

TCEQ Docket Numbers

- 2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd – Rusk County)
- 2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P. – Freestone County)
- 2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, L.P. – Hutchinson County)
- 2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P. – Fort Bend County)
- 2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P. – Brazoria County)
- 2008-0851-MIS-U (UD 07-11926/CER-Colorado Bend Energy LLC (f/k/a Navasota Wharton Energy Partners, L.P.) – Wharton County)
- 2012-1529-MIS-U (UD 12696/EN Service’s LP – Harrison County)
- 2012-1552-MIS-U (UD 16409/Bosque Power Company, LLC – Bosque County)
- 2012-1559-MIS-U (UD 12210 & 12211/Topaz Power Group, LLC – Nueces County)
- 2012-1562-MIS-U (UD 15506, 16410, 16411 & 16412/Cottonwood Energy Company LP – Newton County)
- 2012-1586-MIS-U (UD 12268/Wolf Hollow I, LP – Hood County)
- 2012-1587-MIS-U (UD 13534/South Texas Electric Cooperative, Inc. – Victoria County)
- 2012-1635-MIS-U (UD 13544/Brazos Electric Cooperative, Inc. – Johnson County)
- 2012-1648-MIS-U (UD 16413/Brazos Electric Cooperative, Inc. – Jack County)
- 2012-1649-MSI-U (UD 12004/NRG Texas Power LLC – Limestone County)
- 2012-1650-MIS-U (UD 07-12271/Midlothian Energy Limited Partnership – Ellis County)
- 2012-1660-MIS-U (UD 07-12202/Wise County Power Company, LLC – Wise County)
- 2012-1662-MIS-U (UD 07-12203/Ennis Power Company, LLC – Ellis County)
- 2012-1679-MIS-U (UD 15020/Motiva Enterprises, LLC – Jefferson County)
- 2012-1682-MIS-U (UD 07-12272/Hay Energy Limited Partnership – Hays County)
- 2012-1683-MIS-U (UD 12826/GIM Channelview Cogeneration LLC – Harris County)

Appeal of Executive Director’s Use	§	Before the
Determinations Issued to Tenaska Gateway Partners, Ltd; Freestone Power Generation, L.P.;	§	
Borger Energy Associates, L.P.; Brazos Valley Energy, L.P.; Freeport Energy Center, L.P.; CER-	§	Texas Commission on
Colorado Bend Energy LLC (f/k/a Navasota Wharton Energy Partners, L.P.); EN Service LP;	§	Environmental Quality
Bosque Power Company, LLC; Topaz Power Group LLC; Cottonwood Energy Company LP;	§	
Wolf Hollow I, PL; South Texas Electric Cooperative Inc.; Brazos Electric Cooperative, Inc.;	§	
NRG Texas Power LLC; Midlothian Energy Limited Partnership; Wise County Power Company, LLC;	§	
Ennis Power Company, LLC; Motiva Enterprises, LLC; Hays Energy Limited Partnership; and GIM Channelview Cogeneration LLC	§	

Executive Director’s Response to the Appeals Filed on the Negative Use Determinations for the Heat Recovery Steam Generator Applications

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this response to the appeals of the Executive Director's negative use determinations issued for Heat Recovery Steam Generators (HRSGs) to the above listed Applicants.

Despite the number of Applicants and applications under appeal, the Executive Director has decided to respond to all of the appeals in one brief. This is because the issues surrounding the applications and negative uses determinations are consistent across all of the applications. Because of this, the Applicants' arguments are presented and responded to as one. To the extent that any Applicant, application, or argument is sufficiently different or novel to warrant specific discussion, it is addressed separately below.

Each applicant operates a fossil fuel fired turbine to generate electricity. Each Applicant is in the business of providing energy in the form of electricity and/or steam. Turbine exhaust is routed through a heat recovery steam generator (HRSG) removing heat to generate steam. The steam is used for a production purpose; therefore, the HRSG is production equipment. HRSGs increase fuel efficiency, i.e., generate more useful output per unit of fuel fired than at a facility without a HRSG. However, a HRSG is not an air pollution control device.

I. Program Background

In 1993, the citizens of Texas voted to adopt a tax measure called Proposition 2. Proposition 2 was implemented when Article VIII, § 1-1 was added to the Texas Constitution on November 2, 1993. The amendment allowed the legislature to "exempt from ad valorem taxation all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution."

The Texas Legislature codified the constitutional amendment in 1993 as Texas Tax Code §11.31. In 2001, the legislature amended §11.31 with House Bill (HB) 3121. This bill added new procedural requirements to §11.31, including a provision requiring the establishment and implementation of an appeals process.¹ The amendment also required the Commission to adopt new rules establishing standards for the Executive Director to follow in making use determinations.² The Commission codified rules governing appeals at 30 TAC §17.25. Appeals under §17.25 may be filed by either the applicant seeking the determination or by the chief appraiser of the tax appraisal district affected by the determination.³ The Appellant is required to explain the basis for the appeal.⁴

HB 3732⁵ required the TCEQ adopt a nonexclusive list of property including 18 categories of property listed in Texas Tax Code §11.31(k).⁶ These 18 categories of property were codified in TCEQ rules.⁷ One of the properties listed in Texas Tax Code §11.31(k) is HRSGs. When implementing HB 3732, the Commission took the position that property listed in §11.31(k) must

¹ TEX. TAX CODE §11.31(e).

² TEX. TAX CODE §11.31(g).

³ 30 TAC §17.25(a)(2). See Attachment A for the TCEQ Regulatory Guidance Document, Property-Tax Exemptions for Pollution Control Property, RG-461, March 2011, Draft.

⁴ 30 TAC §17.25(b)(5).

⁵ Act of May 28, 2007, 80th Leg., R.S., ch. 1277, §4, 2007 Tex. Gen. Laws 4261, 4264.

⁶ This list is currently codified in the Figure to 30 TAC §17.17(b). Previously codified at 30 TAC § 17.14(a). For ease of reading, this list will be referred to as the list in §11.31(k) rather than agency rules.

⁷ 30 TAC §17.14(a) repealed by 35 TexReg 10964 (November 18, 2010); 33 TexReg 932(February 1, 2008).

still meet all of the other criteria (environmental benefit, be installed to meet or exceed an environmental rule, etc.)⁸ Just because a piece of equipment is listed in §11.31(k) does not mean that it is automatically entitled to a positive use determination. Some HRSG applications were filed as Tier IV applications.⁹ Under the Tier IV application process, Applicants were allowed to choose their own method for calculating a use percentage. The Executive Director must review the proposed method and made a final determination.¹⁰ This resulted in widely varying calculated use determination percentages.

Section 11.31(g)(2) requires Commission rules to be sufficiently specific to ensure that determinations are equal and uniform. In 2009, the 81st Legislature passed HB 3206 and 3544. In identical language, these bills reiterated the uniformity requirement by adding §11.31(g-1) which requires the standards and methods established in the rules to be uniformly applied to use determination applications, including applications for property listed in §11.31(k).

On November 18, 2010, the Commission amended its rules to implement the uniformity requirements in HB 3206 and HB 3544.¹¹ The Commission adopted rules making the CAP applicable to all partial use determinations for property that do not meet the fixed use percentage criteria established by the Commission under the Tier I Table in §17.14(a) of the rules.¹² This includes the property found on the list in §11.31(k).¹³ The adopted rulemaking also eliminated Tier IV applications.¹⁴ To apply the CAP to all partial use determinations, Tier III applications are required for all partial determination requests, including use of the CAP to calculate the percentage of the property used for pollution control.¹⁵ To ensure the standards and methods are uniformly applied to equipment on the list in §11.31(k), all applications must be filed as Tier I, II, or III.¹⁶ HB 3206 and 3544 do not apply to applications filed prior to January 1, 2009, or to applications filed after January 1, 2009, that received final determinations prior to September 1, 2009.¹⁷

Additionally, in this rulemaking, the Commission adjusted the CAP to make it apply to a greater universe of equipment.¹⁸ The Commission also adopted new 30 TAC §17.25(d), clarifying that the General Counsel could remand use determination appeals to the Executive Director. Section 17.25(d) was based upon the General Counsel preexisting authority to remand all matters on the Commissioners agenda in 30 TAC §10.4(d). The Commission deleted the requirement that the environmental benefit be confined to the site.¹⁹

⁸ Figure to 30 TAC §17.15(b), Figure to 30 TAC §17.14(a), "Simply because a piece of equipment is on the Equipment and Categories List or purports to fall under a category set forth on the list, does not mean that it will receive a positive use determination." 33 TexReg 932 at 933 (February 1, 2008) repealed by 35 TexReg 10964 (November 18, 2010).

⁹ 30 TAC § 17.2(16) repealed by 35 TexReg 10964 (November 18, 2010).

¹⁰ 30 TAC § 17.17(d) repealed by 35 TexReg 10964 (November 18, 2010).

¹¹ 35 TexReg 10964.

¹² 30 TAC §17.17(a), 35 TexReg 10964 at 10965.

¹³ Id.

¹⁴ 35 TexReg 10964 at 10965.

¹⁵ 30 TAC §17.17(a), 35 TexReg 10964 at 10965.

¹⁶ 30 TAC Chapter 17. "The inclusion of a piece of equipment on the Tier I table or on the table in § 17.17(b) or the assertion that a piece of equipment falls under a category set forth on either list does not mean that the equipment would receive a positive use determination in all circumstances." 35 TexReg 10964.

¹⁷ HB 3206 § 5 and HB 3544 § 5.

¹⁸ 35 TexReg 10964 at 10965.

¹⁹ 35 TexReg 10964.

II. Procedural Background

For the purpose of discussing procedural posture, all of the appealed applications can be placed in one of two groups:

1. Applications that received a positive use determination, were appealed by the affected appraisal district, were placed on hold, subsequently remanded back to the Executive Director, and received a negative use determination dated July 10, 2012.
2. Applications that received a negative use determination dated July 10, 2012.

On May 1, 2008, the Executive Director issued 100% positive use determinations for 25 HRSGs. At the same time, the Executive Director also issued negative use determinations for any associated steam turbine.²⁰ Six of the 100% positive use determinations for the HRSGs were timely appealed by the affected appraisal districts on May 16, 2008. These six applications will be referred to hereafter as the Group 1 applications and consist of:

Name	Application No.	Docket No.
Tenaska Gateway Partners, Ltd	07-11914	2008-0830-MIS-U
Freestone Power Generation, L.P.	07-11966	2008-0831-MIS-U
Borger Energy Associates, L.P.	07-11971	2008-0832-MIS-U
Brazos Valley Energy, L.P.	07-11969	2008-0849-MIS-U
Freeport Energy Center, L.P.	07-11994	2008-0850-MIS-U
CER-Colorado Bend Energy LLC (f/k/a Navasota Wharton Energy Partners, L.P.)	07-11926	2008-0851-MIS-U

These applications were filed under Tier IV of the Commission's rules. As previously mentioned, Tier IV applications allowed applicants to propose a reasonable method for calculating an appropriate use determination percentage, and required the ED to review the proposed calculation method and make a final determination.²¹ This resulted in widely varying calculated use determination percentages. In August 2008, the Executive Director convened a stakeholder group to discuss a uniform method of addressing HRSGs. The workgroup was attended by the Applicants, affected appraisal districts, and environmental and public interest groups. No consensus was reached among the parties.

