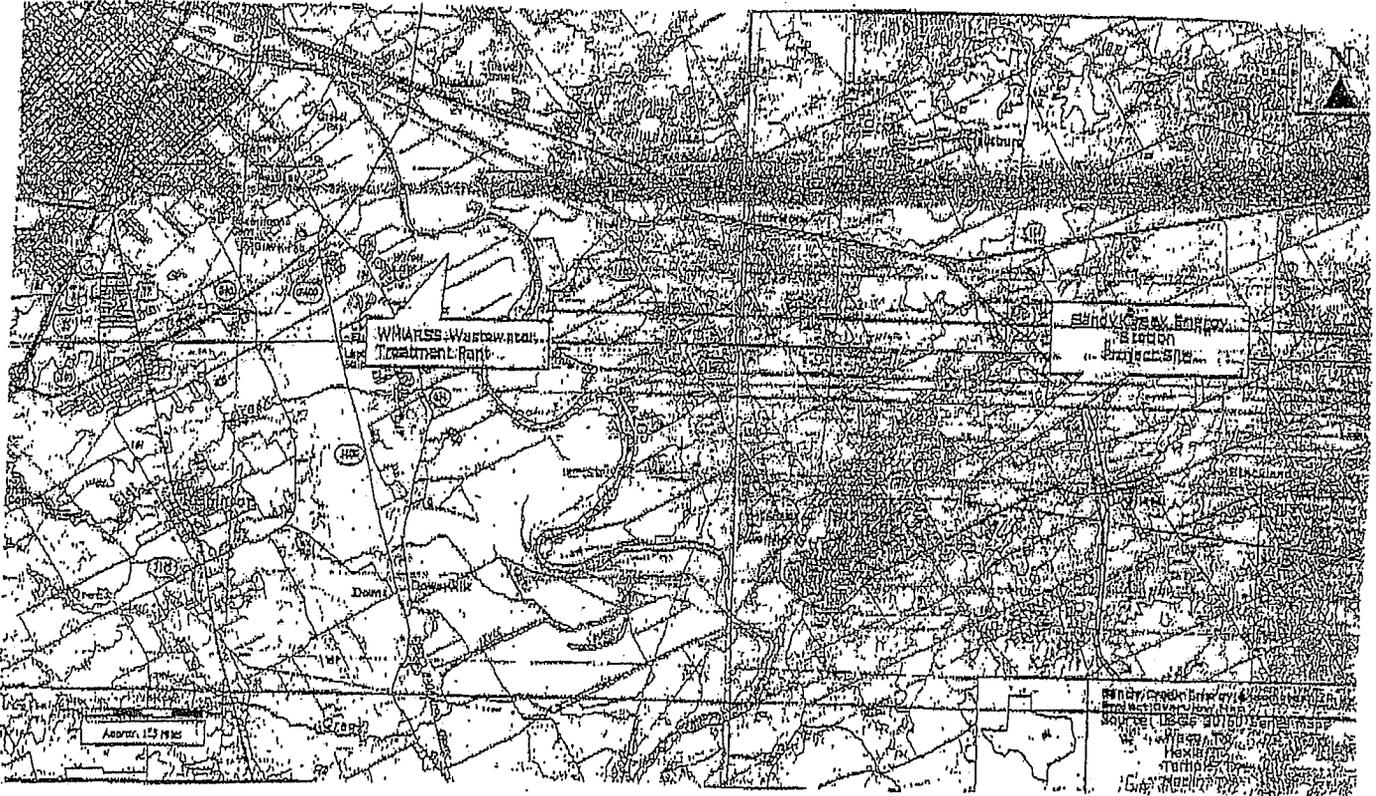
Under Texas Penal Code, Section 37.10, if you make a false statement on this application, you could receive a jail term of up to one year and a fine up to \$2,000, or a prison term of two to 10 years and a fine of up to \$5,000.

14. DELINQUENT FEE/PENALTY PROTOCOL

This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol. (Effective September 1, 2006)

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
Authorization No. R. 11071-001
Page 7

Attachment "A"



Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
Martin A. Hubert, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 11, 2006

Mr. Kenneth Ramirez
Bracewell & Patterson L.L.P.,
111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043

Re: Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
Reclaimed Water Authorization
Texas Commission on Environmental Quality (TCEQ) Permit No. 11071-001
Authorization No. R11071-001
RN0009883, CN8877434
McLennan County, Texas

Dear Mr. Ramirez:

We have completed our review of information on the above referenced project. The project under review consists of the reuse of wastewater effluent from the WMAKSS's Wastewater Treatment Plant (TCEQ Permit No. 11071-001).

Our review showed that the material generally meets the applicable minimum standards as set forth in the Texas Commission on Environmental Quality's rules titled Use of Reclaimed Water. The project is approved. The attachment to this letter indicates the approved site and conditions that apply to this approval.

If you have any questions, please feel free to contact Louis Herrin at (512) 239-4552.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Linendoll".

Chris Linendoll, Manager
Wastewater Permitting Section
Water Quality Division

cc: Janet McQuaid, Fulbright & Jaworski L.L.P., 600 Congress Avenue, Suite 2400, Austin, Texas
78701-3271, w/attachments
TCEQ, Region 9 Office, w/attachments
TCEQ Applications Review and Processing Team, w/attachments
(Attn: Ms. Katherine McKenzie, MC148)



Authorization No. R 11071-001

This authorization supersedes

and replaces R1107-001

approved October 15, 2004

AUTHORIZATION FOR RECLAIMED WATER

Producer: Cities of Waco, Bellmead, Laoy-Lakeview, Robinson, and Woodway
P.O. Box 2570
Waco, Texas 76702-2570

Providers: City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

Users: Sandy Creek Energy Associates
400 Chasterfield Center, Suite 110
St. Louis, Missouri 63017

Location: The wastewater plant site is located on the south bank of the Brazos River, approximately 4.5 mile downstream from the crossing of Interstate Highway 35 and the Brazos River in McLennan County, Texas.

Authorization: Reclaimed water from the WMARSS's Water Treatment Plant (Permit 11071-001) to be used for cooling tower makeup water, boiler makeup water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas and coal piles; and other Type II uses. Sandy Creek Energy Associates is authorize to treat the Type II effluent to Type I for fire protection within their facility. The service area is shown on Attachment A.

This authorization contains the conditions that apply for the uses of the reclaimed water. The approval of a reclaimed water use project under Chapter 210 does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

This action is taken under authority delegated by the Executive Director of the Commission on Environmental Quality.

Issued Date: December 11, 2006

A handwritten signature in black ink, appearing to be "R. M. ...", is written over a horizontal line.

For the Commission

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
Authorization No. R 11071-001
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Limitations: The authorization is subjected to the following requirements:

I. General Requirements,

- (a) No water treatment plant operator (producer) shall transfer to a user reclaimed water without first notifying the commission.
- (b) Irrigation with untreated wastewater is prohibited.
- (c) There shall be no nuisance conditions resulting from the distribution, the use, and/or storage of reclaimed water.
- (d) Reclaimed water shall not be utilized in a way that degrades ground water quality to a degree adversely affecting its actual or potential uses.
- (e) Reclaimed water managed in ponds for storage must be prevented from discharge into waters in the state, except for discharges directly resulting from rainfall events or in accordance with a permit issued by the commission. All other discharges are unauthorized. If any unauthorized overflow of a holding pond occurs causing discharge into or adjacent to waters in the state, the user or provider, as appropriate, shall report any noncompliance. A written submission of such information shall also be provided to the commission regional office and to the Austin Office, Water Enforcement Section (MC-149), within five (5) working days of becoming aware of the overflow. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- (f) Unless otherwise provided in this authorization, there shall be no off-site discharge, either airborne or surface runoff, of reclaimed water from the user's property except to a water treatment system or wastewater treatment collection system unless the reclaimed water user applies for and obtains a permit from the commission which authorizes discharge of the water.
- (g) Signs in both English and Spanish shall be posted at storage areas, hose bibs and faucets reading "Reclaimed Water, Do Not Drink" or similar warnings. Alternately, the area may be secured to prevent access by the public.
- (h) Reclaimed water piping shall be separated from potable water piping when trenched by a distance of at least nine feet. Exposed piping shall be painted purple and all piping shall be marked in accordance with 30 Texas Administrative Code (TAC) 210.25(g).
- (i) The design of distribution systems which will convey reclaimed water to a user shall be approved by the executive director. Materials shall be submitted for approval by the executive director in accordance with the Texas Engineering Practice Act (Article 3271a, Vernon's Annotated Texas Statutes). The plans and specifications for the distribution systems authorized by this authorization must be approved pursuant to state law, and failure to secure approval before commencing construction of such works or making a transfer of reclaim water therefrom is a violation of this authorization, and each day of a transfer is an additional violation until approval has been secured.
- (j) Nothing in this authorization modifies any requirements of the Texas Department of Health found in Title 25 TAC, Chapter 337.
- (k) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
 Authorization No. R 11071-001

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- (1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;
 - (2) the addition of a new producer;
 - (3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or
 - (4) changes from either Type I or Type II uses to the other.
- (1) The reclaimed water producer and user shall maintain on the sites a current operation and maintenance plan. The operation and maintenance plan which shall contain, as a minimum the following:
- (1) a copy of a signed contracts between the user, producer and provider and ;
 - (2) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;
 - (3) the measures that will be implemented to prevent unauthorized access to reclaimed water facilities (eg., secured valves);
 - (4) procedures for monitoring reclaimed water;
 - (5) a plan for how reclaimed water use will be scheduled to minimize the risk of inadvertent human exposure;
 - (6) schedules for routine maintenance;
 - (7) a plan for worker training and safety; and
 - (8) contingency plan for system failure or upsets.

II. Storage Requirements for Reclaimed Water.

- (a) All initial holding ponds designed to contain Type II effluent, located in areas in the state not identified as a vulnerable area as defined by a rating of 1.0 or greater on the statewide "Ground-Water Pollution Potential - General, Municipal, and Industrial Sources" (DRASTIC) map shall conform to the following requirements:
- (1) The ponds, whether constructed of earthen or other impervious materials, shall be designed and constructed so as to prevent groundwater contamination;
 - (2) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks;
 - (3) All soil liners must be of compacted material having a permeability less than or equal to 1×10^{-4} cm/sec, at least 24 inches thick, compacted in lifts no greater than 6 inches each;
 - (4) Synthetic membrane linings shall have a minimum thickness of 40 mils. In situ liners at least 24 inches thick meeting a permeability less than or equal to 1×10^{-4} cm/sec are acceptable alternatives;
 - (5) Certification shall be furnished by a Texas Registered Professional Engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities; and
 - (6) Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
 Authorization No. R 11071-001
 Page 4

- (7) An alternative method of pond lining which provides equivalent or better water quality protection than provided under this section may be utilized with the prior approval of the executive director.
- (8) A specific exemption may be obtained from the executive director if, after the review of data submitted by the reclaimed water provider or user, as appropriate, the executive director determines containment of the reclaimed water is not necessary, considering:
- (A) soil and geologic data, and ground water data, including its quality, uses, quantity and yield; and
- (B) adequate demonstration that impairment of ground water for its actual or potential use will be prevented.
- (b) Reclaimed water may be stored in leak-proof, fabricated tanks.

III. Specific Uses and Quality Standards for Reclaimed Water.

Numerical parameter limits pertaining to specific reclaimed water use categories are contained in this section. These limits apply to reclaimed water before discharge to initial holding ponds or a reclaimed water distribution system. It shall be the responsibility of the reclaimed water producer to establish that the reclaimed water meets the quality limits at the sample point for the intended use in accordance with the monitoring requirements identified in Section IV relating to Sampling and Analysis.

- (a) Reclaimed Water Use, Type II where the public would not likely come in contact with the reclaimed water. The following use is allowed by this authorization: cooling tower make-up water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas and coal piles; and other Type II uses.
- (b) The following conditions apply to this type of use of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use, reclaimed water on a 30-day average shall have a quality of:

| | |
|---------------------------------|------------------|
| CBOD ₅ | 15 mg/l |
| Fecal Coliform | 200 CFU/100 ml** |
| Fecal Coliform (not to exceed). | 800 CFU/100 ml** |

- * geometric mean
 ** single grab sample

IV. Sampling and Analysis.

The reclaimed water producer shall sample the reclaimed water prior to distribution to user to assure that the water quality is in accord with the intended contracted use. Analytical

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
Authorization No. R 11071-001
Page 5

methods shall be in accord with those specified in 30 TAC Chapter 319 (relating to Monitoring and Reporting). The minimum sampling and analysis frequency for reclaimed water is weekly.

The monitoring shall be done after the final treatment unit. These records shall be maintained on a monthly basis and be available at the plant site for inspection by authorized representatives of the Commission for at least five years.

V. Record keeping and Reporting.

- (a) The reclaimed water provider and user shall maintain records on site for a period of five years.
 - (1) Records to be maintained by the provider include:
 - (A) copies of notifications made to the commission concerning reclaimed water projects.
 - (B) as applicable, copies of contracts made with each reclaimed water user (this requirement does not include reclaimed water users at residences that have separate distribution lines for potable water).
 - (C) records of volume of water delivered to each reclaimed water user per delivery.
 - (D) reclaimed water quality analyses.
- (b) The reclaimed water producer shall report to the commission on a monthly basis the following information on forms furnished by the executive director. Such reports are due to the commission by the 20th day of the month following the reporting period.
 - (1) volume of reclaimed water delivered to provider.
 - (2) quality of reclaimed water delivered to a user or provider reported as a monthly average for each quality criteria except those listed as "not to exceed" which shall be reported as individual analyses.
- (c) Monitoring requirements contained in the authorization are suspended from the effective date of the authorization until the reclaim water is transferred. The provider shall provide written notice to the Austin Office, Registration, Review & Reporting Division, Water Quality Application Team (MC 161) and the Region 9 Office of the Commission thirty (30) days prior to transfer.

VI. Transfer of Reclaimed Water.

Reclaimed water transferred from a provider to a user shall be done on a demand only basis. This means that the reclaimed water user may refuse delivery of such water at any time. All reclaimed water transferred to a user must be of at least the treatment quality specified in Section IV. Transfer shall be accomplished via pipes or tank trucks.

VII. General Prohibitions.

Except for on-channel ponds, storage facilities for retaining reclaimed water prior to use shall not be located within the floodway and shall be protected from the 100-year flood.

VIII. Restrictions.

This authorization does not convey any property right and does not grant any exclusive privilege.

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
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IX. Responsibilities and Contracts.

(a) The producer of reclaimed water will not be liable for misapplication of reclaimed water by users, except as provided in this section. Both the reclaimed water provider and user have, but are not limited to, the following responsibilities:

- (1) The reclaimed water producer shall:
 - (A) transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user for the specified use;
 - (B) sample and analyze the reclaimed water and report such analyses in accordance with Sections IV and V relating to Sampling and Analysis and Record keeping and Reporting, respectively; and
 - (C) notify the executive director in writing within five (5) days of obtaining knowledge of reclaimed water use not authorized by the executive director's reclaimed water use approval.
- (2) The reclaimed water provider shall:
 - (A) assure construction of reclaimed water distribution lines/systems in accordance with 30 TAC Chapter 317 and in accordance with approved plans and specifications;
 - (B) transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user for the specified use;
 - (C) notify the executive director in writing within five (5) days of obtaining knowledge of reclaimed water use not authorized by the executive director's reclaimed water use approval; and
 - (D) not be found in violation of this chapter for the misuse of the reclaimed water by the user if transfer of such water is shut off promptly upon knowledge of misuse regardless of contract provisions.
- (3) The reclaimed water user shall:
 - (A) use the reclaimed water in accordance with this authorization; and
 - (B) maintain and provide records as required by Section III relating to Record keeping and Reporting.

X. Enforcement.

If the producer, provider and/or user fails to comply with the terms of this authorization, the executive director may take enforcement action provided by the Texas Water Code, §§26.019 and 26.136.

XI. Special Provisions.

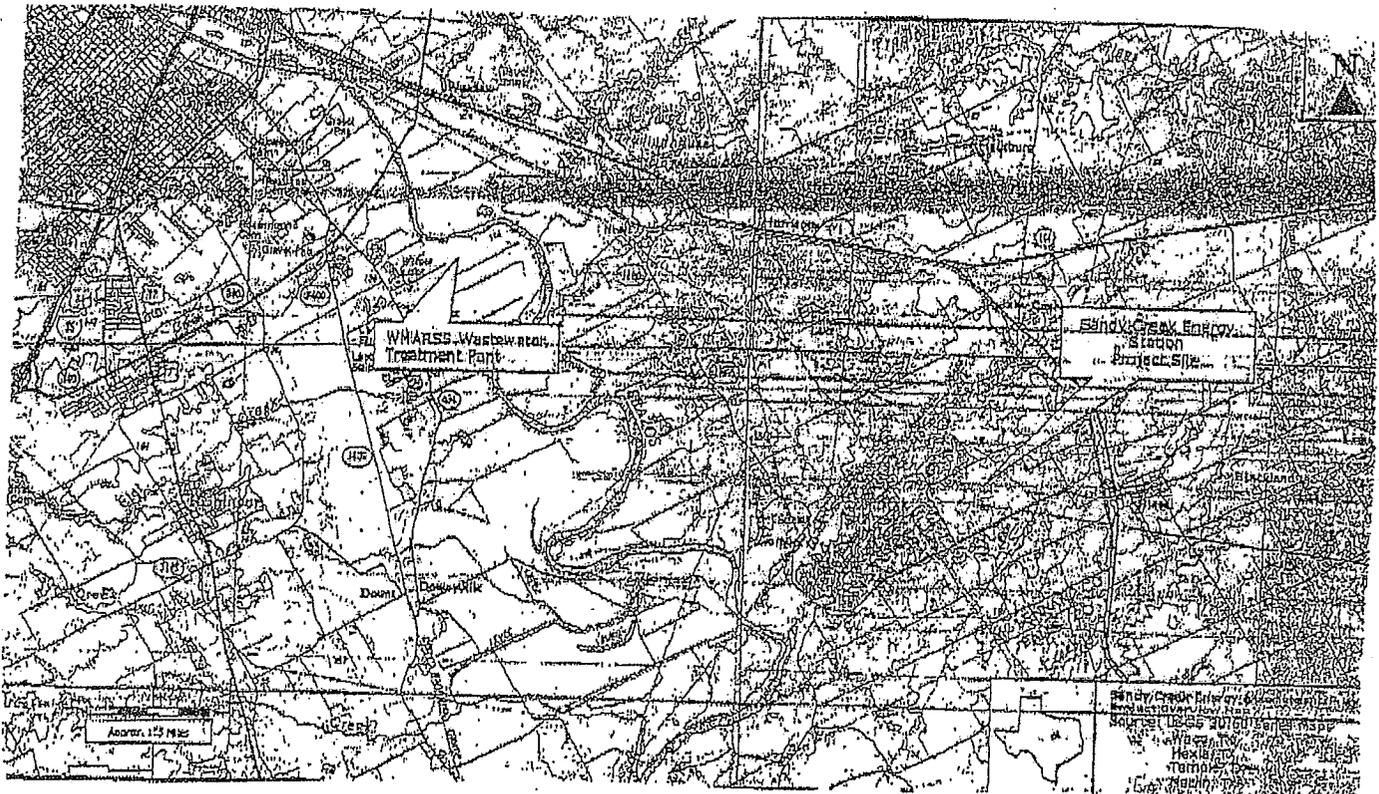
The Sandy Creek Energy Associates is authorize to treat the Type II effluent to Type I that are outline under 30 TAC Chapter 210 for fire protection within their facility.

XII. Standard Provisions.

- (a) This authorization is granted in accordance with the Texas Water Code and the rules and other Orders of the Commission and the laws of the State of Texas.
- (b) Acceptance of this authorization constitutes an acknowledgment and agreement that the provider and user will comply with all the terms, provisions, conditions, limitations and restrictions embodied in this authorization and with the rules and other Orders of the Commission and the laws of the State of Texas. Agreement is a condition precedent to the granting of this authorization.

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
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Attachment "A"



WATER AND WASTEWATER POLLUTION CONTROL EQUIPMENT

Sandy Creek – Raw Water Pre-Treatment System
ECL Item Number W-58

Statutes and Regulations

30 TAC 288 governs the conservation and reuse of water for industrial users.

Property/Equipment Description

The raw water pre-treatment system clarifies, disinfects, and neutralizes water from the Waco Metropolitan Area Regional Sewage System ("WMARSS"). The water supplied by WMARSS is grey water that meets the guidelines as Type I Effluent as specified in the TAC. The equipment included in the raw water pre-treatment is the 11 mile intake piping, chlorine treatment, solids contact units utilizing coagulant and coagulant aids, and lime and soda ash injection for pH adjustment. Also, a storage pond prior to treatment and a storage tank post treatment are utilized. By treating and utilizing grey water, the Sandy Creek Power Generation Facility ("Sandy Creek" or the "Facility") eliminates the need to utilize fresh water supplies in the area.

The ECL states that Item Number W-58 includes the following, "*Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or amount of the new water used as process or make-up water including Zero Discharge Sources*" (emphasis added). The raw water pre-treatment system treats grey water (effluent from the WMARSS) in order to reduce the amount of new water that the Facility uses as process or make-up water.

The raw water pre-treatment system does not include equipment that conditions water prior to use in the boiler or cooling towers such as equipment used for demineralization, neutralization, and adding corrosion inhibitors.

The raw water pre-treatment system is currently construction work in progress (CWIP).

Dynegy Inc.
133 South Fourth Street, Suite 306
Springfield, IL 62701-1232



September 8, 2009

Joseph Thomas
TCEQ - Cashiers Office MC-214
Tax Relief for Pollution Control Property Program
P.O. Box 13088
Austin, Texas, 78711-3088

Subject: Response to Administrative Review of Use Determination Application 13256 for Sandy Creek Energy Associates LP et al's Sandy Creek Power Generation Facility

Dear Mr. Joseph Thomas:

On February 17, 2009, Sandy Creek Energy Associates LP et al ("SCEA") submitted Use Determination Application 13256 (the "Application") to the Texas Commission on Environmental Quality ("TCEQ"). The Application is a Tier I application for the Raw Water Pre-treatment System at the Sandy Creek Power Generation Facility ("Sandy Creek" or the "Facility") located in Riesel, McLennan County, Texas. The Application was filed as Reclaimed Water System, under Part A of the Equipment and Categories List ("ECL"), item number W-58. Item No. W-58, under Part A of the ECL, states the following as qualifying:

"Installed systems, excluding cooling towers, that clean, recycle or reuse wastewater or use grey water or storm water in order to reduce the amount of new water used as process or make-up water including Zero Discharge Systems."

In a letter dated August 6, 2009 to Mr. Minor Hibbs, Special Assistant, Chief Engineers Office, TCEQ, SCEA submitted further clarification regarding the Reclaimed Water System and its qualification for a pollution control property tax exemption.

On August 19, 2009, the TCEQ responded with a request for additional information as follows:

"The application does not provide sufficient information on the components of the reclaimed water system. Please provide a detailed list of all the components that make up this system, as well as a process flow diagram showing this and related systems from the inlet pipeline to the discharge point for wastewater from the facility (if any). Please label each piece of equipment identified on the process flow diagram."

In response to this request, SCEA marked up process and instrumentation diagrams as well as the water balance. In these marked up versions of the drawings, SCEA defines the pieces of equipment included in the Application as well the typical process water treatment system equipment that was excluded from the Application. SCEA also included a summary list of equipment matching the equipment tags to the equipment description. SCEA also enclosed the drawing showing the pipeline that supplies water from WMARSS to the Facility.

Mr. Joseph Thomas
Texas Commission on Environmental Quality
Tax Relief for Pollution Control Property Program
September 8, 2009
Page 2

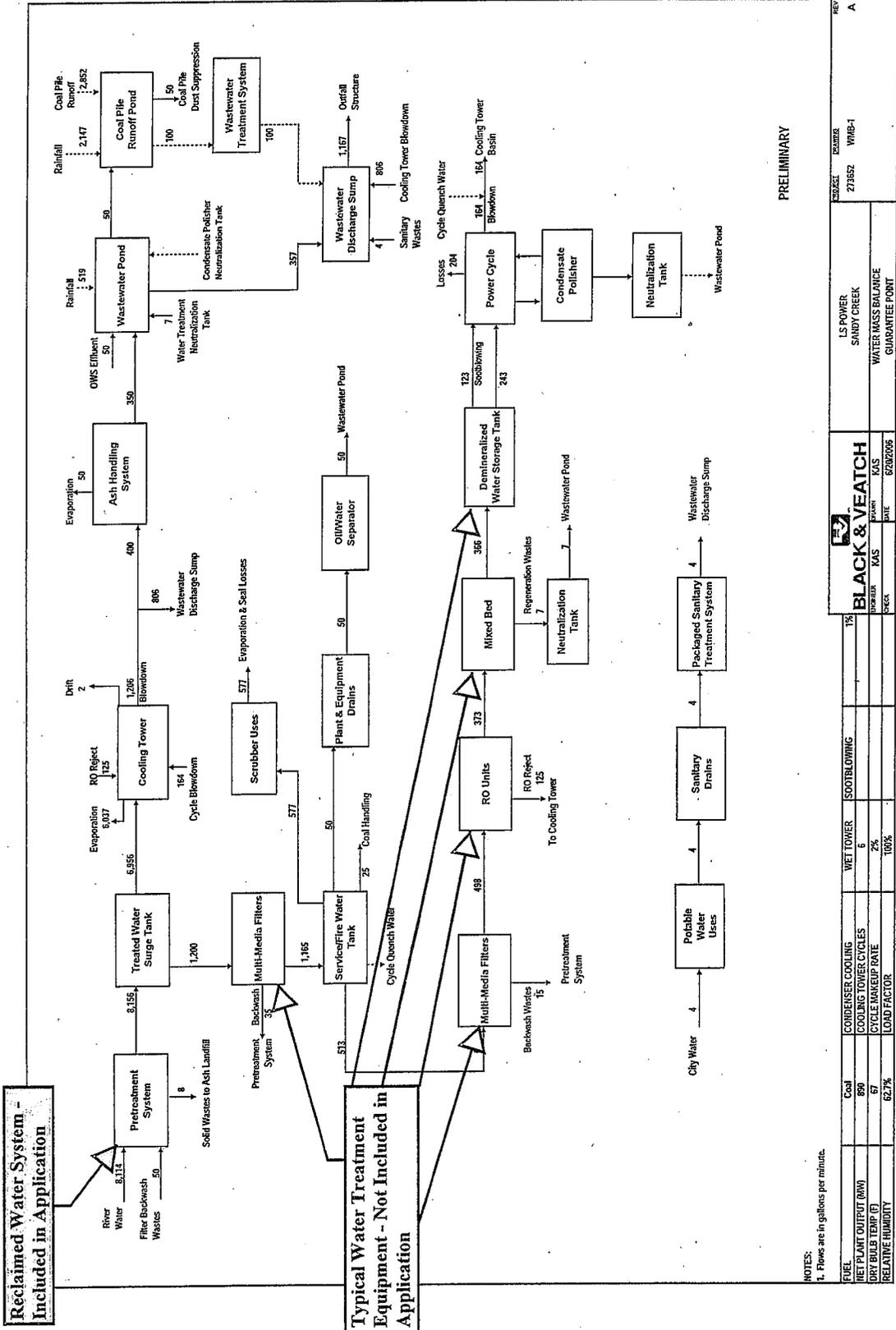
We look forward to hearing from you. If you have any additional questions or concerns, please contact me at (217) 492-6612.