The six appeals were to be considered by the Commission on February 25, 2009. The Executive Director requested the appeals be continued to reevaluate the recommendation provided in his brief.²² The appeals were continued indefinitely.²³ On June 18, 2012, the Executive Director requested that the six appealed applications be remanded to the Executive Director.²⁴ The General Counsel granted the remand on June 29, 2012.²⁵ The Executive Director subsequently issued negative use determinations for all of Group 1 applications on July 10, 2012.

On July 10, 2012, the Executive Director also issued negative use determinations for the 28 pending HRSG applications (4 were issued Notices of Deficiency). Fifteen of the applications

²⁰ Issues regarding steam turbines will be discussed later in the brief.

²¹ 30 TAC § 17.17(d); repealed 35 TexReg 10964.

²² Executive Director's Request for Continuance, February 12, 2009.

²³ Office of General Counsel Letter, February 23, 2009.

²⁴ Executive Director's Request for Remand, June 18, 2012.

²⁵ Office of General Counsel Letter, June 29, 2012.

were appealed. Hereinafter these applications will be referred to as the Group 2 applications and consist of the following:

Name	Application No.	Docket No.
EN Services LP	12696	2012-1529-MIS-U
Bosque Power Company, LLC	16409	2012-1552-MIS-U
Topaz Power Group, LLC	12210 & 12211	2012-1559-MIS-U
Cottonwood Energy Company LP	15506, 16410, 16411, & 16412	2012-1562-MIS-U
Wolf Hollow I, LP	12268	2012-1586-MIS-U
South Texas Electric Cooperative, Inc.	13534	2012-1587-MIS-U
Brazos Electric Cooperative, Inc.	16413	2012-1648-MIS-U
Brazos Electric Cooperative, Inc.	13544	2012-1635-MIS-U
NRG Texas Power LLC	12004	2012-1649-MIS-U
Midlothian Energy Limited Partnership	07-12271	2012-1650-MIS-U
Wise County Power Company, LLC	07-12202	2012-1660-MIS-U
Ennis Power Company, LLC	07-12203	2012-1662-MIS-U
Motiva Enterprises, LLC	15020	2012-1679-MIS-U
Hays Energy Limited Partnership	07-12272	2012-1682-MIS-U
GIM Channelview Cogeneration LLC	12826	2012-1683-MIS-U

III. Legal Analysis

A. Equipment listed in §11.31(k) is not automatically entitled to a positive use determination.

Applicants state that because HRSGs are listed in §11.31, that the Commission has no choice but to issue positive use determinations.²⁶ Applicants cite to §11.31(k) and §11.31(m) to support their position. Specifically, Applicants point to §11.31(k) which directs the TCEQ to adopt a “nonexclusive list of facilities, devices, or methods for the control of air, water, or land pollution which must include ... (8) heat recovery steam generators.” Applicants argue the legislative intent was to list equipment that is predetermined to be pollution control equipment and the role of the Executive Director is only to determine the appropriate positive use determination percentage. Furthermore, Applicants argue §11.31(m) mandates the Executive Director review § 11.31(k) listed equipment and determine whether the equipment is wholly or partly pollution control property within 30 days.

The full text of Texas Tax Code §11.31(m) is as follows:

Notwithstanding the other provisions of this section, if the facility, device, or method for the control of air, water, or land pollution described in an application for an exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director of the Texas Commission on Environmental Quality, not later than the 30th day after the date of receipt of the information required by Subsections (c)(2) and (3) and without regard to whether the information required by Subsection (c)(1) has been submitted, shall determine that the facility, device, or method described in the

²⁶ To ensure the record is complete attachment B contains various documents including use determinations and applications that are not attached to the other briefs.

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application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution and shall take the actions that are required by Subsection (d) in the event such a determination is made.

Applicants further claim that §11.31(l), requires the Commission to remove HRSGs from the §11.31(k) list before issuing anything other than a positive use determination.

Texas Tax Code §11.31(l) states:

The [TCEQ] by rule shall update the list adopted under [§11.31](k) at least once every three years. An item may be removed from the list if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.

The Executive Director agrees the Legislature intended for the property listed in §11.31(k) to be reviewed to determine eligibility for a use determination. However, the Executive Director does not agree that equipment on the list in §11.31(k) automatically qualifies for a positive use determination. To obtain a positive use determination the equipment listed in §11.31(k) must meet the same statutory and regulatory eligibility criteria as any other piece of equipment (i.e., provide an environmental benefit, meet or exceed an environmental rule, be partially or wholly used as pollution control property, etc.)

HB 3732 provided for an expedited review of applications for equipment listed in §11.31(k) and exempted applicants from submitting information regarding the anticipated environmental benefit. However, HB 3732 did not change any of the other requirements necessary to obtain a property tax exemption. Although §11.31(m) requires the Executive Director to determine whether property on the §11.31(k) list is used wholly or partly for pollution control without regard to whether the environmental benefit information was submitted, it does not waive the environmental benefit requirement. Rather, it puts the Executive Director and an applicant in a potentially precarious situation, if environmental benefit information is not submitted; the Executive Director still must make a determination. Also, the vast majority of Applicants included some discussion of environmental benefit in their applications.

Applicants must still meet the Constitutional requirement that the property is used, constructed, installed, or acquired to meet or exceed an environmental rule.²⁷ The Legislature cannot extend a tax exemption beyond what is provided in the Constitution.

Section 11.31(m) requires the Executive Director to distinguish the production portion of the §11.31(k) listed equipment from the pollution control portion. The Executive Director must determine the appropriate use determination percentage, which includes 0% if none of the equipment is used for pollution control.

Therefore, simply because a piece of equipment is listed in §11.31(k) does not mean the property is automatically entitled to a positive use determination.

This is the way the Commission has implemented HB 3732. When initially implementing HB 3732, the Commission created a flow chart in Figure 30 TAC §17.15(b) requiring applicants to show environmental benefit at the site and cite to an applicable rule for items listed in §11.31(k). Also, when the Commission codified the §11.31(k) list in Figure 30 TAC §17.14(a), Commission stated, “[p]roperty used solely for product collection or for production purposes is not eligible

²⁷ Tex. Const. art. VIII, § 1-1.

for a positive use determination.” In the adoption preamble, the Commission stated, “[s]imply because a piece of equipment is on the [ECL] or purports to fall under a category set forth on the list, does not mean it will receive a positive use determination.”²⁸

In 2009, the Legislature passed HB 3206 and 3544. Using identical language, these bills created new §11.31(g-1) which states, “[t]he standards and methods for making a determination under [§11.31] that are established in rules adopted under Subsection (g) apply uniformly to all applications for determinations under this section, including applications relating to facilities, devices, or methods for the control of air, water, or land pollution included on a list adopted by the [TCEQ] under [§11.31](k).” A plain reading of §11.31(g-1) would indicate applications for equipment on the list in §11.31(k) would be subject to the same requirements as all other applications.

When implementing HB 3206 and HB 3544, to ensure equipment listed in §11.31(k) is treated uniformly, the Commission eliminated Tier IV applications and required all applications for equipment listed in §11.31(k) to be filed as a Tier I, II, or III application.²⁹ Thus, equipment listed in §11.31(k) is treated uniformly to all other equipment within a Tier and subject to the same requirements including providing an environmental benefit, used to meet and/or exceed an environmental rule, etc. In the adoption preamble to the 2010 rule, the Commission reiterated, “inclusion of a piece of equipment on the Tier I Table or on the table in §17.17(b) or the assertion that a piece of equipment falls under a category set forth on either list does not mean that the equipment would receive a positive use determination in all circumstances.”³⁰

According to the doctrine of legislative acceptance, an agency’s construction of a statute is given deference if an agency rule interpreting the statute is in effect when the legislature amends the law without making substantial change.³¹ The Legislature is presumed to be aware of the background law and to have acted with reference to it.³² Therefore, the Legislature was aware of the TCEQ’s implementation of §11.31(k) when the Legislature amended §11.31 in 2009. In fact the amendments in 2009, when the Legislature passed HB 3206 and 3544 creating new §11.31(g-1), reiterated the way the Commission was implementing §11.31(k). Thus, the Legislature accepted the way the Commission has been implementing §11.31(k).

The equipment listed in §11.31(k) is not automatically entitled to a positive use determination, but is subject to the same statutory and regulatory eligibility as any other piece of equipment. Those criteria are the equipment must be used wholly or partially for pollution control, the equipment must provide an environmental benefit, and the equipment must be installed to meet

²⁸ 33 TexReg 932 at 933. In response to comment regarding “green products” make to meet an environmental rule, the commission stated: “The commission does not agree that a piece of equipment is automatically eligible for tax exemption under TTC, §11.31 simply because it was installed to meet an environmental initiative. A piece of equipment installed to meet an environmental initiative must also satisfy all statutory and regulatory requirements to qualify for a positive use determination including that it provide a pollution control benefit at the site.” 33 TexReg 932 at 936. Also, in response to a comment that HB 3732 allows production equipment using new or advanced technologies may have a pollution control benefit the commission responded: “The commission appreciates this comment and agrees that certain production equipment using advanced technologies may also have pollution control benefits. However, each category of equipment listed in TTC, §11.31(k) will be considered on an application-specific basis to determine whether the equipment is installed to wholly or partly control air, water, or land pollution. Under the adopted rules, the categories of equipment listed in HB 3732 are incorporated into rule in Part B of the ECL.” 33 TexReg 932 at 939. Repealed November 18, 2010, 35 TexReg 10964.

²⁹ 30 TAC Chapter 17, 35 TexReg 10964.

³⁰ 35 TexReg 10964.

³¹ *Grocers Supply Co. v. Sharp*, 978 S.W.2d 638, 644 (Tex.App.—Austin 1998, pet. denied).

³² *Acker v. Texas Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990).

or exceed an environmental rule. If any one of these criteria is not met, then the equipment is not entitled to a positive use determination.

B. HRSGs are used wholly for production purposes.

Each applicant operates a fossil fuel fired turbine to generate electricity. Turbine exhaust is routed through a heat recovery steam generator (HRSG) removing heat (thermal energy) to generate steam. The steam is then used for a production purpose: either to drive a steam turbine which is used to generate more electricity or to support production processes at a nearby facility. When used to drive a steam turbine, the plant is called a combined-cycle plant. When the steam is provided to nearby facilities, it is called a cogeneration plant. For simplicity, these plants will be referred to as combined-cycle plants.

To demonstrate HRSGs are pollution control equipment, Applicants argue HRSGs provide pollution control through increased efficiency. Applicants state HRSGs increase the amount of useful energy that can be extracted from the fuel fired in the turbine, which in turn allows less fuel to be used to generate the same amount of useful energy which in turn avoids emissions. Applicants generally compare their plant to some other fossil-fueled fired facility such as a single-cycle³³ plant with the same energy output, or a boiler. Some Applicants state the HRSGs were installed in lieu of add on pollution control devices.

The Executive Director has never recognized emissions avoidance as pollution control. The pollution control portion of a piece of equipment cannot be derived simply by comparing it to an alternative piece of equipment. This sort of hypothetical comparison leads to absurd results. Any situation can be created to claim whatever pollution control benefit is desired. Applicants could claim a 100% positive use for their entire combined cycle plant by comparing it to a pulverized coal plant and citing the avoided SO₂ emissions. No Applicant has provided sufficient information as to why these hypothetical comparisons should be done, nor have they provided why the hypothetical single-cycle plant or boiler are appropriate comparisons. In the permitting context, the Executive Director's review begins once an Applicant determines the type of plant it wishes to build. That is when an Applicant generally approaches the agency to determine the applicable regulations and authorizations necessary to complete the project. Applicants cannot turn HRSGs into pollution control equipment simply by comparing them to other pieces of production equipment that emit more pollutants.