Very truly yours,



Rick Barton
Sr. Director, Property Tax
Dynergy, Inc.

Enclosure



PRELIMINARY

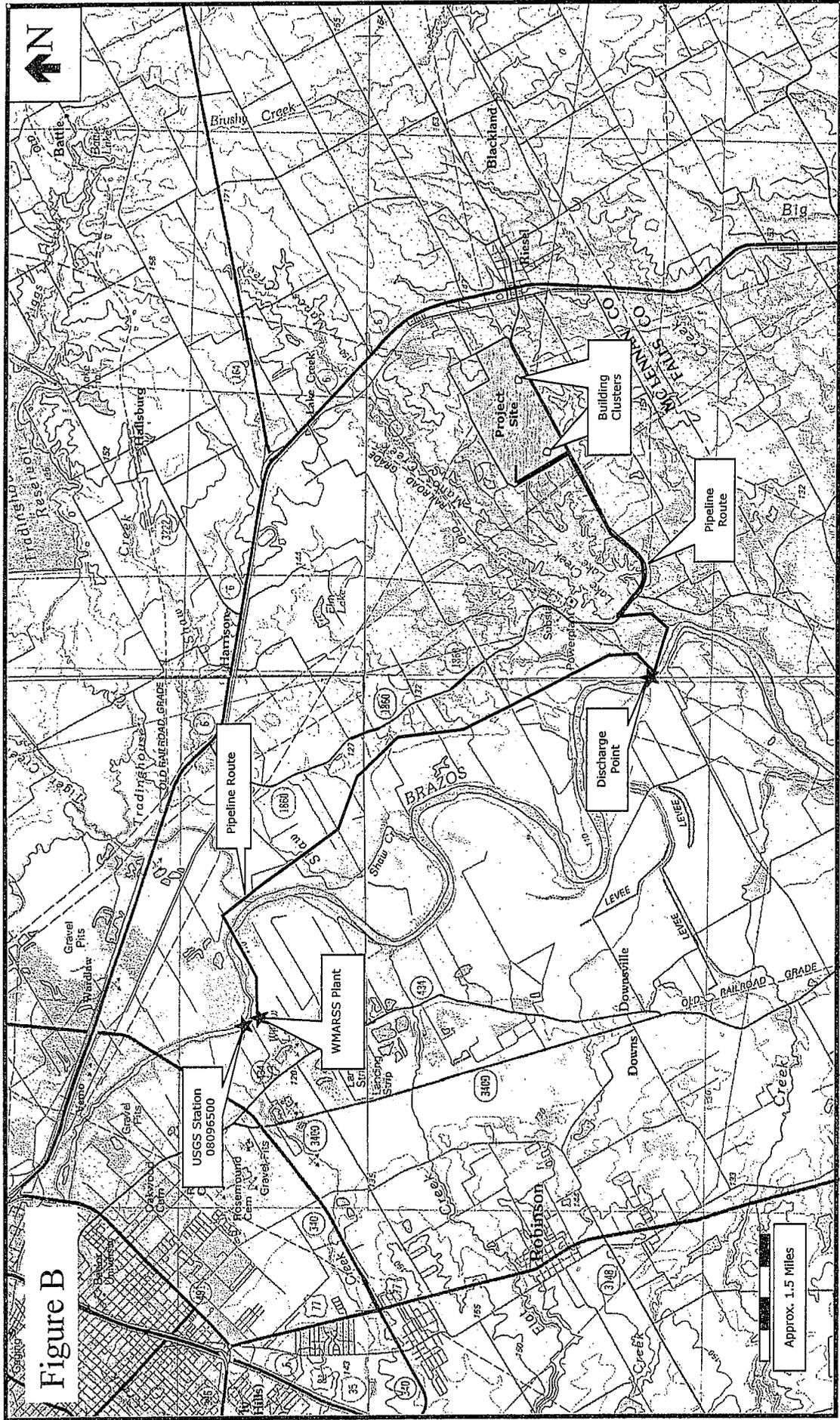
NOTES:
1. Flows are in gallons per minute.

| | | | | | | | | | | | |
|-----------------------|-------|----------------------|-----------|-------------|----|----------------------|-------|-------|-------|-----|---|
| FUEL | Coal | CONDENSER COOLING | WET TOWER | SOOTBLOWING | 1% | LS POWER SANDY CREEK | 27852 | 27852 | YMG-1 | REP | A |
| NET PLANT OUTPUT (MW) | 590 | COOLING TOWER CYCLES | 24 | | | WATER MASS BALANCE | | | | | |
| DRY BULB TEMP (F) | 67 | CYCLE MAKEUP RATE | 2% | | | GUARANTEED POINT | | | | | |
| RELATIVE HUMIDITY | 62.7% | LOAD FACTOR | 100% | | | | | | | | |

BLACK & VEATCH
 PROJECT NO. 27852
 SHEET NO. YMG-1
 DATE: 8/20/05

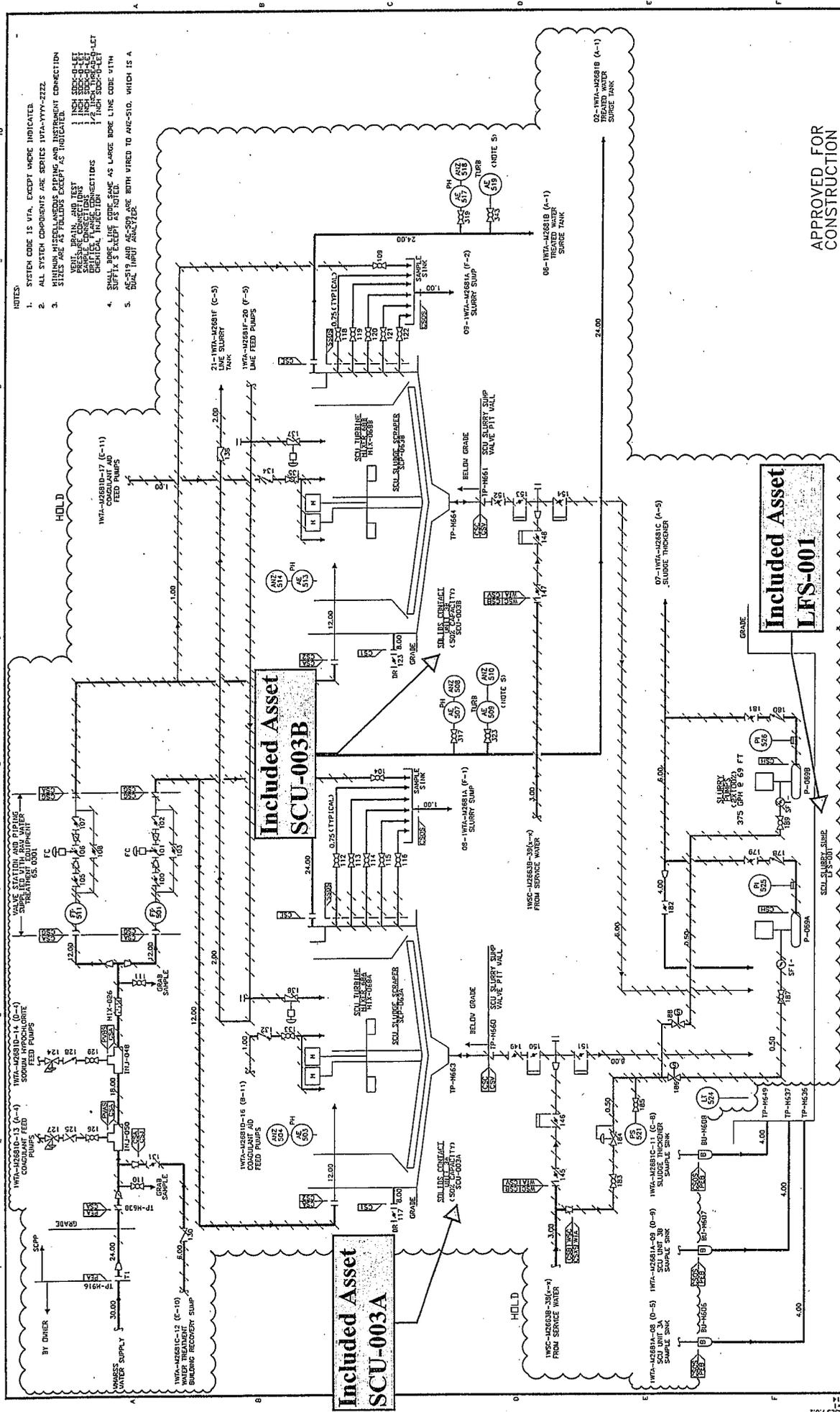


Figure B



Approx. 1.5 Miles

| Item Number | Description |
|---|-----------------------------------|
| <i>Reclaimed Water System – Included Assets</i> | |
| CXX-008 | Coagulant Aid Tote |
| CXX-033 | Mixing Serpentine |
| LFS-001 | Solids Contact Unit Slurry Sump |
| P-021A | Treated Water Transfer Pump |
| P-021B | Treated Water Transfer Pump |
| PFLT-006 | Filter Press |
| SCU-003A | Solids Contact Unit |
| SCU-003B | Solids Contact Unit |
| SCU-003B | Solids Contact Unit |
| SLO-007 | Lime Silo |
| SKD-014 | Thickener Discharge Pump Skid |
| SKD-015 | Coagulant Feed Pump Skid |
| SKD-015 | Coagulant Feed Pump Skid |
| SKD-016 | Coagulant Aid Feed Pump Skid |
| SKD-018 | Dewatering Polymer Feed Pump Skid |
| SKD-020 | Lime Feed Pump Skid |
| TNK-009 | Treated Water Surge Tank |
| TNK-010 | Coagulant Storage Tank |
| TNK-011 | Sodium Hypochlorite Storage Tank |
| TNK-022 | Lime Slurry Tank |
| <i>Reclaimed Water System – Excluded Assets</i> | |
| FLT-004A | Service Water Pressure Filter |
| FLT-004B | Service Water Pressure Filter |
| FLT-004C | Service Water Pressure Filter |
| SKD-012 | Filter Backwash Pump Skid |
| SKD-019 | Air Scour Blower Skid |



APPROVED FOR CONSTRUCTION

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| PROJECT | 149060-1WTA-M2881A | REV | 3 |
| DATE | 05/07/2008 | REV | 1 |
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| DATE | 05/07/2008 | REV | 4 |
| BY | SCPP | REV | 5 |
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| BY | SCPP | REV | 8 |
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| DATE | 05/07/2008 | REV | 97 |
| BY | SCPP | REV | 98 |
| CHECKED | SCPP | REV | 99 |
| DATE | 05/07/2008 | REV | 100 |

149060-1WTA-M2881A
 SANDY CREEK ENERGY STATION
 UNIT 1
 PIPING AND INSTRUMENT DIAGRAM
 RAW WATER PRETREATMENT



DYNEGY

Richard Barton
Senior Director, Property Tax

Dynergy Inc.
133 South Fourth St. Suite 306
Springfield, IL 62701
(217) 492-6612

August 6, 2009

*Via email (mhibbs@tceq.state.tx.us)
and Certified Mail/Return Receipt Requested*

Mr. Minor Hibbs
Special Assistant, Chief Engineer's Office
MC 168
Texas Commission on Environmental Quality
12100 Park 35 Circle
Austin, Texas 78753

Re: Letter for TCEQ Legal Counsel Review of the Sandy Creek Energy Associates LP et al's Use Determination Application SC-2008-8 for Pollution Control Property Tax Exemption of the Reclaimed Water System at the Sandy Creek Power Generation Facility

Dear Mr. Hibbs:

As you are aware, Sandy Creek Energy Associates LP et al. ("SCEA" or "we") has submitted Use Determination Application SC-2008-8 (the "Application") to the Texas Commission on Environmental Quality ("TCEQ"). The Application is a Tier I application pertaining to the Raw Water Pre-treatment System at the Sandy Creek Power Generation Facility ("Sandy Creek" or the "Facility") located in Riesel, McLennan County, Texas. Tier I applications encompass property defined in Part A of the Equipment and Categories List ("ECL").

I. BACKGROUND

We prepared this letter at your request (in a telephone conversation with Rick Barton, Dynergy's Property Tax Manager) for presentation to TCEQ's legal counsel regarding consideration of the Raw Water Pre-treatment System installed at Sandy Creek as property tax exempt pollution control equipment. This pre-treatment system clarifies, disinfects, and neutralizes wastewater received from the Waco Metropolitan Area Regional Sewage System ("WMARSS"). This pre-treatment system is also known as the "Reclaimed Water System" (and will be referred to as such herein) because the wastewater water received from WMARSS is recycled to avoid depleting state surface waters or ground water.

II. RECLAIMED WATER SYSTEM DESCRIPTION

The equipment associated with the Reclaimed Water System covered by the Application for property tax exemption includes only that equipment above and beyond the typical raw water treatment equipment that would normally be used by a coal-fired electric generation facility to produce water for process purposes.

The Reclaimed Water System includes:

- the 11 mile intake piping;
- chlorine treatment system;
- solids contact units utilizing coagulant and coagulant aids; and
- lime and soda ash injection for pH adjustment.

There is also a storage pond for wastewater storage prior to treatment as well as a tank for post treatment storage.

The Application does not include the conventional raw water treatment systems typically found at coal-plants using process water from a potable water source or on-site wells. These conventional water systems (which are not included in the Application) consist of multi-media filters, reverse osmosis units, mixed bed demineralization equipment, and associated tanks and piping used to further treat the water to process standards.

Accordingly, the Reclaimed Water System covered by the Application is used wholly as pollution control equipment for the Facility.

III. DISCUSSION OF PROPERTY TAX EXEMPTION APPLICATION AND ELIGIBILITY

A. Basis for Tier I Application

The first step in the application process is the determination of the appropriate tier level for an application. In this case, the Application is appropriately classified as a Tier I application because the pollution control equipment at issue is specifically listed in Part A of the ECL, 30 T.A.C. § 17.14(a). Specifically, the Reclaimed Water System falls squarely under Item W-58, Water Recycling Systems, which includes:

“Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.” (Emphasis Added.)

While Item W-58 encompasses a variety of water recycling systems, for purposes of Sandy Creek's Application, it contains three key elements: (1) an installed system that is not a cooling tower, (2) that reuses wastewater, (3) to reduce the amount of new water used as process water or make-up water. The Reclaimed Water System satisfies each of these three elements. To wit:

- (1) The Reclaimed Water System as defined in the Application (and as described above) does not include cooling towers.

- (2) The Reclaimed Water System "reuses" wastewater, specifically, wastewater from WMARSS. The term "reuse" is defined in TCEQ's water conservation rules (30 T.A.C. § 288.1) as:

"The authorized use for one or more beneficial purposes of use of [sic] water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water."

The WMARSS wastewater that supplies the Reclaimed Water System is wastewater originally used by residents of the Waco metropolitan area that has been treated by WMARSS and would otherwise be discharged in due course into the Brazos River. The purpose of use of the wastewater by the Reclaimed Water System is a "beneficial use" pursuant to the TCEQ's regulations regarding the Use of Reclaimed Water. The TCEQ's regulations define "beneficial use" as "an economic use of wastewater . . . which takes the place of potable and/or raw water that could otherwise be needed from another source." 30 T.A.C. § 210.3. If the Reclaimed Water System had not been installed to permit the Facility to reuse the WMARSS wastewater, then an estimated 8,788 gallons of raw water per minute, or 12,654,720 gallons per day, would be needed from another source (or sources) to satisfy the Facility's water needs. Thus, the Reclaimed Water System reuses wastewater.

- (3) As referenced above, the Sandy Creek Facility requires an estimated 8,788 gallons of process water per minute, or 12,654,720 gallons per day. In the absence of the Reclaimed Water System, these very substantial water needs would have to be met with new water obtained either through the pumping of local groundwater or the diversion of surface water pursuant to newly obtained water rights. The Reclaimed Water System is designed specifically for the purpose of reusing wastewater from WMARSS to not just reduce, but eliminate the amount of new water used as process water at the Sandy Creek Facility.

B. Interpretation of Item W-58

We understand that TCEQ has suggested that Item W-58 of the ECL may apply only to systems that reuse wastewater generated exclusively on-site. Respectfully, we believe there is no basis either in the description of Item W-58 itself, Section 11.31 of the Texas Tax Code, TCEQ's regulations in 30 T.A.C. Chapter 17, or TCEQ's guidance on Property Tax Exemptions for Pollution Control Equipment (the "Program Guidance"), for limiting the applicability of the Item in that manner.

Item W-58 provides three distinct ways in which a water recycling system may be used for pollution control purposes. They are systems that:

- (i) clean, recycle, or reuse wastewater;
- (ii) use grey water or storm water to reduce the amount of a facility's discharge; or
- (iii) use grey water or storm water to reduce the amount of new water used as process or make-up water. 30 T.A.C. § 17.14(a) (Part A).

The regulation was drafted in the disjunctive. The use of the word "or" makes clear that any of the three uses qualifies as pollution control equipment.¹

To the extent that the "on-site" interpretation results from a narrow focus on the language in the description of Item W-58 which reads, "...in order to reduce the amount of a facility's discharge..." we point out that such a limited reading disregards the alternative, accepted purpose set forth in Item W-58 for covered water recycling systems. That language reads: "...or the amount of new water used as process or makeup water..." (emphasis added). An interpretation disregarding the alternative provision in W-58 is inconsistent with Texas law. The Texas Supreme Court has held that when construing a statute, effect should be given to all words. Words should not be treated as surplusage. *State of Texas v. Shumaker*, 199 S.W.2d 279, 287 (Tex. 2006). Administrative rules are construed in the same manner. See *Rodriguez v. Lloyds Ins. Co.*, 997 S.W. 2d 248, 254 (Tex. 1999). Thus, regulations and statutes must be construed in a manner to give meaning to each of their parts. A narrow reading focusing exclusively on reduction of discharge disregards the other uses set forth in Item W-58. The use of the disjunctive "or" means "in the alternative" and requires that alternatives be treated separately. This is black letter law *In Re BNS.*, 247 S.W. 3d 807, 809 (Tex. App. – Dallas 2008, no. pet).

Further, interpreting ECL Item W-58 to limit its applicability to reuse of wastewater generated on-site is contrary to the State's legitimate interest in conserving precious water supplies, and specifically to the objectives of 30 T.A.C. Chapter 288, which broadly seek to promote the beneficial use of wastewater or other reclaimed water in order to conserve and protect surface waters and groundwater. Finally, we note that in other instances where an Item on the ECL is intended to address a site-specific use of waste water, that intent is specifically articulated.²

We respectfully urge TCEQ to recognize the applicability of ECL Item W-58 in light of the compelling environmental benefits provided by the Facility's reuse of the WMARSS wastewater rather than new groundwater or surface water. If TCEQ intends to limit the applicability of Item W-58 solely to wastewater generated on-site, we respectfully request that TCEQ advise us of the statutory or regulatory basis supporting that decision. Moreover, as described below, treatment of wastewater generated off-site provides no less overall benefit to the site or the community generally.

¹ Similarly, while Reclaimed Water Authorization No. 11071-0001 was issued to WMARSS as a reclaimed water provider, under 30 T.A.C. § 210, the applicant on a Reclaimed Water Authorization cannot be determinative of who may qualify for a pollution control equipment exemption. Further, if this requirement were superimposed on Item W-58, i.e., that wastewater, or storm water, or grey water used to reduce discharge or make-up water is limited to that which is generated on-site, the Item would lack utility. The rule simply does not and cannot reasonably contain such a restriction. For example, the rule allows an exemption for equipment that utilizes "stormwater." An interpretation of the rule to mean that the equipment treat only that stormwater generated exclusively on-site may be a virtual impossibility considering that sheet flow from neighboring properties could and would be captured for use or reuse.

² For example, Item W-59 deals with wastewater treatment facilities or plants. To qualify, the facility must be "constructed to process wastewater generated on-site." 30 T.A.C. § 17.14(a) (Part A, Item 59). It is clear that where the control equipment must use wastewater generated on-site, the Item so states.

B. Decision Flow Chart Analysis

The second step in the application process is to evaluate the eligibility of the equipment for which the positive use determination is sought under the TCEQ's Decision Flow Chart, published at 30 T.A.C. § 17.15(a). For purposes of this discussion, the flow chart requires the applicant to make two critical determinations.

The first determination, in Step 3, is whether an adopted environmental rule or regulation is being met (or exceeded). If no, Step 4 stipulates that the equipment is not eligible. If yes, Step 5 asks whether the equipment provides an environmental benefit at the site. As the following discussion indicates, the Reclaimed Water System meets each of these essential criteria and, therefore, should be granted a positive use determination by TCEQ.

1. *Is an adopted environmental rule or regulation being met?*

Section 17.10(d)(4) of TCEQ's regulations requires the use determination application to identify "the specific law, rules, or regulations that are being met or exceeded by the use, installation, construction, or acquisition of the pollution control property." SCEA's original application cited 30 T.A.C. Chapter 288, which contains TCEQ's rules regarding water conservation plans, drought conservation plans, and conservation and reuse of water generally. The application did not identify the specific regulation in Chapter 288, nor did it identify the statute implemented by the relevant provisions of Chapter 288.³ This may have contributed to TCEQ's questions regarding the eligibility of the Reclaimed Water System for a positive use determination.⁴ To address any such questions, we take this opportunity to identify the specific statutory and regulatory provisions the Reclaimed Water System is designed to and will in practice meet or exceed.

(a) Texas Water Code § 11.1271

For reasons described in detail below in the discussion of the environmental benefit provided by the Reclaimed Water System, SCEA desired to avoid the use of groundwater to supply the Facility due to the significant negative environmental impacts groundwater use would entail. The other traditional alternative source of water is surface water. Surface waters within the State of Texas are the property of the State of Texas,⁵ and no person may appropriate any state water without first obtaining a permit from TCEQ.⁶

Texas Water Code Section 11.1271 requires an applicant for a new water right to formulate and submit a water conservation plan and adopt reasonable water conservation measures, and directs TCEQ to adopt rules concerning submission of water conservation plans. The term "conservation" is defined in Section 11.002(8)(B) as "those practices, techniques, and technologies that will reduce the consumption of water . . . or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses." The Reclaimed

³ To the extent the Agency deems necessary, we will amend our application to provide this greater specificity.

⁴ While there is no rule mandating Sandy Creek use the wastewater from WMARSS as a raw water source, any such emphasis would be misplaced, particularly with regard to Item W-58, which addresses recycling of wastewater, grey water, and stormwater. We are not aware of a regulatory requirement mandating that any regulated actor specifically use grey water or stormwater to reduce the amount of a facility's discharge, and for that reason it is unreasonable to hold that Item W-58 as applied to Sandy Creek should be interpreted that way.

⁵ Texas Water Code § 11.021(a).

⁶ Texas Water Code § 11.121.

Water System falls within this definition of a water "conservation" measure. SCEA identified the Reclaimed Water System as a reasonable technological alternative to reduce the consumption of new water at the site by reusing wastewater from WMARSS. Thus, the Reclaimed Water System not only meets an adopted environmental rule, but eliminates the need to obtain a direct water right that would have permitted SCEA to appropriate state-owned water from the Brazos River or Lake Waco for ongoing and continuous use.⁷ Accordingly, the Reclaimed Water System exceeds this adopted environmental statute.⁸

(b) 30 T.A.C. § 288.7

Section 288.7 was adopted to implement Texas Water Code § 11.1271 that requires TCEQ to adopt rules concerning submission of water conservation plans. This regulation stipulates as follows:

(a) A water conservation plan submitted with an application for a new or additional appropriation of water must include data and information which:

(1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;

(2) evaluates conservation as an alternative to the proposed appropriation; and

(3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

(b) It shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

⁷ Pursuant to SCEA's contract with the City of Waco, the City of Waco obtained an Amendment to its existing Certificate of Adjudication (Certificate No. 12-2315C) (the "Amended Certificate"), authorizing the diversion of an additional 58,200 acre-feet of water per year from Lake Waco on the Bosque River from a diversion structure located on land owned by the City of Robinson. The additional water rights were for industrial uses, and under the aforementioned contract served as a backup water supply in the event that WMARSS was unable to provide sufficient quantities of reclaimed water to meet the Facility's needs. Further, the Amended Certificate specifically requires the City of Waco to implement a water conservation plan as required by 30 T.A.C. § 288.3, and that any contract customer of the City do the same within 90 days prior to the diversion of water for industrial purposes. See Amended Certificate, Par. 5.A. and B. Accordingly, installation and use of the Reclaimed Water System as a water conservation measure nonetheless meets or exceeds the requirements of Texas Water Code § 11.1271, 30 T.A.C. § 288.3, and the Amended Certificate.

⁸ We understand that TCEQ acknowledges that, because Sandy Creek is obligated to meet storage requirements under limitation I(e) of the Authorization, the reclaimed water storage pond should be eligible for a positive use determination. It is important to note that SCEA is required to treat Type II effluent to Type I standards for fire protection uses. The system to be installed by SCEA will be used to treat all Type II effluent to Type I standards, thus exceeding the minimum usage criteria in the Authorization and the requirements for on-site grey water usage established by the TCEQ. See 30 T.A.C. §§ 210.32-33.