HRSGs are not pollution control devices. HRSGs are not used wholly or partly to prevent, monitor, or control air, water, or land pollution. A HRSG does not remove air contaminants in the same manner that a traditional pollution control device does. The same amount of air contaminants that enter a HRSG leave a HRSG. HRSGs are used solely to remove heat. Heat is not a regulated pollutant. The heat removed by the HRSG is then converted to steam that is used for production purposes. Therefore, HRSGs are used wholly for production purposes; and, as such, are not eligible to receive a positive use determination. Additionally, HRSGs are not installed in lieu of traditional control devices which are still installed on combined-cycle plants (i.e., low NO_x burners, selective catalytic reducers, etc.)

Applicants also cite Attorney General Opinion JC-0372 to support their position that the pollution control property tax exemption extends to "pollution-reducing production equipment."

³³ Single-cycle plants are only the fossil-fuel fired turbine. When used to produce electricity, these plants are used as peaking plants.

Section 11.31(m) of the Texas Tax Code requires the Executive Director to distinguish between the portion of the equipment that is used for pollution control and the portion that is used for production, including equipment on the §11.31(k) list. “Statutory exemptions from taxation are subject to strict construction since they are the antithesis of equality and uniformity and because they place a greater burden on other taxpaying businesses and individuals. An exemption cannot be raised by implication, but must affirmatively appear and all doubts are resolved in favor of the taxing authority and against the claimant.”³⁴ Applicants misinterpret Attorney General Opinion JC-0372. The opinion reiterates the Executive Director’s statutory obligation to distinguish to portion of the equipment that is used for pollution control from the portion used for production.³⁵

C. HRSGs are not eligible to receive 100% positive use determinations.

By acknowledging that the HRSGs are used for production purposes, the Applicants concede that the HRSGs are not used wholly for pollution control purposes; and, therefore, are not eligible to receive 100% positive use determinations. To qualify for a 100% positive use determination, the subject property must be used wholly for pollution control purposes.³⁶ In their applications, the Applicants acknowledge that the HRSGs are used to capture heat, which is used to generate steam, which is used for production purposes.

In *Mont Belvieu Caverns, LLC v. Tex. Comm’n. on Env’tl. Quality*, the Austin Court of Appeals held that property cannot qualify as 100% pollution control property if any portion of its value is attributable to its capacity to produce goods or provide services.³⁷ In *Mont Belvieu, Mont Belvieu Caverns, LLC (MBC)* argued that its brine-storage pond system was entitled to a Tier I 100% positive use determination despite the pond system was used to provide gas-storage services to its customers. The TCEQ is required by statute to distinguish between property used to control, monitor, prevent, or reduce pollution from property that is used to produce goods or provide services. The Court of Appeals used the text of Tex. Tax Code §11.31 to reject MBC’s assertion.

By requiring that the TCEQ “distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution [i.e., pollution-control property] from the proportion of property that is used to produce goods or services,” the Legislature manifested its understanding and intent that pollution-control property—property qualifying for the tax exemption—is, by definition distinct from “property that is used to produce goods and services”...[Tex. Tax Code § 11.31(g)(3)] means that TCEQ must distinguish the proportion of the property’s value that is attributable to a pollution-control feature from that attributable to its capacity to produce goods and services, thereby reflecting legislative intent to limit the pollution-control property exemption solely to capital investment made to comply with state or federal environmental

³⁴ *Bullock v Nat’l Bancshares Corp.* 584 S.W.2d 268, 271-72 (Tex. 1979) (internal citations omitted).

³⁵ “We stress, however, that under section 11.31 the owner of pollution-reducing production equipment, property that serves both a production and a pollution-reduction purpose, is not entitled to a tax exemption on the total value of the property. Rather, pollution-reducing production equipment may receive only a partial tax exemption.” The opinion goes on and states, “Given that tax exemptions are not favored by the law ... the TNRCC must adopt rules and administer the statute to limit tax exemptions to only that portion of property that serves a pollution-control, as opposed to a production, purpose.” Attorney General Opinion JC-0372, pg. 6.

³⁶ *Mont Belvieu Caverns, LLC v. Tex. Comm’n. on Env’tl. Quality*, No. 03-11-00442-CV, 2012 WL 3155763 (Tex. App.-Austin Aug. 3, 2012).

³⁷ No. 03-11-00442 CV, 2012 WL 3155763 (Tex.App.-Austin 2012).

regulations that does not yield productive benefits and would thus otherwise be irrational economically...

These limitations and qualifications reflected in subsection (g)(3) in turn inform our construction of subsections (a) and (b)'s definition of pollution-control property. And it follows from these limitations and qualifications that property cannot qualify as 100% pollution-control property if any portion of its value is attributable to its capacity to produce goods and services.

The Austin Court of Appeals reasoned that by acknowledging that its brine-storage pond system was part of its production process, MBC conceded that at least some portion of the property was attributable to providing services, and, therefore, by definition, could not be 100% pollution-control property. Thus, HRSGs do not qualify for a 100% positive use determination.

D. HRSGs do not provide an environmental benefit.

Applicants claim by recapturing what would otherwise be wasted heat, and using that heat to generate steam for production purposes, HRSGs allow the Applicants to burn less fossil fuel than would be necessary to generate the same output as a single-cycle power plant or boiler. Applicants cite "avoided emissions" as the environmental benefit provided by the HRSGs. Some applicants attempt to state "the duct burners inside the HRSG may further reduce air emissions."

To receive a positive use determination, the subject equipment must provide an environmental benefit. Generally, a piece of equipment provides an environmental benefit if it is used to prevent, monitor, control, or reduce air, water, or land pollution.³⁸ As previously mentioned, a HRSGs is not wholly or partly used to prevent, monitor, or control air, water, or land pollution. A HRSG does not remove air contaminants. The same amount of pollutants that enter a HRSG leave it. The Executive Director does not agree with the Applicants' contention that an environmental benefit may be derived by comparing a HRSG to a single-cycle power plant or a boiler. It is important to note that duct burners are not part of the appealed applications.³⁹ Also, duct burners only add to the air emissions.

HRSGs are not used wholly or partly to prevent, monitor, or control air, water, or land pollution; and, therefore, do not provide an environmental benefit.

E. Applicants fail to cite an applicable environmental regulation

To qualify for a positive use determination, the subject property must be used, constructed, acquired, or installed wholly or partly to meet or exceed an existing environmental rule.⁴⁰ Applicants point to various environmental regulations including New Source Performance Standards (NSPS) for Industrial Boilers including Da, Db, Dv, GG, and KKKK, 40 CFR Part 60, National Ambient Air Quality Standards for NO_x (40 CFR §50.11), Texas Health and Safety Code § 382.11, 30 TAC §§101.21,106.512, 111.111(a), 111.151(a), 111.153(b), 116.110,

³⁸ Tex. Tax Code §11.31(b). The amendments the Commission adopted on November 18, 2010, eliminated the requirement that the environmental benefit occur at the site.

³⁹ Low NO_x burners may be eligible for a positive use determination. They are currently listed on the Tier I list. Applicants wishing to receive a positive use determine for low NO_x burners should submit a use determination application for that specific equipment. It has been the experience of the Executive Director that the vast majority of Applicants have done just that. Additionally, duct burners increase the amount of NO_x emitted.

⁴⁰ Tex. Const. art. VIII, § 1-1, and 30 TAC §17.4.

HRSG Prop 2 Appeals

116.710, 116.911, 117.115, 117.131, 117.1205, 117.3010, Best Available Control Technology (BACT), and BACT as established in the plant's Title V operating permit.

A sufficient nexus must exist between the equipment and the environmental rule. Simply because an environmental rule applies to a piece of equipment, does not mean for the purposes of a use determination that this criteria is satisfied, nor does it mean the applicant qualifies for a property tax exemption.

No Applicant has cited to a rule that requires the installation of the HRSG. There is no rule that explicitly requires the installation of a HRSG nor is there a generally applicable efficiency standard that could only be met by installation of a HRSG. Rather, Applicants cite to rules that apply to the HRSG or other various parts of the plant. A review of each of the rules cited reveals there is an insufficient nexus between the HRSG and the environmental rule. Simply because an environmental rule applies to a piece of equipment does not make that equipment pollution control. If that were the case, the fact there is an emission limit would make the entire plant pollution control equipment.

There are many issues with the rules Applicants have cited. Many Applicants cite to rules that are not applicable to its plant⁴¹ or have cited to rules that are mutually exclusive.⁴² Many Applicants cited to rules that limit emissions only from the turbine or the duct burner.⁴³ Applicants have cited rules that control emissions on a mass per unit of fuel fired, mass per volume of exhaust, mass per time, etc. Since a HRSG is not a control device, it cannot help to meet those emission limits.⁴⁴

Of all the regulations cited by Applicants, there are a few that require specific discussion. Applicants cite to NSPS Da and/or Db which contain a limit based upon pounds of NO_x per MWhr generated.⁴⁵ NSPS Da and Db regulate only a portion of the plant. Applicants argue HRSGs provide control by increasing efficiency of the entire plant. Because what is regulated by NSPS Da and Db is not the same as what Applicants state the control provided by HRSGs, there is not a sufficient nexus.

BACT does not require the installation of HRSGs. Some Applicants take a statement from the definition of BACT out of context then state HRSGs are BACT. Some Applicants state BACT is established by their Title V operating permit.⁴⁶ Applicants claim BACT requires installation of a particular type of plant. In a certified question in the contested case hearing for Sandy Creek coal-fired power plant, the Commission reaffirmed the long held application of BACT to the plant proposed by the applicant.⁴⁷ Such as in this case, applicants decide which type of plant to build (here a combined-cycle plant) and then during the air quality permit review BACT is applied to that plant. Additionally, BACT is an emissions limit, almost always on a mass per unit of time. As discussed above a HRSG does not help meet such a limit.

⁴¹ Example: 30 TAC §106.512 Several Applicants cite to 30 TAC §106.512. This is a permit by rule. The majority, if not all of the Applicants have a NSR permit; thus, 30 TAC §106.512 does not apply.

⁴² Examples include NSPS Da, Db, and KKKK. If either Da, Db, or KKKK applies to a facility, then the others do not apply.

⁴³ Example: 30 TAC §117.3010 (lb/MMBtu).

⁴⁴ Examples include: 30 TAC § 111.151(a) (lb/hr), 30 TAC §111.153(b) (lb/MMBtu)

⁴⁵ 40 CFR §§ 60.44Da(d)(2) & 60.44b(l)(3).

⁴⁶ Please be aware, a Title V operating permit is a codification of applicable air requirements and does not establish BACT.

⁴⁷ Commission Order, May 25, 2006.

Applicants cite to the NAAQS for NO_x. NAAQS set ambient air concentrations that no person can cause or contribute to an exceedence. Applicants state because their plants emit less pollution as compared to other hand-picked plants, then the HRSGs assist in meeting the NAAQS. Under the Applicant's argument, to determine how the HRSG helps to meet the NAAQS requires the comparison to other plants. Hypothetical comparisons should not form the basis of a use determination. The business decisions of the Applicant dictate the type of plant it installed and the TCEQ has never suggested that installing a combined cycle natural gas plant with a HRSG should be considered in lieu of a simple cycle natural gas plant or other type of fossil fueled power plant as a result of a NAAQS review.