Regarding subparagraph (a)(1), given the feasibility of the reuse of WMARSS wastewater through implementation of the Reclaimed Water System, SCEA asserts that proposing the use of surface water as the primary supply for the Facility would not reasonably consider the water conservation goals of the water conservation plan. Thus, implementation of the Reclaimed Water System was necessary to meet the requirement of Section 288.7(a)(1).

Regarding subparagraph (a)(2), any water conservation plan developed in support of a water right application for the Facility that properly evaluated conservation as an alternative to the proposed appropriation would lead to the conclusion that the conservation alternative, *i.e.*, installation of the Reclaimed Water System, is the preferred alternative. Accordingly, implementation of the Reclaimed Water System was necessary to meet the requirement of Section 288.7(a)(2).

Regarding subparagraph (a)(3), SCEA determined that recycling and reuse of the WMARSS wastewater through implementation of the Reclaimed Water System was a feasible alternative to new water development. Accordingly, implementation of the Reclaimed Water System was required to meet the requirement of Section 288.7(a)(3).

Finally, in light of the foregoing analysis, SCEA would not have been able to meet the burden of proof established in Section 288.7(b) to demonstrate that no feasible alternative to an appropriation of new water rights existed concerning the Facility, or that a new appropriation was necessary or reasonable.

In conclusion, given the already impaired groundwater resources in McLennan County and the water conservation requirements of Section 11.1271 of the Texas Water Code and Section 288.7 of TCEQ's regulations implementing that statute, installation of the Reclaimed Water System was effectively required to provide a source of water for the Sandy Creek Facility.

2. *Is there an environmental benefit at the site?*

Section 11.31(c)(1) of the Texas Tax Code requires that an applicant for a tax exemption for pollution control property submit information in its application detailing "the anticipated environmental benefits from the installation of the facility, device, or method for the control of air, water, or land pollution." In Box 5 of the Decision Flow Chart, TCEQ has interpreted this provision to require the pollution control property provide an "environmental benefit at the site."

In previous discussions with SCEA, TCEQ has indicated that it believes the Reclaimed Water System does not provide an environmental benefit at the site because the wastewater being treated does not come from the site. This interpretation, however, focuses exclusively on the reduction in volumetric wastewater discharge or the treatment of wastewater. A significant environmental benefit of the Reclaimed Water System, however, is the elimination of the need to withdraw more than 12 million gallons per day from the already heavily stressed groundwater supplies in McLennan County.

(a) **Environmental benefit of avoided groundwater pumping**

The Sandy Creek Facility requires an estimated 12,654,720 gallons of water per day. The first option for obtaining this raw water would be to install groundwater wells at the site to withdraw the volume necessary for the Facility's operations. Withdrawal of this volume of groundwater (or any material volume of groundwater), however, would severely and detrimentally impact the

Trinity Aquifer, a significant source of groundwater in McLennan and 12 other counties, which has already been identified by TCEQ and the Texas Legislature as one of the most critically stressed aquifers in the state.

Conditions facing the Trinity Aquifer are severe. In 2008, TCEQ issued an order designating a five-county area including McLennan County as the Central Texas – Trinity Aquifer – Priority Groundwater Management Area. The designation was based on extensive research and evaluation of the history and condition of the aquifer and the threats facing the aquifer from increasing development in the region. TCEQ studies found that historical pumpage in a 16-county study area has exceeded effective recharge, resulting in declining water levels, removal of water from aquifer storage, and possible deterioration of chemical quality.⁹ The impact of this reduction in groundwater reserves also impacts natural springs, reducing surface water supplies and quality, and impacting species that rely on surface water.¹⁰ The greatest groundwater level declines in the study area are from wells completed in the Trinity Aquifer Hosston Formation in the Waco metropolitan area of McLennan County, with declines of over 400 feet.¹¹ Likewise, the 2007 State Water Plan illustrated that the most significant historical water-level declines in the state have occurred in the Trinity aquifer in the study area centered in McLennan County.¹² Consistent with these historical findings, TCEQ found that present pumping rates in McLennan and 11 surrounding counties is already at or above the estimated long-term sustainable supply.¹³ The TCEQ concluded that McLennan is one of five counties in the study area experiencing or expected to experience critical groundwater problems in the next 25 years.¹⁴

Currently, there are no federal or state agencies with the authority to regulate groundwater in the McLennan County area, and TCEQ determined that local governments cannot provide the type of groundwater regulation required to protect groundwater resources.¹⁵ The task of regulating groundwater resources falls to groundwater conservation districts (“GCDs”), which are charged by statute with the power to enact rules requiring well permits, regulating spacing of wells, and regulating groundwater transfer.¹⁶ However, while a McLennan County GCD was authorized by the 80th Legislature, it has yet to be confirmed by voters. Further, its authorizing legislation requires that the GCD include at least one adjacent county by September 1, 2011 or the GCD will be dissolved.¹⁷ The GCD also must be authorized by voters by September 1, 2012.¹⁸

In response to the critical issues facing the Trinity Aquifer in McLennan County, TCEQ issued an Order on October 21, 2008 establishing the Central Texas – Trinity Aquifer – PGMA to cover McLennan, Bosque, Coryell, Hill and Somervell Counties. Under Section 35.007(a) of the Texas Water Code, PGMA’s are “those areas of the state that are experiencing or that are

⁹ An Order Designating the Central Texas – Trinity Aquifer – Priority Groundwater Management Area and Approving the Executive Director’s Recommendations Regarding Groundwater Conservation Districts in the PGMA, TCEQ Docket No. 2008-0099-MIS; SOAH Docket No. 582-08-1502 (“PGMA Order”), Findings of Fact ¶ 22.

¹⁰ *Id.*, ¶ 35.

¹¹ *Id.*, ¶ 23.

¹² *Id.*, ¶ 23.

¹³ PGMA Order, Findings of Fact ¶ 25.

¹⁴ *Id.*, ¶ 37.

¹⁵ *Id.*, ¶ 40.

¹⁶ *Id.*, ¶ 41.

¹⁷ *Id.*, ¶ 57.

¹⁸ *Id.*, Conclusions of Law – Creation of a District ¶ 7.

expected to experience, within the immediately following 25-year period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.”

The TCEQ’s designation of a PGMA for the area including McLennan County is definitive evidence of the environmental harm that would result if the Sandy Creek Facility installed groundwater wells to supply some or all of the more than 12 million gallons of water per day that are required by the Facility. Thus, by drawing process water from the WMARSS wastewater discharge rather than using groundwater, the Reclaimed Water System is providing a highly significant environmental benefit, which also occurs at the site.

(b) Environmental benefit is occurring “at the site”

There can be no dispute that the environmental benefit produced by eliminating the need for groundwater use is occurring “at the site,” because the site is located in McLennan County, where the most significant groundwater level declines in the state are occurring, according to TCEQ.

While it is true that the environmental benefit provided by the Reclaimed Water System will be shared across the entire PGMA, that cannot be a basis to reject an application. In fact, the authorizing statute (Texas Tax Code § 11.31(1)(c)) does not expressly require a showing that the environmental benefit be “at the site,” let alone exclusively at a site. The requirement that the environmental benefit occur at the site is included in TCEQ’s decision flow chart at 30 T.A.C. § 17.15(a), but nowhere is it required that the environmental benefit be *restricted* to the site itself. Not only would such a restriction be contrary to the purpose of the statute and the goals of the legislature, it would be inconsistent with TCEQ’s own application of the requirement. For example, TCEQ has issued property tax exemptions for the installation of emissions scrubbing equipment at facilities. While this equipment cleans the emissions from the site at which it is installed, the benefit of reduced emissions is experienced across the local area and airshed in which the site is located. In the case of Sandy Creek, the Reclaimed Water System is eliminating the need for groundwater pumping at the site, which benefits both the site and the entire PGMA. Preserving the groundwater resources (as well as surface water resources) provides benefits to the region and at the site itself. While the benefits to the region and the site¹⁹ itself may not be susceptible to precise quantification, there can be no doubt that the benefits exist (and TCEQ’s rules do not require that the benefit be quantifiable²⁰).

Furthermore, in previous cases addressing TCEQ’s imposition of the “at the site” requirement for the environmental benefit, the Executive Director stated that the purpose of the requirement is to “ensure[] that the taxpayers who absorb the pollution tax burden immediately benefit from the pollution being controlled as a result of installation of the equipment. . . . Environmental benefit at the site provides the quid pro benefit to the counties deprived of tax revenues when an item is

¹⁹ The system provides other benefits to the site as well. As discussed above, SCEA intends to treat the Type II effluents it receives to Type I standards. The treatment to Type I standards will meet or exceed other rules and standards and provide benefits to the site. Additionally, potential human exposure to constituents typically found in Type II effluent from fugitive emissions will be further limited by the treatment to Type I standards.

²⁰ See, e.g., *Executive Director’s Response Brief to Valero Refining - Texas, L.P., Diamond Shamrock Refining Company, L.P., and the Premcor Refining Group, Inc.’s Appeal of the Executive Director’s Negative Use Determinations*, TCEQ Docket Numbers 2007-0732-MIS-U through 2007-0740-MIS-U (2007) at 24 (discussing the origin of the TCEQ’s environmental benefit “at the site” requirement and noting that the Executive Director heeded comments to remove a qualifier that would have required the benefits at the site to be “quantifiable”).

taken off the tax roll as a result of a positive use determination.”²¹ The Executive Director’s statement confirms that the benefit must not be restricted to the site; reading it otherwise would deprive those taxpayers in the vicinity of the site from the very benefit that the requirement is designed to ensure. The benefits provided by the Sandy Creek Facility’s use of reuse of wastewater from WMARSS in place of raw water from the region’s critically stressed aquifer, which prevents further degradation of the quality and availability of the primary source of drinking water for McLennan County as well as contributing to further subsidence in the region, provides precisely the type of immediate and significant benefit at the site that TCEQ’s rule requires.

The broad environmental benefits provided by the Reclaimed Water System both at the Sandy Creek Facility itself and to the Central Texas – Trinity Aquifer PGMA generally, are precisely the sort of environmental benefit that provides significant value to the State of Texas and for which a property tax exemption should be granted.

IV. CONCLUSION

In conclusion, SCEA believes that the Reclaimed Water System falls squarely within the parameters of Item W-58 of the ECL, Water Recycling Systems, because it is an installed system that reuses wastewater in order to reduce the amount of new water used as process water or make-up water at the Facility. SCEA believes that no valid, legal basis exists to disregard the plain language of Item W-58 and limit its applicability solely to systems that reuse wastewater generated exclusively on-site. Accordingly, the Application is appropriately classified as a Tier I application under Item W-58.

As required by TCEQ’s flowchart, published at 30 T.A.C. § 17.15(a), the Reclaimed Water System meets or exceeds an adopted environmental rule or regulation and provides an environmental benefit at the site. The adopted rules being met or exceeded include, without limitation, the water conservation requirements of Texas Water Code Section 11.1271 and 30 T.A.C. Chapter 288 (specifically, Section 288.3 and 288.7). The Reclaimed Water System meets or exceeds these rules because it implements a reasonable, technological alternative to reduce consumption of new water at the site by reusing wastewater from WMARSS, thereby eliminating the need to obtain or draw upon a surface water right. The Reclaimed Water System provides a significant environmental benefit at the site by also eliminating the need to withdraw massive quantities of groundwater to meet the Facility’s needs. In light of the significant depletion of the Trinity Aquifer already occurring at the site and in the surrounding region, which has led to the designation of the Central Texas – Trinity Aquifer – Priority Groundwater Management Area, use of groundwater rather than reclaimed water avoids inflicting further pressure on an already critically stressed groundwater supply.

In light of the above, SCEA believes that the Application clearly meets the requirements of Section 11.31 of the Texas Property Tax Code.

We very much appreciate the opportunity to present this additional information in support of our exemption application. If the Agency continues to have any questions or concerns regarding our application, we would appreciate the opportunity to meet personally with you and your staff. We would be pleased to meet at any time that is convenient for you.

²¹ *Id.* at 25.

Mr. Minor Hibbs
TCEQ
August 6, 2009
Page 11

Thank you again for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rick Barton".

Rick Barton
Sr. Director – Property Tax

Receipt to Follow

Received and Original
Forwarded to Dept

FEB 20 2009

Sandy Creek Energy Associates, L.P.
1000 Louisiana Street, Suite 5800
Houston, TX 77002

TCEQ/Revenue Section

February 17, 2009

TCEQ - Cashiers Office MC-214
Tax Relief for Pollution Control Property Program
P.O. Box 13088
Austin, Texas, 78711-3088

Subject: Filing of Form TCEQ-00611 (Application for Use Determination for Pollution Control Property) – Sandy Creek Energy Associates LP et al - **Revised Submittal**

Dear Sir or Madam:

Sandy Creek Energy Associates LP et al (“Sandy Creek”) received a Notice of Deficiency (“NOD”) from the Texas Commission on Environmental Quality (“TCEQ”) dated January 29, 2009 requesting additional information regarding Use Determination Application 12874 (the “Application”). As you know, this application was submitted by Sandy Creek for property tax exemption of pollution control property at the Sandy Creek Power Generation Facility (the “Facility”) located in McLennan County, Texas. In the NOD, the TCEQ requested the following additional information:

Issue 1: *“The application contains both Tier I and Tier II properties and contains various non-integrated equipment under a single application. However, under 30 TAC 17.10(b), an application can cover only individual items or integrated units installed for a common purpose. Additionally, program policy was changed last spring to allow on a single tier level in a single application. Therefore, the application will need to be divided into several different applications. Since there is only one Tier II item in the application, each additional application will need to cover one Tier I item or integrated unit. Separate fees of \$150.00 each are required for each of the Tier I applications.”*

Response 1: Sandy Creek has divided the original Application into eleven (11) applications (the “Applications”) for a revised submittal for property tax exemption per 30 TAC §17. The first application, SC-2008-1 (revised), includes only the Tier II soot blowing equipment. As noted in the NOD, it is not necessary to include an additional fee with this revised application. Use Determination Application 12873 (SC-2008-2) was declared to be administratively complete by the TCEQ and is not included in this revised submittal.

The Tier I pollution control property was divided into ten (10) Tier I Applications for the Facility. The Applications, SC-2008-3, SC-2008-4, SC-2008-5, SC-2008-6, SC-2008-7, SC-2008-8, SC-2008-9, SC-2008-10, SC-2008-11, and SC-2008-12, include property listed in Part A of the Equipment and Categories List ("ECL"). An application fee is required to be submitted along with each of the Tier I Applications, and the fee for each of the Tier I Applications is \$150 for a total fee of \$1,500.

Issue 2: *"The application requests use determinations for land used for four different environmental purposes. When submitting a Tier I application for each type of the land, the square footage must be provided. Please note that the application for the AQCS land can be combined with the AQCS equipment itself as the land and system are an integrated unit. This is also true for the wastewater land and treatment system."*

Response 2: Sandy Creek has included the square footage of land for each of the qualifying land costs and included the land costs in the appropriate Tier I applications.

Issue 3: *"When providing an application for the environmental paving, the square footage of the concrete paving and of the asphalt paving must be specified. In the diagram of the paving in the application, it appears that the area of the AQCS equipment is included. However, since this area is not a roadway, that part is not appropriate to request as environmental paving. There also appears to be overlap with the land shown for wastewater ponds, storm water ponds, and the ash landfill; please ensure that the diagrams show the area(s) correctly in each application."*

Response 3: Sandy Creek has added the total square footage of environmental paving to the application. A clearer diagram has been provided that shows that the paving surrounds the AQCS but does not include the area of the AQCS. The access roads to and around the ponds and landfill are also shown.

Issue 4: *"Under Item #7 of the application (page 4), various rules and laws are cited. When submitting additional applications, please only list the laws and rules that are applicable to the item or integrated unit in the specific application. Please note that the permit listed in the application is not a rule or law and should not be used."*

Response 4: Sandy Creek has deleted the reference to the permit in the Applications and has listed only the applicable legislation in each of the eleven (11) applications.

Issue 5 - *"In the entry for asbestos removal and abatement, a regulation from the federal Occupational Safety and Health Administration (OSHA) is cited. Please note that OSHA regulations are for worker safety, not environmental protection, and do not qualify items for property tax exemptions under this program. No environmental rules or laws for asbestos were noted in the application."*

Response 5: Sandy Creek has omitted the OSHA legislative reference above and added legislation from the Code of Federal Regulations section for environmental protection and legislation from the Texas Administrative Code that are applicable for asbestos removal.

Issue 6: *"In the entry for the raw water pre-treatment system the only ECL number listed is W-58. However, W-58 is for water recycling systems, and the application indicates that your system uses effluent without recycling. Additionally, the system is used to produce water for production purposes, so that this system is for production rather than environmental purposes."*

Response 6: Sandy Creek believes that the raw water treatment system qualifies as a pollution control item under ECL Item Number W-58. The ECL states that Item Number W-58 includes the following, *"Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or amount of the new water used as process or make-up water including Zero Discharge Sources"* (emphasis added). The raw water pre-treatment system treats grey water (effluent from the Waco Metropolitan Area Regional Sewage System) in order to reduce the amount of new water that the Facility uses as process or make-up water. In order for the pre-treated raw water to be used in the boiler, cooling towers, or service water system, additional treatment, including demineralization, polishing, and corrosion inhibitor addition, must occur. The additional treatment equipment and associated costs are not included in the application.

Issue 7: *"The application has an entry for secondary containment, referencing ECL number S-6. However, there is no indication in the discussion or in the diagrams of the facility that liquids are stored that require secondary containment nor of where the secondary containment is located. To qualify under S-6, the secondary containment must be for storage of liquids. The new application should indicate the location."*

Response 7: Sandy Creek has clarified the details of the description for the secondary containment to indicate the locations of secondary containment and the fluids that are contained therein.

Pursuant to Title 30 of Chapter 17 of the Texas Administrative Code, the Applications have been prepared using the TCEQ Application for Use Determination for Pollution Control Property (TCEQ-00611). Submission of these applications is necessary to comply with the NOD, as a required process step in the TCEQ's pollution control certification process for tax exemption of certain assets used in pollution control capacities within the Facility. Enclosed is a check in the amount of \$1,500 for the ten (10) additional Tier I applications.

The Applications can be summarized as follows:

| <u>Application Tracking Number</u> | <u>Property</u> | <u>ECL Number(s)</u> | <u>Application Amount</u> |
|---|---|---------------------------|---------------------------|
| Sandy Creek Power Generation Facility – Soot Blowing | | | |
| | <i>Property</i> | | |
| SC-2008-1 | Intelligent Soot Blowing Equipment | Tier II | \$ 16,076,280 |
| | | Subtotal SC-2008-1 | \$ 16,076,280 |
| Sandy Creek Power Generation Facility – Particulate Emissions | | | |
| | <i>Land</i> | | |
| SC-2008-3 | Land Dedicated to the Air Quality Control System (AQCS) | A-1, A-133, A-168 | \$ 18,545 |
| | <i>Property</i> | | |
| SC-2008-3 | Air Quality Control System (AQCS) | A-1, A-133, A-168 | 250,498,861 |
| SC-2008-3 | Concrete Exhaust Stack | A-182 | 16,296,833 |
| SC-2008-3 | Continuous Emissions Monitoring System (CEMS) | A-61 | 2,105,469 |
| SC-2008-3 | Fly Ash Handling System | A-6, S-21, S-22 | 4,542,940 |
| | | Subtotal SC-2008-3 | \$273,462,648 |
| Sandy Creek Power Generation Facility – NO_x Emissions | | | |
| | <i>Property</i> | | |
| SC-2008-4 | Low NO _x Burners & Over-Fired Air System | A-88, A-89 | \$ 14,084,199 |
| SC-2008-4 | Selective Catalytic Reduction (SCR) System | A-80 | 87,722,721 |
| | | Subtotal SC-2008-4 | \$101,806,920 |
| Sandy Creek Power Generation Facility – Environmental Paving | | | |
| | <i>Property</i> | | |
| SC-2008-5 | Environmental Paving | M-8 | \$ 8,936,598 |
| | | Subtotal SC-2008-5 | \$ 8,936,598 |
| Sandy Creek Power Generation Facility – Coal Dust Suppression | | | |
| | <i>Property</i> | | |
| SC-2008-6 | Coal Dust Suppression | A-6 | \$ 5,336,880 |
| | | Subtotal SC-2008-6 | \$ 5,336,880 |
| Sandy Creek Power Generation Facility – Asbestos Removal | | | |
| | <i>Property</i> | | |
| SC-2008-7 | Asbestos Removal and Abatement | M-2 | \$ 394,198 |
| | | Subtotal SC-2008-7 | \$ 394,198 |
| Sandy Creek Power Generation Facility – Raw Water Pre-Treatment | | | |
| | <i>Property</i> | | |
| SC-2008-8 | Raw Water Pre-Treatment System | W-58 | \$ 50,373,792 |
| | | Subtotal SC-2008-8 | \$ 50,373,792 |

Sandy Creek Power Generation Facility – Wastewater

| | | | | |
|-----------|--|---------------------------|-----------|-------------------|
| | <i>Land</i> | | | |
| SC-2008-9 | Land Dedicated to the Wastewater Collection and Treatment System | W-57, W-66 | \$ | 107,810 |
| | <i>Property</i> | | | |
| SC-2008-9 | Wastewater Collection and Treatment System | W-57, W-66 | | 24,088,458 |
| SC-2008-9 | Cathodic Protection | M-21, T-31 | | 377,048 |
| | | Subtotal SC-2008-9 | \$ | 24,573,316 |

Sandy Creek Power Generation Facility – Stormwater

| | | | | |
|------------|--|----------------------------|-----------|-------------------|
| | <i>Land</i> | | | |
| SC-2008-10 | Land Dedicated to the Stormwater Conveyance and Containment System | W-57, W-65 | \$ | 48,145 |
| | <i>Property</i> | | | |
| SC-2008-10 | Stormwater Conveyance and Containment System | W-57, W-65 | | 11,320,603 |
| | | Subtotal SC-2008-10 | \$ | 11,368,748 |

Sandy Creek Power Generation Facility – Solid Waste

| | | | | |
|------------|------------------------------------|----------------------------|-----------|-------------------|
| | <i>Land</i> | | | |
| SC-2008-11 | Land Dedicated to the Ash Landfill | S-20 | \$ | 644,682 |
| | <i>Property</i> | | | |
| SC-2008-11 | Bottom Ash Handling System | S-1, S-21 | | 5,815,028 |
| SC-2008-11 | Ash Landfill | S-20 | | 17,332,847 |
| | | Subtotal SC-2008-11 | \$ | 23,792,557 |

Sandy Creek Power Generation Facility – Secondary Containment

| | | | | |
|------------|-----------------------------|----------------------------|-----------|------------------|
| | <i>Property</i> | | | |
| SC-2008-12 | Secondary Spill Containment | S-6 | \$ | 2,720,535 |
| | | Subtotal SC-2008-12 | \$ | 2,720,535 |

TOTAL \$518,842,472

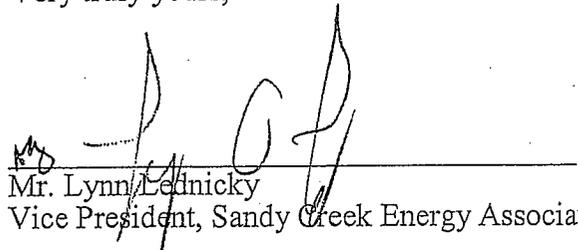
Texas Commission on Environmental Quality
Tax Relief for Pollution Control Property Program
February 17, 2009
Page 6

Please send a copy of the completed property tax exemption Use Determinations to the following address:

Ms. Amy Jolley
Sandy Creek Energy Associates LP et al
1000 Louisiana, Suite 5800
Houston, Texas 77002

If you have any questions regarding the Applications or the information supplied within the Applications, please contact me at (713) 767-0464.

Very truly yours,


Mr. Lynn Lednicky
Vice President, Sandy Creek Energy Associates, L.P.

Enclosures

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution
January 29, 2009

SANDY CREEK ENERGY ASSOCIATES LP ET AL
AMY JOLLEY
1000 LOUISIANA, #5800
HOUSTON TX 77002-

This letter is to inform you that during the administrative review of Use Determination Application, 12874, the reviewer has determined that additional information is required. This application was filed for the following facility:

SANDY CREEK POWER GENERATION FACILITY
RATTLESNAKE RD
RIESEL TX 76682

The additional information required is:

Issue 1: The application contains both Tier I and Tier II properties and contains various non-integrated equipment under a single application. However, under 30 TAC 17.10(b), an application can cover only individual items or integrated units installed for a common purpose. Additionally, program policy was changed last spring to allow on a single tier level in a single application. Therefore, the application will need to be divided into several different applications. Since there is only one Tier II item in the application, each additional application will need to cover one Tier I item or integrated unit. Separate fees of \$150.00 each are required for each of the Tier I applications.

Issue 2: The application requests use determinations for land used for four different environmental purposes. When submitting a Tier I application for each type of land, the square footage must be provided. Please note that the application for the AQCS land can be combined with the AQCS equipment itself as the land and system are an integrated unit. This is also true for the wastewater land and treatment system.

Issue 3: When providing an application for the environmental paving, the square footage of concrete paving and of asphalt paving must be specified. In the diagram of the paving in the application, it appears that the area for the AQCS equipment is included. However, since this area is not a roadway, that part is not appropriate to request as environmental paving. There also appears to be overlap with the land shown for wastewater ponds, storm water pond, and the ash landfill; please ensure that the diagrams show the area(s) correctly in each application.

Issue 4: Under Item #7 of the application (page 4), various rules and laws are cited. When submitting additional applications, please only list the laws and rules that are applicable to the item or integrated unit in the specific application. Please note that the permit listed in the application is not a rule or law and should not be used.

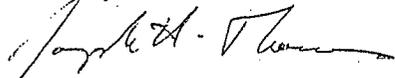
Issue 5: In the entry for asbestos removal and abatement, a regulation from the federal Occupational Safety and Health Administration (OSHA) is cited. Please note that OSHA regulations are for worker safety, not environmental protection, and do not qualify items for property tax exemptions under this program. No environmental rules or laws for asbestos removal were noted in the application.

Issue 6: In the entry for the raw water pre-treatment system, the only ECL number listed is W-58. However, W-58 is for water recycling systems, and the application indicates that your system uses effluent without any recycling. Additionally, the system is used to produce water for production purposes, so that this system is for production rather than environmental purposes.