NSPS KKKK has a performance based emission standard that encompasses the entire combine-cycle plant, but that does not automatically mean it is an applicable regulation. NSPS KKKK does not generally apply forcing the construction of combined-cycle plants. Rather, it applies after an Applicant affirmatively decides to build a combined-cycle plant.⁴⁸ An emission limit, no matter what units it is based on (lb/MMBtu, lb/MWhr, etc.), is still an emission limit and should be treated as such. Emissions apply to a vast array of sources. Placing an emission limit on a source does not make that source pollution control; otherwise, all sources would qualify for a tax exemption by virtue of having an emission limit.

Thus, the Executive Director has determined that no Applicant cites an applicable environmental regulation for the purposes of receiving a tax exemption.

F. The statutory appeals process in §11.31(e) does not preclude the General Counsel from remanding the Group 1 applications.

Applicant's claim the remand of the Group 1 applications by the General Counsel is a violation of the plain language of Texas Tax Code §11.31(e). Applicants go on to state that because the statute requires the Commission to make the determination to either affirm the Executive Director's use determination or remand the matter then 30 TAC §17.25(d) is an undue delegation. Section 11.31(e) provides:

Not later than the 20th day after the date of receipt of the letter issued by the executive director, the person seeking the exemption or the chief appraiser may appeal the executive director's determination to the Texas Commission on Environmental Quality. The commission shall consider the appeal at the next regularly scheduled meeting of the commission for which adequate notice may be given. The person seeking the determination and the chief appraiser may testify at the meeting. The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's determination. On issuance of a new determination, the executive director shall issue a letter to the person seeking the determination and provide a copy to the chief appraiser as provided by Subsection (d). A new determination of the executive director may be appealed to the commission in the manner provided by this subsection. A proceeding under this subsection is not a contested case for purposes of Chapter 2001, Government Code.

Texas Water Code §5.110(d) allows the Commission to delegate duties to the General Counsel. Nothing in §11.31 prohibits the Commission from delegating this duty. Therefore, the Commission acted within its authority.

⁴⁸ There are other applicability criteria that will not be discussed here.

Also, the General Counsel already had authority to remand matters pursuant to 30 TAC §10.4(d). The requirements in Chapter 10 of the Commission's rules are general rules of the Commission.⁴⁹ Although Chapter 10 is generally applicable to all matters, the Commission adopted 30 TAC §17.25(d) to ensure the General Counsel could efficiently manage the Commission's public meetings.⁵⁰ The negative use determinations issued for the Group 1 applications are still subject to the administrative appeals process in Texas Tax Code § 11.31(e) and 30 TAC §17.25. The right of the Group 1 Applicants were not adversely effected by the remand and issuance of the negative use determination. Therefore, the remand by the General Counsel was proper.

G. Application of 30 TAC § 17.25(d) to the Group 1 applications was not an unconstitutionally retroactive.

Applicants state application of 30 TAC §17.25(d) is unconstitutionally retroactive. Applicants state Article 1, Section 16 of the Texas Constitution specifically prohibits retroactive laws. Additionally, Applicants cite Government Code § 311.022 which states a "statute is presumed to be prospective in its operation unless expressly made retrospective. The Applicants also state the same general principles apply to agency rules. Applicants concede that procedural rules are not retroactive in application, however, argue that the remand provisions in 30 TAC §17.25(d) are substantive because the process is how substantive rights are protected, the consequences for losing a positive use determination are significant, and the appeals process has taken a significant amount of time. Applicants also allege that because HB 3206 and 3544 only apply to applications filed after January 1, 2009, that §17.25(d) does not apply.

Article 1, Section 16 of the Texas Constitution states, "No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made." "A retroactive law, in the sense of the constitution, and in so far as is here applicable, which prohibits such acts, is one made that affects acts or rights accruing before it came into force. A statute is retroactive which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or adopts a new disability in respect to transactions or considerations already passed."⁵¹ A law "is not retroactive merely because it draws on antecedent facts for its operation."⁵² A statute is retroactive only if it operates before its effective date.⁵³ The general rule is that 'a new remedial or procedural statute' applies to both pending and future actions.⁵⁴

The effective date of new 30 TAC §17.25(d) is December 13, 2010.⁵⁵ The new rule was first used on June 18, 2012, when the Executive Director requested that the Group 1 appealed applications be remanded⁵⁶ and then the General Counsel granted the remand on June 29, 2012.⁵⁷

⁴⁹ See Generally, 21 TexReg 4712.

⁵⁰ Similarly, the Executive Director requested and the General Counsel granted a continuance of the Group 1 applications pursuant to 30 TAC §10.4(c). When requesting the continuance, Executive Director conferred with all of the parties, and none of the parties opposed the motion. Executive Director's Motion for Continuance, February 23, 2009, and General Counsel Letter granting continuance. February 23, 2009.

⁵¹ *Turbeville v. Gowdy*, Civ.App., 272 S.W. 559 (1925).

⁵² *Bd. of Med. Exam'rs v. Nzedu*, 228 S.W.3d 264, 271 (Tex. App.—Austin 2007, pet. denied).

⁵³ *General Dynamics Corp. v. Sharp*, 919 S.W.2d 861, 866 (Tex. App.—Austin 2006).

⁵⁴ *Harrison v. Cox*, 524 S.W.2d 387, 391 (Tex.Civ.App., 1975).

⁵⁵ 35 TexReg 10964, 10983.

⁵⁶ Executive Director's Request for Remand, June 18, 2012.

⁵⁷ Office of General Counsel Letter, June 29, 2012.

Therefore, the rule is not retroactive because it was used after its effective date. Additionally, the new rule is purely procedural in nature. The remand does not affect the substantive rights of the Applicants nor does it affect the standard of review the Commission uses. The rule only allowed the General Counsel to remand the application to the Executive Director. The Executive Director did change his use determination; however, this change was because the statutory distinction between ineligible production property and eligible pollution-control property.

Remand was not unconstitutionally retroactive because there is no vested right. In *Grocers Supply*, the Austin Court of Appeals expressly held that retroactive application of a change in the Comptroller's interpretation of a statutory exemption did not violate the Texas Constitution because no one had a vested right to the current version of the law.⁵⁸ In particular, the taxpayer had no right to an erroneous interpretation of the law. "A right cannot be considered a vested right unless it is something more than a mere expectation as may be based upon an anticipated continuance of the present general laws; it must have become a title, legal or equitable to the present or future enjoyment of a demand or a legal exemption from the demand by another."⁵⁹ When the authority granting the right has the power and discretion to take that right away, it cannot be said to be a vested right. An erroneous interpretation does not create a vested right.⁶⁰

Lastly, new §17.25(d) was not promulgated to implement either HB 3206 or 3544; therefore, the limitation on applicability does not apply. As discussed above, the General Counsel already had authority to remand the applications under 30 TAC §10.4(d).

Therefore, remand by the General Counsel pursuant to 30 TAC §17.25(d) was not impermissibly retroactive.

H. The change in interpretation of §11.31 is not a violation of the Equal and Uniform Taxation Constitution requirement.

Applicants state because 100% positive use determinations are now final for 19 applicants, the negative use determinations issued by the Executive Director, presumably if upheld by the Commission, would represent an unequal tax in violation of Art. VIII, Section 1 of the Texas Constitution. Applicants state that equal and uniform taxation requires that similarly situated taxpayers be taxed the same. Applicants state taxation is equal and uniform only when the tax classification is not unreasonable or arbitrary and operates the same throughout a class. Applicants claim because 100% positive use determinations were issued to some of the HRSGs then the Commission is required to issue 100% positive use determinations to all HRSGs.

Art VIII, Section 1 of the Texas Constitution states, "[t]axation shall be equal and uniform."

Tax classifications are constitutional unless there is no reasonable basis for the attempted classification.⁶¹ The party attacking the tax has the burden to show discrimination by negating every conceivable basis which might support it.⁶²

Since the initial filing of applications requesting a positive use determination for the HRSGs, the Executive Director has contemplated how to address these applications. As can be seen from reviewing the applications, appeals, and Executive Director's initial brief on the six appeals,

⁵⁸ *Grocers Supply Co. v. Sharp*, 978 S.W.2d 638, 643-44 (Tex.App.—Austin 1998, pet. denied).

⁵⁹ *Id.* citing *Ex Parte Abell*, 613 S.W.2d 255, 260 (Tex. 1995).

⁶⁰ *Id.*

⁶¹ *Hurt v. Cooper*, 130 Tex. 433, 110 S.W.2d 896, 901 (1937).

⁶² *Marathon Oil Co.*, 798 S.W.2d, 353, 359 (Tex.App.—Austin 1990, no writ).

there are many different ways to view the HRSG applications. The initial 25 positive use determination represent his initial view of the applications. However, as the Executive Director continued to review and contemplate the applications, his understanding has evolved and has realized the following.

The initial 25 positive use determinations were issued in error. A 100% positive use determination can only be issued when the equipment is wholly used for pollution control.⁶³ HRSGs are used for a production purpose. Therefore, there was no basis for the 100% positive use determination. Also, the HRSGs as described in the appealed applications are wholly used for production. The Executive Director does not agree that energy efficiency/emissions avoidance is pollution control or provides a recognizable environmental benefit especially in light on the strict construction tax exemptions are subject. If the Commission followed Applicants' argument, then the Commission would have to repeat this error.

"Agencies may, indeed are expected to, alter and refine their interpretation of what fills such gaps [in statutes] through the exercise of their technical expertise, their assessment of the wisdom of the implicated policies, and their experience with the day-to-day operation of the rules designed to implement those policies."⁶⁴ An administrative agency is not bound to follow its prior decisions in the same way a court is bound to follow judicial precedent, provided that the agency gives a reasonable explanation for the apparent inconsistency in agency interpretations.⁶⁵

In *First American Title Insurance Co. v. Strayhorn*, the Austin Court of Appeals held that an agency may change its interpretation of a statutory tax scheme as long as the new interpretation does not contradict the statute of a formally promulgated rule.⁶⁶ The Comptroller had changed her interpretation of what portion of the premium tax could be included in retaliatory-tax calculations from 100% to 15% without adopting a change in rules. The court affirmed the change because the former interpretation was an informal policy, not a rule, and the new interpretation was consistent with statute.⁶⁷ The court specifically rejected the appellant's equal-protection argument, hold that "uniformly enforce[ing] a statute until a certain date and then uniformly enforce[ing] the statute in a different manner does not mean there is a constitutional violation [T]axpayers do not acquire a right to pay less in taxes ... because a tax policy was incorrectly implemented."⁶⁸

Similarly, in *Grocers Supply Co. v. Sharp*, the Comptroller had adopted an expansive interpretation of a sales-tax exemption, but adopted a narrow interpretation after Grocers Supply submitted a tax-refund claim in reliance on the expansive interpretation.⁶⁹ The narrow interpretation was consistent with an earlier Texas Supreme Court opinion interpreting the statutory exemption. The Austin Court of Appeals held that the Comptroller could change his interpretation of the statute – even after Grocers Supply applied for a refund – because the expansive interpretation had not been adopted in a formal rule.

⁶³ TTC §11.31, *Mont Belevieu: Caverns, LLC v. Tex. Comm'n. on Env'tl. Quality* No. 03-11-00442 CV, 2012 WL 3155763 (Tex.App.–Austin 2012).

⁶⁴ *1756, Inc. v. Attorney General*, 745 F.Supp. 9, 15 (D.Ct., D.C. 1990).

⁶⁵ *Employees Ret. Sys. Of Tex.*, 74 S.W.3d 532, 544-545 (Tex.App.–Austin 2002, pet. denied).

⁶⁶ 169 S.W.3d 298, 306 (Tex.App.–Austin 2005) aff'd on other grounds sub nom *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627 (Tex. 2008).

⁶⁷ *Id.* at 306-07.

⁶⁸ *Id.* at 642.

⁶⁹ 978 S.W.2d 638, 640 (Tex.App.–Austin 1998, pet. denied).

Establishing that similarly situated applicants were treated differently in separate agency proceedings does not establish that agency action was improper.⁷⁰ An administrative agency does not violate the Texas Constitutional mandate that all taxation be equal and uniform when it corrects a misapplication of a tax exemption.⁷¹

These holdings apply directly to these appeals and to the Applicant's claims. An administrative agency is allowed to change its mind and decide to do things differently. Here, the Executive Director realized that issuing 100% positive use determinations was in violation of statutory provisions and that the equipment subject to the instant appeal does not qualify for a positive use determination. Therefore, a new class is not being created nor are taxpayers being treated unequally in conflict with applicable requirements, merely, the Executive Director is issuing negative use determinations consistent with existing statutory and regulatory provisions.

I. A Rulemaking Was Not Necessary for the Executive Director or the Commission to Issue Negative Use Determinations

Applicants state any change in how HRSG applications are treated would require a formal rulemaking. Applicants cite to *El Paso Hospital District v. Texas Health and Human Services Commission*. The Applicants claim the new formula resulting in the negative use determinations prescribes law or policy and amends or repeals positions previously applied by the Commission. Also, Applicants claim because the Commission has not updated the list in §11.31(k) through the process found in §11.31(l), the Agency has contravened its own rules.

There is no constitutional requirement that a statute or rule must define all of the terms used.⁷² "Recognizing the myriad of factual situations that may arise and allowing administrative agencies sufficient flexibility when drafting their rules, courts require no more than a reasonable degree of certainty defining what is required or prohibited."⁷³

In *Texas Mutual*, the Texas Department of Insurance, Division of Worker's Compensation discovered that one of its rules was inconsistently applied.⁷⁴ The new director ordered a halt to payments under that rule.⁷⁵ He then issued a one-page report detailing how the provision was to be implemented.⁷⁶ This report was challenged as an invalid rule.⁷⁷ The court decided the report was not a rule and not subject to the APA because it was a document that mandated the internal consistent application of a rule, based on the language of the rule itself.⁷⁸ The court went on and said that even if it was a statement that fell within the definition of a rule, "it is well established that not every administrative pronouncement is a rule within the meaning of the APA."⁷⁹ Additionally, the court distinguished *El Paso Hospital District v. Texas Health and Human Services Commission*, stating, "[u]nlike the HHSC's interpretation in *El Paso Hospital District*, the ... report does not contradict Rule 134.401."

⁷⁰ *Reliant Energy, Inc., v. Pub. Util. Comm'n.*, 153 S.W.3d 174, 199-201 (Tex.App.—Austin 2004, pet. denied).

⁷¹ *Grocers Supply Co. v. Sharp*, 978 S.W.2d 638, 645 (Tex.App.—Austin 1998, pet. denied).

⁷² *Texas Mutual Insurance Co., v. Vista Community Medical Center, LLP.*, 275 S.W.3d 538, 555 (Tex.App.—Austin 2008).

⁷³ *Id.* at 555.

⁷⁴ *Id.* at 545.

⁷⁵ *Id.* at 545-56.

⁷⁶ *Id.* at 554.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 555.

In *Railroad Commission v. WBD Oil & Gas CO.* the Texas Supreme Court upheld the RRC's field rules.⁸⁰ Field rules are orders detailing regulations for a certain field.⁸¹ These are created through a contested case hearing.⁸² In discussing the case, the Court pointed out the field rules "in the context of the APA as a whole, it is clear that field rules are not rules of 'general applicability' which must not be made without public comment but are an adjudication of the individual rights principally affected."⁸³ "By 'general applicability,' the APA definition references statements that affect the interest of the public at large such that they cannot be given effect of law without public input. The definition does not reference statements made in determining individual rights, even if the number of individuals is large and they can be described as falling within a defined class."⁸⁴

The negative use determinations issued to each of the Applicants was the result of a case-by-case review of each application. The Executive Director followed his standard process for each application.⁸⁵ A technical review was generated for each application. In deciding that HRSGs were production equipment, the Executive Director interpreted existing provisions and applied them on a case-by-case basis to the applications.

This change is not a rule of general applicability. Rather it affects a limited number of Applicants for a use determination. Therefore, no rulemaking is necessary.

J. Steam Turbines are not eligible to receive a positive use determination

Several of the HRSG use determination applications also request a use determination for an associated steam turbine.⁸⁶ The Executive Director has issued negative use determinations for all steam turbines whether or not they were on the list in §11.31(k). Some applicants have either specifically appealed the negative use determination for the associated steam turbine or have filed documents that indicate dissatisfaction with a negative use determination but do not appear to be an appeal. All appeals of steam turbines in the Group 1 applications are untimely. Even if considered timely, steam turbines are production equipment, as discussed below.

The following tables detail the Group 1 applications with steam turbine(s), the date the negative use determination was issued, whether the steam turbine was claimed to be on §11.31(k) list, and documents that may be considered an appeal:

⁸⁰ *Railroad Commission of Texas v. WBD Oil & Gas Co.*, 104 S.W.3d 69 (Tex. 2003).

⁸¹ *Id.* at 70.

⁸² *Id.* at 70-71.

⁸³ *Id.* at 79.

⁸⁴ *Id.*

⁸⁵ Attachment C contains the technical review for the application subject to this Appeal.

⁸⁶ Attachment D contains 18 additional use determinations for steam turbines that the Executive Director issued negative use determinations.

Group 1 Applications – Steam Turbines

Application No.	Date Neg. Issued	§ 11.31(k)?	Relevant Document(s)
07-11926	May 1, 2008	Yes, B-10	<ul style="list-style-type: none"> • December 5, 2008, Response to appeal of the ED's UD • July 31, 2012, Applicant CER-Colorado Bend Energy LLC's Appeal of Negative Use Determination Issued to CERT-Colorado Bend Energy LLC, (hereinafter CER Use Determination Appeal)
07-11994	May 1, 2008	Yes, B-10	<ul style="list-style-type: none"> • December 5, 2008, Response to appeal of the ED's UD • July 30, 2012, Applicant Freeport's Appeal
07-11914	May 1, 2008	Yes, B-10	<ul style="list-style-type: none"> • December 5, 2008, Response to appeal of the ED's UD • July 30, 2012, Applicant Tenaska's Appeal
07-11966	May 1, 2008	Yes, B-10	<ul style="list-style-type: none"> • December 5, 2008, Response to appeal of the ED's UD • August 1, 2012, Applicant Freestone Power's Appeal of Negative Use Determination

To be considered timely, appeals must be filed within 20 days of receiving notice of the use determination.⁸⁷ A person is presumed to have been notified on the third regular business day after the date the notice of the Executive Director's action is mailed.⁸⁸ All of the appeals are dated at least six months after the Executive Director mailed the negative use determination.

Applicants attempt to revive the steam turbine appeals by stating that since the Executive Director requested remand of the applications and General Counsel granted it, somehow that revives the steam turbines. The General Counsel can only remand what was before him, the HRSO portions of the applications. As can be seen from the table above, the negative for the steam turbines were issued over 4 years ago and are final. The negatives were never timely appealed.

For the Group 2 applications, there are three steam turbines that were timely appealed. Those applications are listed in the table below.

⁸⁷ 30 TAC §17.25(b).

⁸⁸ Id.

The following steam turbines were timely appealed:

Application No.		§ 11.31(k)?
12271	Midlothian Energy Limited Partnership	Yes, B-10
12826	GIM Channel View Cogeneration LLC	Yes, B-10
12210 & 12211	Topaz Power Group	Yes, B-10
12272	Hays Energy Limited Partnership	Yes, B-10
12826	GIM Channelview Cogeneration LLC	Yes, B-10

Steam turbines are used wholly for production, do not provide an environmental benefit, and applicants fail to cite an applicable environmental regulation

Steam turbines do not qualify for a positive use determination. Steam turbines take steam from the HRSG and use the energy to drive an electrical generator. Thus, steam turbines are production equipment. Additionally, steam turbines are not pollution control equipment. They provide no environmental benefit. Just because the steam turbine may be on the §11.31(k) list, as discussed above, does not mean that they automatically qualify for a positive use determination. Every application for a use determination with a steam turbine has been given a negative use determination.

K. Economizers and Condensers are not eligible to receive a positive use determination.

One of the appealed applications is for an economizer at a coal-fired power plant. Economizers are heat exchangers. They take heat from the exhaust gas of the coal-fired boiler to help warm the water. Coal-fired power plants are steam boilers, adding energy to water creating steam. Steam then drive a steam turbine that generates electricity. Economizers are merely part of this production process to preheat to the water. They are production equipment, provide no environmental benefit, and there is no applicable environmental rule cited by the Applicant. Just because the economizer may be on the §11.31(k) list, as discussed above, does not mean that they automatically qualify for a positive use determination.

One of the appealed applications has a condenser. A condenser is a unit that condenses the water vapor into liquid water. The liquid water is then sent back to the HRSG to generate steam to generate electricity. The condenser is part of the steam production cycle. They are production equipment, provide no environmental benefit, and no applicable environmental rule is cited by the Applicant. Just because the condenser may be on the §11.31(k) list, as discussed above, does not mean that they automatically qualify for a positive use determination.

L. The Executive Director can delegate authority to sign use determinations.

A couple of Applicants challenge whether the Executive Director can delegate the authority to sign the negative use determinations.

“The [ED] may delegate to the [ED]’s staff any authority or duty assigned to the [ED] unless the statute, rule, or order assigning or delegating the authority or duty specifies otherwise.”⁸⁹ In Agency rules the Executive director is defined as “[t]he executive director of the commission, or any authorized individual designated to act for the executive director.”⁹⁰ Lastly, Texas Tax Code §11.31 does require the Executive Director is issue a use determination but does not prohibit delegation.⁹¹

IV. Conclusion

After careful consideration of the Appeals filed by the above listed Applicants on the negative use determination issued by the Executive Director on the HRSGs, the Executive Director concludes that its negative use determinations were correct. The Applicants have failed to provide any legal basis upon which the Commission should reverse the Executive Director’s negative use determination in this case. The Executive Director’s negative use determination is consistent with the terms and mandates set forth in the relevant statutes and rules. The assertions of the Applicants do not alter the findings and final negative use determination issued by the Executive Director in this case.

Accordingly, the Executive Director respectfully requests that the Commission deny the instant appeal and affirm the Executive Director’s negative use determinations.

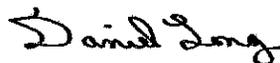
Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Director
Environmental Law Division



Daniel Long, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

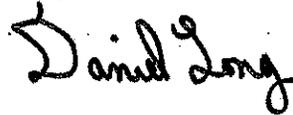
⁸⁹ TWC §5.222

⁹⁰ 30 TAC §3.2(16)

⁹¹ Tex. Tax Code §11.31

Certificate of Service

I certify that on October 4, 2012, the original and 7 copies of the Executive Director's Response to the Appeals Filed on the Negative Use Determinations for the Heat Recovery Steam Generator Applications was filed with the Office of the Chief Clerk, Texas Commission on Environmental Quality, and was served by first-class mail, agency mail, electronic mail, or facsimile to all persons on the attached mailing list.