Issue 7: The application has an entry for secondary containment, referencing ECL number S-6. However, there is no indication in the discussion or in the diagrams of the facility that liquids are stored that require secondary containment nor of where the secondary containment is located. To qualify under S-6, the secondary containment must be for storage of liquids. The new application should indicate the location.

Please provide the missing and/or incomplete information as soon as possible. As per 30 TAC 17.12(2)(A) the applicant must respond to a notice of deficiency (NOD) by providing the additional information required within 30 days of receipt of the NOD or the application will be returned. Once the additional information has been received the administrative review of this application will resume. If you have any questions or require any assistance in developing the additional required information please contact the Tax Relief for Pollution Control Property Program at (512) 239-0012. Your response may be faxed to 512/239-5768, electronically mailed to txrelief@tceq.state.tx.us, or sent by U.S. Mail.

Sincerely,



Joseph Thomas
Tax Relief for Pollution Control Property Program

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 19, 2009

SANDY CREEK ENERGY ASSOCIATES LP ET AL
AMY JOLLEY
1000 LOUISIANA, #5800
HOUSTON TX 77002

This letter is to inform you that during the administrative review of Use Determination Application 13256 the reviewer determined that the following information is missing:

The application does not provide sufficient information on the components of the reclaimed water system. Please provide a detailed list of all the components that make up this system, as well as a process flow diagram showing this and related systems from the inlet pipeline to the discharge point for wastewater from the facility (if any). Please label each piece of equipment identified on the process flow diagram.

Please provide the missing and/or incomplete information as soon as possible. As per 30 TAC 17.12(2)(A) the applicant must respond to a notice of deficiency by providing the additional information required within 30 days of receipt of the notice of deficiency or the application will be returned. Once the additional information has been received the administrative review of this application will resume. If you have any questions or require any assistance in developing the additional required information please contact the Tax Relief for Pollution Control Property Program at (512) 239-0012. Your response may be faxed to 512/239-5678, electronically mailed to txrelief@tceq.state.tx.us, or sent by U.S. Mail to:

Tax Relief for Pollution Control Property Program MC110
PO Box 13087
Austin TX 78711-3087

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Thomas".

Joseph Thomas
Tax Relief for Pollution Control Property Program

From: "Barton, Rick" <Rick.Barton@dynegey.com>
To: "JOTHOMAS@tceq.state.tx.us" <JOTHOMAS@tceq.state.tx.us>
Date: 4/2/2009 4:25 P.M.
Subject: FW: Sandy Creek Reclaimed Water System Use Determination Application
Attachments: TCEQ ReclaimWtr Permit 11071-001.pdf

Joe, the note below came back to me, let me know if you receive this.

Rick Barton

From: Barton, Rick
Sent: Thursday, April 02, 2009 4:14 PM
To: Joe Thomas (jthomas@tceq.state.tx.us.)
Cc: Jolley, Amy; Baker, Don; Markwick, Harry J; Tuite, Patricia (US - Pittsburgh)
Subject: FW: Sandy Creek Reclaimed Water System Use Determination Application

Joe,

We appreciated the opportunity to discuss the Sandy Creek Power Generation Facility ("Sandy Creek") reclaimed water system (designated as the raw water pre-treatment system in the Use Determination application) with you during our call on Tuesday. Based upon this most recent conversation and our previous conversations, we believe that it is important for us to reiterate and emphasize that the equipment that has been delineated in the Use Determination application for the reclaimed water system only includes the equipment above and beyond the typical raw water treatment equipment that would be utilized by a coal-fired electric generation facility to produce water for process purposes. The equipment included in the Use Determination Application includes the necessary pumps and piping to transport the wastewater from the Waco Metropolitan Area Regional Sewage System ("WMARSS") to Sandy Creek and the equipment installed at Sandy Creek that is required to pre-treat the water prior to its use for any purpose. A storage pond that is used to store the wastewater on the Sandy Creek site prior to pre-treatment and a pre-treated water surge tank are included as part of the system. The application does not include the multi-media filters, reverse osmosis units, mixed bed demineralization equipment and associated tanks and piping used to further treat the water to process standards.

The equipment included in the application clarifies, disinfects, and neutralizes wastewater from WMARSS. The water supplied by WMARSS is classified as Type II effluent and under Reclaimed Water Authorization No. R11071-001, Sandy Creek treats that wastewater to Type I effluent standards in order to utilize the reclaimed water as a raw water source in lieu of using ground water or surface waters of the state. As you are aware, these resources would be heavily impacted by the water requirements at Sandy Creek and the use of the ground water or surface waters would have a negative environmental impact for the surrounding community. In order to receive, treat, store, and utilize the wastewater, Sandy Creek is subject to numerous treatment and storage requirements as delineated in Reclaimed Water Authorization No. R11071-001. As a named user of the reclaimed water, Sandy Creek must comply with Limitation I(f) of the authorization which states:

"Unless otherwise provided in this authorization, there shall be no off-site discharge, either airborne or surface runoff, of reclaimed water from the user's property except to a water treatment system or wastewater treatment collection system unless the reclaimed water user applies for and obtains a permit from the commission which authorizes discharge of the water."

Sandy Creek must comply with these requirements in order to use the wastewater as a raw water source. For your use and convenience, we have attached a copy of Reclaimed Water Authorization No. R11071-001 to this email.

During preparation of the Use Determination application for this equipment, Sandy Creek referenced the TCEQ Use Determination Guidance, specifically Equipment and Categories List ("ECL") Item No. W-58 for Water Recycling Systems, as the basis for the application. We selected this ECL item number as we believed that it best fit the description for the reclaimed water system at Sandy Creek. ECL Item No. W-58 includes:

"Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems." (Emphasis Added.)

In the Use Determination application, we originally emphasized the ECL Item No. W-58 reference to grey water, however you have since directed us to Title 30 of the Texas Administrative Code, Part 1, Chapter 210, Subchapter F, Rule 210.82 ("30 TAC 210.82") that defines the types of wastewater that qualifies as grey water in Texas. We concur that the wastewater from WMARSS would not be considered grey water, however, we do believe that it would be considered "reused wastewater" and therefore, would still be included in ECL Item No. W-58. In researching the TAC, we found the word "reuse" defined in 30 TAC 288.1. In that Rule, "reuse" is defined as:

"The authorized use for one or more beneficial purposes of use of water that remains unconsumed after the water is used for the original purpose of use and before that water is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water."

By receiving, treating, storing, and utilizing the wastewater from WMARRS under Reclaimed Water Authorization No. R11071-001 for a beneficial use in lieu of WMARRS discharging the wastewater into a watercourse of the state, we believe that Sandy Creek is "reusing" the wastewater received from WMARRS. In previous discussions, you indicated that the TCEQ's interpretation of ECL Item W-58 is applicable only to systems that reuse wastewater generated on site. In reviewing the language of ECL Item No. W-58, we believe that interpretation focuses on the portion of the description that states "...in order to reduce the amount of a facility's discharge" and disregards the continuance of the description that states "...or the amount of new water used as process or makeup water...". We have not found any language within the Use Determination Guidance or Texas Administrative Code that would specifically suggest that ECL Item No. W-58 is limited to the reuse of wastewater generated on-site. If there is some guidance or code language that we have overlooked that would specifically limit ECL Item No. W-58 to only on site recycled water, we would offer to amend the Use Determination application to a Tier II application.

During our previous discussions, I believe that you indicated that there is no permit or authorization required under 30 TAC 288 and therefore, 30 TAC 288 does not mandate the reuse of the wastewater.

30 TAC 288 does include in the definition of "reuse" the condition of "authorized use". The authorization to use the wastewater occurs under 30 TAC 210 which establishes the general provisions for the use of reclaimed water. 30 TAC 210.2 states:

"The purpose of this chapter is to establish general requirements, quality criteria, design, and operational requirements for the beneficial use of reclaimed water which may be substituted for potable water and/or raw water. As defined and specified in this chapter, the requirements must be met by producers, providers, and/or users of reclaimed water. Specific use categories are defined with corresponding reclaimed water quality requirements. These criteria are intended to allow the safe utilization of reclaimed water for conservation of surface and ground water; to ensure the protection of public health; to protect ground and surface waters; and to help ensure an adequate supply of water resources for present and future needs."

30 TAC 210.2 appears to be a more pertinent reference for the Sandy Creek reclaimed water system and we are amenable to revising the Use Determination application to reference that rule. In our opinion, the legislative intent of 30 TAC 288, 30 TAC 210, and ECL Item No. W-58 is to promote the beneficial reuse of wastewater or other reclaimed water in order to conserve and protect the surface waters and ground water of the state. We believe that the reclaimed water system at Sandy Creek is fulfilling that legislative intent by reusing the wastewater from WMARRS, in accordance with the provisions of Reclaimed Water Authorization No. R11071-001, in order to provide an environmental benefit to the community by minimizing impact to the local surface waters and ground water.

30 TAC 17.4 states:

"To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet or exceed laws, rules, or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision of Texas, for the prevention, monitoring, control, or reduction of air, water, or land pollution."

Based upon the above applicability statement, I am optimistic that the information contained within this email will enable the TCEQ to issue a positive use determination for the reclaimed water system at Sandy Creek based on the existing application or, revised application if necessary. If you have any additional questions or would like to discuss the system in greater detail, please contact me at the telephone number or email below.

Regards,

Rick Barton



Authorization No. R 11071-001
This authorization supersedes
and replaces R 1107-001
approved October 15, 2004

AUTHORIZATION FOR RECLAIMED WATER

Producer: Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
P.O. Box 2570
Waco, Texas 76702-2570

Providers: City of Waco
P.O. Box 2570
Waco, Texas 76702-2570

Users: Sandy Creek Energy Associates
400 Chasterfield Center, Suite 110
St. Louis, Missouri 63017

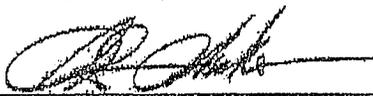
Location: The wastewater plant site is located on the south bank of the Brazos River, approximately 4.5 mile downstream from the crossing of Interstate Highway 35 and the Brazos River in McLennan County, Texas.

Authorization: Reclaimed water from the WMARSS's Water Treatment Plant (Permit 11071-001) to be used for cooling tower make-up water, boiler makeup water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas and coal piles; and other Type II uses. Sandy Creek Energy Associates is authorize to treat the Type II effluent to Type I for fire protection within their facility. The service area is shown on Attachment A.

This authorization contains the conditions that apply for the uses of the reclaimed water. The approval of a reclaimed water use project under Chapter 210 does not affect any existing water rights. If applicable, a reclaimed water use authorization in no way affects the need of a producer, provider and/or user to obtain a separate water right authorization from the commission.

This action is taken under authority delegated by the Executive Director of the Commission on Environmental Quality.

Issued Date: December 11, 2006



For the Commission

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
Authorization No. R 11071-001
Page 2

Limitations: The authorization is subjected to the following requirements:

I. General Requirements.

- (a) No water treatment plant operator (producer) shall transfer to a user reclaimed water without first notifying the commission.
- (b) Irrigation with untreated wastewater is prohibited.
- (c) There shall be no nuisance conditions resulting from the distribution, the use, and/or storage of reclaimed water.
- (d) Reclaimed water shall not be utilized in a way that degrades ground water quality to a degree adversely affecting its actual or potential uses.
- (e) Reclaimed water managed in ponds for storage must be prevented from discharge into waters in the state, except for discharges directly resulting from rainfall events or in accordance with a permit issued by the commission. All other discharges are unauthorized. If any unauthorized overflow of a holding pond occurs causing discharge into or adjacent to waters in the state, the user or provider, as appropriate, shall report any noncompliance. A written submission of such information shall also be provided to the commission regional office and to the Austin Office, Water Enforcement Section (MC-149), within five (5) working days of becoming aware of the overflow. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the anticipated time it is expected to continue; and, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- (f) Unless otherwise provided in this authorization, there shall be no off-site discharge, either airborne or surface runoff, of reclaimed water from the users property, except to a water treatment system or wastewater treatment collection system unless the reclaimed water user applies for and obtains a permit from the commission which authorizes discharge of the water.
- (g) Signs in both English and Spanish shall be posted at storage areas, hose bibs and faucets reading "Reclaimed Water, Do Not Drink" or similar warnings. Alternately, the area may be secured to prevent access by the public.
- (h) Reclaimed water piping shall be separated from potable water piping when trenched by a distance of at least nine feet. Exposed piping shall be painted purple and all piping shall be marked in accordance with 30 Texas Administrative Code (TAC) 210.25(e).
- (i) The design of distribution systems which will convey reclaimed water to a user shall be approved by the executive director. Materials shall be submitted for approval by the executive director in accordance with the Texas Engineering Practice Act (Article 3271a, Vernon's Annotated Texas Statutes). The plans and specifications for the distribution systems authorized by this authorization must be approved pursuant to state law, and failure to secure approval before commencing construction of such works or making a transfer of reclaim water therefrom is a violation of this authorization, and each day of a transfer is an additional violation until approval has been secured.
- (j) Nothing in this authorization modifies any requirements of the Texas Department of Health found in Title 25 TAC, Chapter 337.
- (k) Major changes from a prior notification for use of reclaimed water must be approved by the executive director. A major change includes:

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
 Authorization No. R 11071-001
 Page 3

- (1) a change in the boundary of the approved service area not including the conversion of individual lots within a subdivision to reclaimed water use;
 - (2) the addition of a new producer;
 - (3) major changes in the intended use, such as conversion from irrigation of a golf course to residential irrigation; or
 - (4) changes from either Type I or Type II uses to the other.
- (1) The reclaimed water producer and user shall maintain on the sites a current operation and maintenance plan. The operation and maintenance plan which shall contain, as a minimum the following:
- (1) a copy of signed contracts between the user, producer and provider and;
 - (2) a labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines;
 - (3) the measures that will be implemented to prevent unauthorized access to reclaimed water facilities (eg., secured valves);
 - (4) procedures for monitoring reclaimed water;
 - (5) a plan for how reclaimed water use will be scheduled to minimize the risk of inadvertent human exposure;
 - (6) schedules for routine maintenance;
 - (7) a plan for worker training and safety; and
 - (8) contingency plan for system failure or upsets.