A handwritten signature in black ink that reads "Daniel Long". The signature is written in a cursive style with a large initial 'D' and a long, sweeping tail on the 'g'.

Daniel Long, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

**Mailing List
TCEQ Docket Numbers**

2008-0830-MIS-U (UD 07-11914/Tenaska Gateway Partners, Ltd – Rusk County)
2008-0831-MIS-U (UD 07-11966/Freestone Power Generation, L.P. – Freestone County)
2008-0832-MIS-U (UD 07-11971/Borger Energy Associates, L.P. – Hutchinson County)
2008-0849-MIS-U (UD 07-11969/Brazos Valley Energy, L.P. – Fort Bend County)
2008-0850-MIS-U (UD 07-11994/Freeport Energy Center, L.P. – Brazoria County)
2008-0851-MIS-U (UD 07-11926/CER-Colorado Bend Energy LLC (f/k/a Navasota Wharton Energy Partners, L.P.) – Wharton County)
2012-1529-MIS-U (UD 12696/EN Service’s LP – Harrison County)
2012-1552-MIS-U (UD 16409/Bosque Power Company, LLC – Bosque County)
2012-1559-MIS-U (UD 12210 & 12211/Topaz Power Group, LLC – Nueces County)
2012-1562-MIS-U (UD 15506, 16410, 16411 & 16412/Cottonwood Energy Company LP – Newton County)
2012-1586-MIS-U (UD 12268/Wolf Hollow I, LP – Hood County)
2012-1587-MIS-U (UD 13534/South Texas Electric Cooperative, Inc. – Victoria County)
2012-1635-MIS-U (UD 13544/Brazos Electric Cooperative, Inc. – Johnson County)
2012-1648-MIS-U (UD 16413/Brazos Electric Cooperative, Inc. – Jack County)
2012-1649-MIS-U (UD 12004/NRG Texas Power LLC – Limestone County)
2012-1650-MIS-U (UD 07-12271/Midlothian Energy Limited Partnership – Ellis County)
2012-1660-MIS-U (UD 07-12202/Wise County Power Company, LLC – Wise County)
2012-1662-MIS-U (UD 07-12203/Ennis Power Company, LLC – Ellis County)
2012-1679-MIS-U (UD 15020/Motiva Enterprises, LLC – Jefferson County)
2012-1682-MIS-U (UD 07-12272/Hay Energy Limited Partnership – Hays County)
2012-1683-MIS-U (UD 12826/GIM Channelview Cogeneration LLC – Harris County)

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ATTACHMENT A



Property-Tax Exemptions for Pollution Control Property

DISCLAIMER

This document is intended to assist those applying for a use determination, pursuant to Title 30, Texas Administrative Code, Chapter 17 (30 TAC 17). Conforming to these guidelines should result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These draft guidelines are not regulations and should not be taken as such. Exercise discretion in using this guide; also consider any other relevant information when developing an application.

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INTRODUCTION

Purpose of Guidelines

These guidelines are intended as guidance for persons seeking a property-tax exemption for capital expenditures for **pollution control property/equipment**—meaning a facility, device, or method for the control of air, water, or land pollution. Under the Texas Tax Code (TTC), a person or business may obtain an exemption from ad valorem property taxes for certain property/equipment installed to comply with environmental laws or rules. This document explains how to determine whether you have property/equipment that may qualify for a tax exemption and how to apply to the TCEQ to ultimately obtain the exemption. The document issued by the TCEQ, which authorizes the tax exemption, is referred to as a **use determination**.

Legislative Background

On November 2, 1993, Texas voters approved a constitutional amendment exempting certain pollution control property/equipment from property taxation. This amendment added Section (§) 1-1 to Article 8 of the Texas Constitution. Legislation to implement the amendment was approved in House Bill (HB) 1920, 73rd Texas Legislature, 1993. This legislation added a new TTC, §11.31. The intent of the constitutional amendment was to ensure that capital expenditures undertaken to comply with environmental rules did not increase a facility's property taxes.

The 77th Texas Legislature, 2001, amended TTC, §11.31 to require the TCEQ to adopt specific standards for evaluating applications and create a formal procedure to allow applicants or appraisal districts to appeal a final determination.

The 80th Legislature, 2007, amended TTC, §11.31 by adding three new subsections. The first change required the TCEQ to adopt a nonexclusive list of property/equipment that included a list of 18 different categories, i.e., the Expedited Review List that is specified in 30 TAC §17.17(b). The second change required that the list be reviewed at least once every three years and established a standard for removing property/equipment from the list. The third change established a 30-day review period for applications that contain only property/equipment listed on the Expedited Review List.

The 81st Texas Legislature, Regular Session, 2009, amended TTC, §11.31 by adding two new sections. New section (g-1) requires that applications containing property/equipment adopted under TTC, §11.31(k) be reviewed using the methods and standards adopted under TTC, §11.31(g). New section (n) requires the establishment of a permanent advisory committee that is charged with advising the commission on the implementation of TTC, §11.31. In addition, the legislation corrected the agency's name in the statute and allowed for electronic appraisal district notifications as required by TTC, §11.31(d).

On November 18, 2010, the TCEQ adopted changes to 30 TAC Chapter 17 to establish procedures and mechanisms for obtaining a use determination required to implement the amendments to TTC, §11.31 by HB 3206 and HB 3544, 81st Texas Legislature, Regular Session, 2009.

The legislation established a two-step process for securing an exemption from property taxes for pollution control property/equipment:

1. A facility must first obtain from the TCEQ a determination that the property/equipment is used for pollution control. The determination includes the percentage of property/equipment use that pertains to pollution control.
2. The applicant then submits this use determination to the local appraisal district to obtain the property tax exemption. The appraisal district will determine the value of the property/equipment.

ELIGIBILITY AND EXCLUSIONS

Effective Date

To be eligible for a positive use determination, the property/equipment must have been purchased, acquired, constructed, installed, replaced, or reconstructed after January 1, 1994, to meet or exceed an adopted federal, state, or local environmental law, rule, or regulation. Property/equipment at the facility prior to that date is not eligible.

Eligible Property/Equipment

Property/equipment that is installed (or is being installed) wholly or partly for pollution control purposes may be eligible for a positive use determination. **The applicant must show that the property/equipment was installed to meet or exceed an applicable environmental regulation.** For property/equipment used **partly** for pollution control, the applicant must perform a cost analysis using the **cost analysis procedure** (CAP) specified in 30 TAC §17.17(c) to determine the percentage of the qualifying capital.

Pollution control property/equipment that became taxable after January 1, 1994, but for which no positive use determination has been issued, may be eligible for a positive use determination.

Following is a list of potential eligible property/equipment:

- **Dedicated-Purpose Vehicles:** Vehicles that are used solely for pollution control (such as certain vacuum trucks, street sweepers, surface-watering trucks, and spill-response vehicles) may be eligible for positive use determinations.
- **Qualifying Land:** Land **may** be eligible for a positive determination, but only land acquired after January 1, 1994, that actually contains (1) only pollution control property/equipment; or (2) property/equipment that is used solely for pollution control; or (3) property/equipment that was specifically purchased solely for pollution control. An example of (1): the actual square footage of land that contains a baghouse or scrubber. An example of (2): the land used for a storm water–or wastewater–containment pond. An example of (3): the purchase of adjacent land that will be used solely for pollution control.
- **Buffer Zones:** Property/equipment used solely as a buffer zone may be eligible only if the buffer zone is specifically required by an adopted environmental rule or regulation.
- **Used Equipment:** Property/equipment purchased from another owner may be eligible for a positive use determination if it meets the following criteria.

1. It must have been acquired, constructed, or installed by the new owner after January 1, 1994.
2. It must be used wholly or partly as pollution control property/equipment.
3. It was not taxable prior to January 1, 1994, by any taxing unit in which the property/equipment is located.

Excluded Property/Equipment

A person is not entitled to an exemption from taxation under TTC, §11.31 and 30 TAC §17.6:

- Solely on the basis that the property is used to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water, or land pollution;
- If the property is used, constructed, acquired, or installed wholly to produce a good or provide a service;
- If the property is not wholly or partly used, constructed, acquired, or installed to meet or exceed a law, rule, or regulation 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; or
- If the environmental benefit is derived from the use or characteristics of the good or service provided.

For example, a company operates a hazardous waste incinerator and contracts with other companies to dispose of their hazardous waste for a fee. The incinerator will not be eligible for a positive use determination since it is considered commercial waste disposal equipment. However, pollution control equipment, such as baghouses or scrubbers needed to comply with environmental regulations while operating the unit, would be eligible. If a company installed and operated an incinerator to dispose of its own waste and did not accept others' waste for a fee, the incinerator would be eligible for a positive use determination.

Property used for residential purposes, or for recreational, park, or scenic uses as defined by TTC, §23.8i, is ineligible for an exemption under TTC, §11.31.

The exemption provided under TTC, §11.31 does not apply to a facility, device, or method for the control of air, water, or land pollution that was subject to a tax abatement agreement executed before January 1, 1994 or to a motor vehicle, except for eligible dedicated-purpose vehicles that are used solely for pollution control.

Length of Use Determination

A use determination is valid as long as the property/equipment:

- is both used for pollution control as described in the application for which the positive use determination was made; and
- the property/equipment remains under the same owner in which the use determination was issued.

TYPES OF APPLICATIONS

The applicant can submit three different tiers, or levels, of applications for a use determination. If tax relief is sought for pollution control property/equipment in different tier levels, separate applications must be submitted for each tier level.

Application fee levels were developed with the intent of recovering the costs to administer the program. Fees are higher for Tiers II and III because of the greater administrative costs involved in reviewing applications.

Tier I—Tier I Table Property/Equipment

The Tier I application is for eligible property/equipment that is listed on the Tier I Table specified in 30 TAC §17.14(a). The Tier I Table enumerates specific property/equipment that the TCEQ has determined is used for pollution control at a standard use percentage as listed in the table. Commonly, property/equipment listed on the Tier I Table is used wholly for pollution control. Tier I applications require a \$150 fee.

The applicant is responsible for demonstrating that the property/equipment is used for pollution control at the standard use percentage listed on the table and was installed to meet or exceed an applicable environmental regulation.

All items listed on a Tier I application must be located on the Tier I Table or must be necessary for the installation or operation of property/equipment located on the Tier I Table. If a piece of property/equipment listed on the Tier I Table is used for a purpose different than that listed on the table, at a different use percentage than listed on the table, or the use of the property/equipment generates a marketable product, a Tier III application must be filed.

The Tier I Table is generic and does not specify brand names. The Tier I Table is reviewed at least once every three years. The Tax Relief Advisory Committee assists in this review.

Tier II—100% Use, Non-predetermined Property/Equipment

The Tier II application is for eligible property/equipment that an applicant believes is used 100% for pollution control but it is not listed on the Tier I Table. A Tier II application may include eligible property/equipment on the Expedited Review List specified in 30 TAC §17.17(b) only if such property/equipment is used 100% for pollution control. Tier II applications require a \$1,000 fee.

The applicant is responsible for demonstrating that the property/equipment serves 100% for pollution control, has no production benefits, and was installed to meet or exceed an applicable environmental regulation.

Tier III—Partial Use Determinations

The Tier III application is for property/equipment that is used partially for pollution control and that does not correspond exactly to an item on the Tier I Table. The Tier III application is also applicable for eligible property/equipment on the Expedited Review List specified in 30 TAC §17.17(b) that is used partially for pollution control. Tier III applications require a \$2,500 fee.

The applicant is responsible for demonstrating that the property/equipment is used for pollution control and was installed to meet or exceed an applicable environmental regulation.

Tier III property/equipment may offer environmental benefits and improvements to production, safety, or other processes, including new or modified property/equipment that has both environmental and production elements. An example is the installation of a new closed vent system used to control a highly reactive volatile organic compound (HRVOC) emission from a cooling tower. The HRVOC emissions are captured by the new closed vent system and returned to the production process. Since the captured material is returned to the production process, the closed vent system is eligible for only a partial use determination and therefore requires a Tier III application.

If the property/equipment controls pollution and contributes to the manufacturing process, safety, or other purposes, the application must specify the proportion of the pollution-control aspect of the property/equipment. The applicant must use the CAP specified in 30 TAC §17.17(c) to make this partial use determination.

TIER I TABLE AND THE EXPEDITED REVIEW LIST

The Tier I Table is specified in 30 TAC §17.14(a) and is based on Part A of the former Equipment and Categories List originally adopted by the TCEQ under TTC, §11.31(g). The Expedited Review List is specified in 30 TAC §17.17(b) and is based on the categories of property/equipment listed in TTC, §11.31(k), referred to as the *nonexclusive list*.

The Tier I Table is a list of property/equipment that the executive director has determined is used either wholly or partly for pollution control purposes at a standard use percentage. The items listed are described in generic terms without brand names or trademarks. If the executive director determines a piece of property/equipment listed on the Tier I Table is used for a purpose different than that listed on the table, at a different use percentage than listed on the table, or the use of the property/equipment generates a marketable product, a Tier III application must be filed.

The commission will review and update the list at least once every three years with the assistance of the Tax Relief for Pollution Control Property Advisory Committee. An item may be added only if there is compelling evidence that the item provides pollution control benefits and a standard use percentage can be calculated. An item may be removed from the list only if there is compelling evidence that the item does not render pollution control benefits. Property/equipment used solely for product collection or for production is not eligible for a positive use determination. Property/equipment used solely for worker safety or fire protection does not qualify as pollution control.

The Expedited Review List is a modified version of the list of the categories set forth in TTC, §11.31(k). The list was formerly known as Part B of the Equipment and Categories List. Property/equipment used solely for product collection or for production is not eligible for a positive use determination.

If a piece of property/equipment is located on both the Tier I Table and the Expedited Review List, the applicant must select the listing appropriate for the use of the property/equipment.

CALCULATING A PARTIAL USE DETERMINATION

Partial use determinations must be calculated for all Tier III applications. The applicant must use the CAP specified in 30 TAC §17.17(c) to make the partial use determination. The purpose of the calculation is to determine the percentage of the property/equipment that is being used for pollution control.

TTC, §11.31 requires the applicant to supply any information requested by the TCEQ as needed to make a use determination. Therefore, if an applicant is unable or unwilling to provide the TCEQ in a timely manner with the information required by the CAP, then the TCEQ will issue a negative use determination to the applicant.

Cost Analysis Procedure

Equation 1 is specified in 30 TAC §17.17(c)(1) and is used in the CAP to determine the creditable partial percentage for property/equipment that is used only in part for pollution control and is not listed on the Tier I Table. If the CAP produces a negative number or zero, then there is no creditable partial percentage for the property/equipment and a positive use determination cannot be issued.

Equation 1

$$\frac{((\text{Production Capacity Factor} \times \text{Capital Cost New}) - \text{Capital Cost Old}) - \text{Net Present Value of Marketable Product}}{(\text{Capital Cost New})} \times 100$$

The variables used in Equation 1 are defined as follows:

Production-Capacity Factor (PCF): A calculated value used to adjust the value of a partial use determination to reflect the capacity of the original property/equipment or process. The PCF is calculated as shown in Equation 2 by dividing the capacity of the existing property/equipment or process, i.e., Old Property, by the capacity of the new property/equipment or process, i.e., New Property. The PCF is only used when there is an increase in production capacity.

Equation 2

$$\text{Production Capacity Factor} = \frac{\text{Production Capacity of Old Property}}{\text{Production Capacity of New Property}}$$

Capital Cost New (CCN): The estimated total capital cost of the property/equipment or process.

Capital Cost Old (CCO): The cost of comparable property/equipment or process without the pollution control. Use the following criteria for calculating CCO –

1. If comparable property/equipment without the pollution control is on the market in the United States, then an average market price of the most recent generation of technology must be used.
2. If the conditions in criteria 1 do not apply and the owner is replacing an existing property/equipment that already has received a positive use determination, the owner shall use the CCO from the application of the previous use determination.

3. If the conditions in criteria 1 and 2 do not apply and the owner is replacing an existing property/equipment, then the owner shall convert the original cost of the property/equipment to today's dollars by using a published industry-specific standard. If the production capacity of the new property/equipment or process is lower than the production capacity of the old property/equipment or process, CCO is divided by the PCF to adjust CCO to reflect the same capacity as CCN.
4. If the conditions in criteria 1, 2, and 3 do not apply, and the owner can obtain an estimate of the cost to manufacture the alternative property/equipment without the pollution control, then an average estimated cost to manufacture the property/equipment must be used. The comparable property/equipment must be the most recent generation of technology. A copy of the estimate, including the specific source of the information, must be provided with the worksheet that is required to be attached to the Tier III application.

Net Present Value of Marketable Product (NPVMP) – The net present value of the marketable product recovered for the expected lifetime of the property is calculated using Equation 3 as specified in 30 TAC §17.17(c)(2).

Equation 3

$$NPVMP = \sum_{t=1}^n \frac{(\text{Marketable Product Value} - \text{Production Cost})_t}{(1 + \text{Interest Rate})^t}$$

The variables used in Equation 3 are defined as follows:

Marketable Product Value (MPV) – The MPV may be calculated two ways.

1. The average retail value of the product produced by the property/equipment for the current one year period. If the price varies from state to state, the applicant must calculate an average and explain how the figures were determined.

Note: The rule specifies in Figure: 30 TAC §17.17(c)(2) that “the most recent three-year average price of the material as sold on the open market should be used in the calculation.” However, this statement is no longer applicable due to the recent revisions to 30 TAC §17.17 and it will be addressed in a future rulemaking.

2. If the material is used as an intermediate material in a production process, then the value assigned to the material for internal accounting purposes may be used. It is the responsibility of the applicant to show that the assigned value is comparable to the value assigned by other similar producers of the product.

Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property/equipment and sold, traded, accumulated for later use, or used in a manufacturing process (including at a different facility). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control.

Production Cost (PC) – The costs directly attributed to the production of the product, including raw materials, storage, transportation, and personnel, but excluding non-cash costs, such as overhead and depreciation.

n – The estimated useful life in years of the property/equipment that is being evaluated for a use determination.

Interest Rate – 10%

t – The sequential number for time in years 1 – x of n . The numerical value for t is used in Equation 3 as the value of the exponent for the denominator and only as an identifier of the calculation sequence in the numerator. For example, where n is 6 years, $t=1$ in year one, $t=2$ in year two, $t=3$ in year three, and so on in sequence, up to year six. The values for MPV and PC in each calculation should equate to those values estimated for year one, year two, year three and so on in sequence, up to year six. The NPVMP would be the sum of all six calculations.

Example: Cost Analysis Procedure

Type of Property/Equipment: Dust Collection System

Analysis: As a result of an increase in production capacity, a facility installs a larger dust collection system. The material collected is considered to be a co-product and is sold to another owner. The previous dust collection system received a positive use determination in 2002.

Costs related to this project are:

Capital Cost New = \$20,000,000

Capital Cost Old = \$5,000,000

Production Capacity Old = 100 tons per year

Production Capacity New = 150 tons per year

Co-Product Value: Per Year = \$100,000

Co-Product Production Costs Per Year = \$50,000

Useful Life = 10 years

Interest Rate = 10%

Marketable Product Value = \$50,000 per year

Production Capacity Factor = 67%

Net Present Value of Marketable Product = \$307,228

Figure 1

$$CAP \text{ Equation} = \frac{(.67 \times 20,000,000) - 5,000,000 - 307,228}{20,000,000} = 0.40 = 40\%$$

Therefore, using the equation specified in the CAP as shown in Figure 1, 40% of the capital cost of the new dust collection system would be eligible for a partial use determination.

STEPS FOR OBTAINING A USE DETERMINATION

The following steps explain how to apply for a use determination and how the TCEQ processes the application.

1. Applicant acquires, installs, replaces, or constructs property/equipment after January 1, 1994.

2. Applicant obtains a use determination application and guidance document from the TCEQ.

<http://www.tceq.state.tx.us/implementation/air/taxrelief>

3. Applicant prepares application for use determination and submits the original signed application and a complete copy to the TCEQ with the appropriate fee.
4. The TCEQ conducts an administrative review to ensure that all required items are included.

If the application is incomplete, the TCEQ will notify the applicant who then has 30 calendar days to submit a revised application.

5. The TCEQ notifies the applicant and the appropriate appraisal district that an application has been filed.

The TCEQ also sends the copy of the application to the Chief Appraiser.

6. The TCEQ conducts the technical review.

If the application is not technically complete, the TCEQ will notify the applicant who then has 30 days to submit a revised application.

7. The TCEQ issues a use determination and notifies the applicant and the appraisal district of the use determination.
8. The applicant submits a tax-exemption form and the positive use determination to the appraisal district.

COMPLETING AN APPLICATION

Confidential Material

The TCEQ recommends that the applicant **not** submit confidential information as part of the use determination application. If doing so cannot be avoided, a general description in non-confidential terms should be included on the application, along with a document containing the confidential information as an attachment. Each page of the confidential information should be conspicuously marked *CONFIDENTIAL*.

Please note that all information submitted to the TCEQ is subject to the Texas Public Information Act as codified in Chapter 552 of the Texas Government Code. The Texas Office of the Attorney General (OAG) is responsible for determining whether proprietary information, i.e., confidential business information, submitted to the TCEQ must be released upon public request. Additional information on this subject is available from the OAG's Open Records Division at <https://www.oag.state.tx.us/open/>.

Common Application Mistakes

- **Citing the Wrong Regulation or Rule**

Property/equipment must have been installed in order to meet or exceed an environmental rule or regulation adopted by a federal regulatory agency, the State of Texas, or a local political subdivision of Texas.

The citation must be to a specific subsection of the regulation that is being met by the installation of the pollution control property/equipment. Local regulations are only valid if they have been adopted as part of the political subdivision's environmental code.

Primary links to federal and state environmental rules and regulations:

- [Title 40 Code of Federal Regulations \(40 CFR\)](#)
- [30 TAC](#)

- **Inadequate Description**

The description of the property/equipment provided in the application must, at a minimum, include all of the following information:

1. The name of the property/equipment;
2. A detailed description of the location of the property/equipment; and
3. An explanation of specifically how the property/equipment is used for pollution control.

- **Timing Deadline**

If the applicant desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the same tax year.

- **Multiple Projects at One Site**

A separate application must be submitted for each unit of pollution control property/equipment or each group of integrated units installed for a common purpose at a facility.

Example 1: A facility installs a new dust collector and secondary containment around storage tanks and replaces a gas-fired internal combustion motor in gas-compression service with an electric motor. Consideration of all three pieces of pollution control property/equipment would require three applications.