II. Storage Requirements for Reclaimed Water.

- (a) All initial holding ponds designed to contain Type II effluent, located in areas in the state not identified as a vulnerable area as defined by a rating of 110 or greater on the statewide "Ground-Water Pollution Potential - General, Municipal, and Industrial Sources" (DRASTIC) map shall conform to the following requirements:
- (1) The ponds, whether constructed of earthen or other impervious materials, shall be designed and constructed so as to prevent groundwater contamination;
 - (2) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks;
 - (3) All soil liners must be of compacted material having a permeability less than or equal to 1×10^{-4} cm/sec, at least 24 inches thick, compacted in lifts no greater than 6 inches each;
 - (4) Synthetic membrane linings shall have a minimum thickness of 40 mils. In situ liners at least 24 inches thick meeting a permeability less than or equal to 1×10^{-4} cm/sec are acceptable alternatives;
 - (5) Certification shall be furnished by a Texas Registered Professional Engineer that the pond lining meets the appropriate criteria prior to utilization of the facilities; and
 - (6) Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.

Cities of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
 Authorization No. R 11071-001
 Page 4

- (7) An alternative method of pond lining which provides equivalent or better water quality protection than provided under this section may be utilized with the prior approval of the executive director.
- (8) A specific exemption may be obtained from the executive director if, after the review of data submitted by the reclaimed water provider or user, as appropriate, the executive director determines containment of the reclaimed water is not necessary, considering:
- (A) soil and geologic data, and ground water data, including its quality, use, quantity and yield; and
- (B) adequate demonstration that impairment of ground water for its actual or potential use will be prevented.

(b) Reclaimed water may be stored in leak-proof, fabricated tanks.

III. Specific Uses and Quality Standards for Reclaimed Water.

Numerical parameter limits pertaining to specific reclaimed water use categories are contained in this section. These limits apply to reclaimed water before discharge to initial holding ponds or a reclaimed water distribution system. It shall be the responsibility of the reclaimed water producer to establish that the reclaimed water meets the quality limits at the sample point for the intended use in accordance with the monitoring requirements identified in Section IV relating to Sampling and Analysis.

(a) ~~Reclaimed Water Use, Type II~~ where the public would not likely come in contact with the reclaimed water. The following use is allowed by this authorization: cooling tower make-up water, quench water for ash produced in the boiler, makeup water for air pollution control equipment, and other process water uses; service water for cleaning floors and equipment; irrigation; water for dust suppression on road, solid waste disposal areas and coal piles; and other Type II uses.

(b) The following conditions apply to this type of use of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use, reclaimed water on a 30-day average shall have a quality of:

| | |
|--------------------------------|------------------|
| CBOD ₅ | 15 mg/l |
| Fecal Coliform | 200 CFU/100 ml** |
| Fecal Coliform (not to exceed) | 800 CFU/100 ml** |

- * geometric mean
 ** single grab sample

IV. Sampling and Analysis.

The reclaimed water producer shall sample the reclaimed water prior to distribution to user to assure that the water quality is in accord with the intended contracted use. Analytical

Offices of Waco, Bellmead, Lacy-Lakeview, Robinson, and Woodway
Authorization No. R. 11071-001
Page 5

methods shall be in accord with those specified in 30 TAC Chapter 319 (relating to Monitoring and Reporting). The minimum sampling and analysis frequency for reclaimed water is weekly.

The monitoring shall be done after the final treatment unit. These records shall be maintained on a monthly basis and be available at the plant site for inspection by authorized representatives of the Commission for at least five years.

V. Record keeping and Reporting.

- (a) The reclaimed water provider and user shall maintain records on site for a period of five years.
- (1) Records to be maintained by the provider include:
- (A) copies of notifications made to the commission concerning reclaimed water projects.
 - (B) as applicable, copies of contracts made with each reclaimed water user (this requirement does not include reclaimed water users at residences that have separate distribution lines for potable water).
 - (C) records of volume of water delivered to each reclaimed water user per delivery.
 - (D) reclaimed water quality analyses.
- (b) The reclaimed water producer shall report to the commission on a monthly basis the following information on forms furnished by the executive director. Such reports are due to the commission by the 20th day of the month following the reporting period.
- (1) volume of reclaimed water delivered to provider.
 - (2) quality of reclaimed water delivered to a user or provider reported as a monthly average for each quality criteria except those listed as "not to exceed" which shall be reported as individual analyses.
- (c) Monitoring requirements contained in the authorization are suspended from the effective date of the authorization until the reclaim water is transferred. The provider shall provide written notice to the Austin Office, Registration, Review & Reporting Division, Water Quality Application Team (MC 161) and the Region 9 Office of the Commission thirty (30) days prior to transfer.

VI. Transfer of Reclaimed Water.

Reclaimed water transferred from a provider to a user shall be done on a demand only basis. This means that the reclaimed water user may refuse delivery of such water at any time. All reclaimed water transferred to a user must be of at least the treatment quality specified in Section IV. Transfer shall be accomplished via pipes or tank trucks.

VII. General Prohibitions.

Except for on-channel ponds, storage facilities for retaining reclaimed water prior to use shall not be located within the floodway and shall be protected from the 100-year flood.

VIII. Restrictions.

This authorization does not convey any property right and does not grant any exclusive privilege.

Cities of Waco, Bellmead, Lady-Lakeview, Robinson, and Woodway
 Authorization No. R 11071-001
 Page 6

IX. Responsibilities and Contracts.

- (a) The producer of reclaimed water will not be liable for misapplication of reclaimed water by users, except as provided in this section. Both the reclaimed water provider and user have, but are not limited to, the following responsibilities:
- (1) The reclaimed water producer shall:
 - (A) transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user for the specified use;
 - (B) sample and analyze the reclaimed water and report such analyses in accordance with Sections IV and V relating to Sampling and Analysis and Record keeping and Reporting, respectively; and
 - (C) notify the executive director in writing within five (5) days of obtaining knowledge of reclaimed water use not authorized by the executive director's reclaimed water use approval.
 - (2) The reclaimed water provider shall:
 - (A) assure construction of reclaimed water distribution lines/systems in accordance with 30 TAC Chapter 317 and in accordance with approved plans and specifications;
 - (B) transfer reclaimed water of at least the minimum quality required by this chapter at the point of delivery to the user for the specified use;
 - (C) notify the executive director in writing within five (5) days of obtaining knowledge of reclaimed water use not authorized by the executive director's reclaimed water use approval; and
 - (D) not be found in violation of this chapter for the misuse of the reclaimed water by the user if transfer of such water is shut off promptly upon knowledge of misuse regardless of contract provisions.
 - (3) The reclaimed water user shall:
 - (A) use the reclaimed water in accordance with this authorization; and
 - (B) maintain and provide records as required by Section III relating to Record keeping and Reporting.

X. Enforcement.

If the producer, provider and/or user fails to comply with the terms of this authorization, the executive director may take enforcement action provided by the Texas Water Code, §§26.019 and 26.136.

XI. Special Provisions.

The Sandy Creek Energy Associates is authorize to treat the Type II effluent to Type I that are outline under 30 TAC Chapter 210 for fire protection within their facility.

XII. Standard Provisions.

- (a) This authorization is granted in accordance with the Texas Water Code and the rules and other Orders of the Commission and the laws of the State of Texas.
- (b) Acceptance of this authorization constitutes an acknowledgment and agreement that the provider and user will comply with all the terms, provisions, conditions, limitations and restrictions embodied in this authorization and with the rules and other Orders of the Commission and the laws of the State of Texas. Agreement is a condition precedent to the granting of this authorization.

Prop 2 Route Slip

Application Number:

13256



ENVIRONMENTAL QUALITY

Reducing and Preventing Pollution

Form EQ-4, 2010

Type of Letter/
Correspondence:

POS Use
 NEG Use
 NOD
 Withdraw
 Admin. Complete
 Other: _____

| | Initials | Date |
|--------------------------------|-----------------|-------------|
| Author/ Creator | RMH | 5/20 |
| Peer Review Completed | JHT | 5/25/10 |
| Author/Creator Review | RMH | 5/25 |
| REVIEW AND APPROVAL BY: | Initials | Date |
| Work Leader Emmanuel Wada | EW | 6/1/10 |
| Management Review: | | |
| Team Leader Chance Goodin | CG | 6/2 |
| Section Manager Donna Huff | | |
| Copies made | td | 6/3 |
| Mailed | td | 6/3 |

Comments for Application 13256:

al
ty

Environmental Quality (TCEQ) has determined the information for Application 13256, received on February 20, 2009. According to Application Review Schedule described in § 101.001, if additional technical information is needed, a Notice of Deficiency will be issued to increase the length of the review time and will not be considered a final decision.

This application has been mailed to the appraisal district for review. If you have any questions or require clarification, please contact the Appraisal District for Pollution Control Property Program at the phone at (512) 239-6348, or by e-mail at pollution@ad.waco.tx.us

Comments/ Special Instructions:

Please return **ROUTING SLIP** and **PROJECT PAPERWORK** to Patricia MC 206, Ext. 1797

Appraisal District, P. O. Box 2297, Waco, Texas

Ronald Hatlett - Update: Sandy Creek Reclaimed Water System Application

From: "Barton, Rick" <Rick.Barton@dynegy.com>
To: "mhibbs@tceq.state.tx.us" <mhibbs@tceq.state.tx.us>, "Joe Thomas(jothomas@tceq.state.tx.us)" <jothomas@tceq.state.tx.us>, "Ronald Hatlett(RHATLETT@tceq.state.tx.us)" <RHATLETT@tceq.state.tx.us>
Date: 4/29/2009 10:37 AM
Subject: Update: Sandy Creek Reclaimed Water System Application
CC: "Tuite, Patricia (US - Pittsburgh)" <ptuite@deloitte.com>, "Csaszar, Greg" <Greg.Csaszar@dynegy.com>, "Jolley, Amy" <Amy.Jolley@dynegy.com>

Hi,

I wanted to provide you with a status update regarding the Use Determination Application SC-2008-8 related to the Raw Water Pre-treatment System (Reclaimed Water System) at the Sandy Creek Power Generation Facility located in Riesel, McLennan County, Texas. As we last discussed, Dynegy is preparing a formal letter for review by your legal department. The letter will discuss the technical and statutory merits of the Reclaimed Water System as pollution control property eligible for a property tax exemption. We are still in the process of drafting the letter and we will send it to you as soon as it is completed and reviewed.

We are requesting that you keep this application on hold since we do not have timing issues related to the Reclaimed Water System. Although we started construction at Sandy Creek last year and we have filed the use determination applications for the pollution control equipment, we have not incurred any property taxable costs as of 12/31/2008 related specifically to the Reclaimed Water System. We have incurred costs since 1/1/2009 and we expect that we will need this use determination decision sometime in January 2010.

Please let me know if you have any questions or concerns.

Regards,

Rick Barton
Sr Dir, Property Tax
Dynegy Inc.
133 South Fourth St. Suite 306
Springfield, IL 62701
Phone: 217 492-6612
"A" 9/80

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 3, 2010

Ms. Amy Jolley
Sandy Creek Energy Associates LP et al.
1000 Louisiana, Suite 5800
Houston, Texas 77002

Re: Notice of Administrative Completeness for Application 13256:
Sandy Creek Energy Associates LP et al
Sandy Creek Power Generation Facility
Rattlesnake Road
Riesel (McLennan County)

Dear Ms. Jolley:

The Texas Commission on Environmental Quality (TCEQ) has determined the information required by §17.10 is complete for application 13256, received on February 20, 2009. A technical review will be conducted according to Application Review Schedule described in § 17.12. Please note that if additional technical information is needed, a Notice of Deficiency (NOD) letter will be issued, and this may increase the length of the review time and will not be considered a part of the review schedule.

In accordance with § 17.12, a copy of the application has been mailed to the appraisal district for the county in which this property is located. If you have any questions or require clarification, please contact Ron Hatlett of the Tax Relief for Pollution Control Property Program at the letterhead address (MC110), by telephone at (512) 239-6348, or by e-mail at rhatlett@tceq.state.tx.us.

Sincerely,

A handwritten signature in cursive script, appearing to read "cgoodin".

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/rh

Enclosure

cc: Chief Appraiser, McLennan County Appraisal District, P. O. Box 2297, Waco, Texas
76703