Example 2: A facility installs a new scrubber and a flare. A vent stream is first sent to the scrubber where a toxic substance is removed. The vent stream is then sent to the flare. This process should be considered one project or integrated unit and could be considered with one application.

Example 3: A facility undertakes a project to eliminate fugitive emissions. The project involves replacement of pump seals, elimination of threaded pipe joints, installation of a collection system that will collect releases from pressure safety valves, and replacement of an existing flare that is unrelated to the fugitive emissions project. This project would require separate applications for the fugitive-emissions and the replacement flare.

- **Eligible Property Must Have Capital Expenditures Incurred**

Positive use determinations will not be issued prospectively. Upon request, the TCEQ will review proposed future projects or purchases and issue a letter stating which specific equipment or parts of a project may be eligible for a positive use determination at the time of construction or purchase. To receive a positive use determination, the requester will need to submit an application during or after the year that the property would first become taxable.

- **Applications Submitted Without Fee Payment**

As specified in [30 TAC §17.10\(a\)](#), the appropriate fee must be submitted with each application. An applicant, whose application is not accompanied with the proper fee payment or a receipt showing the completion of an electronic

payment, will receive a deficiency letter by mail. An application will not be considered administratively complete until the proper fee is received.

Special Conditions

Additional guidance for certain special conditions, e.g., policy decisions regarding unique property/equipment applications, is available on the following TCEQ Relief for Pollution Control Property Program Web page:

<http://www.tceq.state.tx.us/implementation/air/taxrelief/specialconditions.html>

APPLICATION FILING

Send the completed application and the appropriate fee along with a complete copy of the application to:

U.S. Mail

Cashier's Office, MC 214
Tax Relief Program
TCEQ
PO Box 13088
Austin TX 78711-3088

Physical Address

Cashier's Office, MC 214
Building A
TCEQ
12100 Park 35 Circle
Austin TX 78753

Each completed application must include a signature page with an original signature. The copy must be complete and marked *Appraisal-District Copy*.

APPLICATION REVIEW

Applications are first received by the TCEQ's Cashier's Office for fee collection and are then forwarded to the TCEQ's Tax Relief program area for processing and review.

Administrative Review

The TCEQ will determine if an application is administratively complete—that is, all of the required fields on the application form have an entry—and whether the proper fee has been paid within a reasonable time after receipt of the application. If any required fields are left blank or incomplete, if the proper fee has not been included, or if the owner of the property/equipment has an outstanding balance with the TCEQ, the agency will return the application along with a notice of deficiency (NOD) specifying the information or payment needed. The applicant then has 30 days from receipt of the NOD to submit the revised application. Failure to respond in the allotted time will result in the agency terminating its review and the applicant's forfeiture of any fee.

Once the TCEQ has declared an application administratively complete, it will mail the applicant and the appraisal district a notice that the application is under technical review and provide the copy of the application to the appropriate appraisal district.

Delinquent Fee Protocol

In accordance with the TCEQ's Delinquent Fee Protocol, the agency will not consider applications administratively complete until all delinquent fees the owner of the property/equipment owes to the TCEQ are paid.

Additional information about the Delinquent Fee Protocol is available on the following TCEQ Web page: <http://www.tceq.texas.gov/agency/delin/index.html>.

Technical Review

A detailed technical review of the application is completed. For Tier I, II, and III applications not containing property located on the Expedited Review List, the TCEQ has 60 days from the date it declares an application administratively complete to request additional technical information. The TCEQ must complete its review of applications containing property located on the Expedited Review List within 30 days of receipt of a complete application, provided that there are no technical deficiencies.

The 30-day and 60-day clocks are stopped if a technical NOD is sent. The clock restarts after an appropriate response to the technical NOD is received. If an application is deficient, it will be returned to the applicant who has 30 calendar days from receipt to address the deficiencies and provide a revised application.

Use Determination

Once the TCEQ has completed its technical review, it will furnish the applicant with a use determination letter (negative or positive) and a use determination certificate, if positive. A copy of the use determination is mailed to the Chief Appraiser of the appropriate appraisal district. If the review results in a negative determination, the reasoning is explained in the letter. By statute, the executive director may not determine that the property/equipment is pollution control unless it meets the standards of Chapter 17.

Obtaining the Tax Exemption

If the use determination is positive, the applicant must then submit the use determination, along with the appropriate exemption-request form obtained from the appraisal district, to the appraisal district to receive the tax exemption. If the use determination is negative, the applicant and the chief appraiser will be notified of the reason(s) for the denial. The appraisal districts have a filing deadline for exemption requests by April 30 for each tax year. Chief appraisers have the authority to disallow exemption requests that are not filed by this deadline. The TCEQ provides notice to the appraisal district when an application for a use determination is filed and when a final determination is issued. However, it is the responsibility of the applicant to submit the exemption request to the appraisal district to obtain the tax exemption.

APPEALS PROCESS

A use determination may be appealed by the applicant or the Chief Appraiser of the appraisal district. A written appeal request must be received by the TCEQ Chief Clerk within 20 days after receipt of the use determination letter. The use determination is presumed to have been received on the third working day after it was mailed.

The appeal request must contain the following information:

1. Name, address, and daytime phone number of the person requesting the appeal. (Fax number and e-mail addresses are requested but not required.)
2. Name and address of the applicant and the Chief Appraiser of the appraisal district.

3. Application number assigned by the TCEQ and a copy of the negative use determination letter or the positive use determination letter and certificate.
4. Description of what is being appealed.
5. Explanation of the basis for the appeal.

Upon receipt of the appeal, the TCEQ's chief clerk will forward a copy to the executive director and the TCEQ's general counsel. The general counsel will develop the briefing schedule and set the agenda date. The chief clerk will mail a copy of the appeal to whichever party did **not** request the appeal.

Tax Relief program personnel or the Office of the General Counsel will contact the applicant and the appraiser to discuss the appeal. Both parties will be offered the opportunity to participate in alternative dispute resolution.

The applicant and the chief appraiser may testify at the commission meeting. The commission may either deny the appeal or remand the matter to the executive director. If remanded, the executive director will conduct a new technical review and issue a new use determination. The new determination may then be appealed using the same procedures as for the initial appeal.

To contact the Office of the Chief Clerk:

U.S. Mail Address

Office of the Chief Clerk, MC 105
TCEQ
PO Box 13087
Austin TX 78711-3087

Fax: 512-239-3311

Physical Address

Office of the Chief Clerk, MC 105
Building F
TCEQ
12100 Park 35 Circle
Austin TX 78753

OBTAINING PROGRAM DOCUMENTS

Current copies of the *Use Determination for Pollution Control Property Application*, Form TCEQ-00611, instructions for completing the application form, and this TCEQ regulatory guidance document may be obtained from the following TCEQ Web page: <http://www.tceq.texas.gov/implementation/air/taxrelief>.

CONTACTING THE TAX RELIEF PROGRAM

Questions relating to the Tax Relief program can be sent to:

U.S. Mail Address

Tax Relief Program, MC 110
TCEQ
PO Box 13087
Austin TX 78711-3087

Physical Address

Tax Relief Program, MC 110
Building F
TCEQ
12100 Park 35 Circle
Austin TX 78753
E-mail: txrelief@tceq.state.tx.us

Telephone: 512-239-4900

ATTACHMENT B

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2012

Mr. Greg Maxim
Director
Duff and Phelps, LLC
919 Congress Ave Ste 1450
Austin, Texas 78701

Re: Notice of Negative Use Determination
Borger Energy Associates, LP
Blackhawk Station
119 N. Spur Co-Gen Place
Borger (Hutchinson County)
Application Number: 07-11971; Tracking Number: DPBlackhawk B

Dear Mr. Maxim:

This letter responds to Borger Energy Associates, LP's Application for Use Determination for the Blackhawk Station, remanded to the executive director on June 29, 2012, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program

The TCEQ has completed the review for application #07-11971 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and §17.6. Heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

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

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

Mr. Greg Maxim
Page 2
July 10, 2012

CG/RH

cc: Chief Appraiser, Hutchinson County Appraisal District, PO Box 5065, Borger, Texas 79008-5065

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2012

Mr. Gene E Doss
Tax Advisor
Entergy Services Inc
2ndFloor North
2001 Timberloch Place
The Woodlands, Texas 77380

Re: Notice of Negative Use Determination
EN Services LP
Harrison County Power Project
8 Miles S of Marshall on 43
Marshall (Harrison County)
Application Number: 12696

Dear Mr. Doss:

This letter responds to EN Services LP's Application for Use Determination, received July 3, 2008, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Harrison County Power Project.

The TCEQ has completed the review for application #12696 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and §17.6. Heat recovery steam generators are used solely for production; therefore, are not eligible for a positive use determination.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

A handwritten signature in black ink, appearing to read "Chance Goodin".

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/RH

Mr. Gene E Doss
Page 2
July 10, 2012

cc: Chief Appraiser, Harrison County Appraisal District, P. O. BOX 818, Marshall, Texas 75671

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2012

Mr. Greg Odell
Agent
Ryan, Inc.
12th Floor LB 72
13155 Noel Rd
Dallas, Texas 75240

Re: Notice of Negative Use Determination
Hays Energy Limited Partnership
Hays Energy, LP
1601 Francis Harris Lane
San Marcos (Hays County)
Application Number: 12272

Dear Mr. Odell:

This letter responds to Hays Energy Limited Partnership's Application for Use Determination, received April 29, 2008, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Hays Energy, LP.

The TCEQ has completed the review for application #12272 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and §17.6. Heat recovery steam generators and steam turbines are used solely for production; therefore, are not eligible for a positive use determination.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

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

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/RH

Mr. Greg Odell
Page 2
July 10, 2012

cc: Chief Appraiser, Hays County Appraisal District, 21001 North IH 35, Kyle, Texas 78640

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2012

Mr. Greg Odell
Agent
Ryan, Inc.
12th Floor LB 72
13155 Noel Rd
Dallas, Texas 75240

Re: Notice of Negative Use Determination
Midlothian Energy Limited Partnership
Midlothian Energy
5000 V V Jones Rd
Venus (Ellis County)
Application Number: 12271; Tracking Number: 08-RC-MEL 2008

Dear Mr. Odell:

This letter responds to Midlothian Energy Limited Partnership's Application for Use Determination, received April 29, 2008, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Midlothian Energy.

The TCEQ has completed the review for application #12271 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4 and §17.6. Heat recovery steam generators and steam turbines are used solely for production; therefore, are not eligible for a positive use determination.

Please be advised that a Negative Use Determination may be appealed. The appeal must be filed with the TCEQ Chief Clerk within 20 days after the receipt of this letter in accordance with 30 TAC §17.25.

If you have questions regarding this letter or need further assistance, please contact Ronald Hatlett of the Tax Relief for Pollution Control Property Program by telephone at (512) 239-6348, by e-mail at ronald.hatlett@tceq.texas.gov, or write to the Texas Commission on Environmental Quality, Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087.

Sincerely,

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

Chance Goodin, Team Leader
Stationary Source Programs
Air Quality Division

CG/RH

Mr. Greg Odell
Page 2
July 10, 2012

cc: Chief Appraiser, Ellis County Appraisal District, P. O. Box 878, Waxahachie, Texas 75165

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 checked="" type="checkbox"/> Partnership | <input type="checkbox"/> Utility |
| <input 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)

Electricity generation

2. TYPE OF APPLICATION

- | | |
|--|---|
| <input type="checkbox"/> Tier I \$150 Fee | <input type="checkbox"/> Tier III \$2,500 Fee |
| <input type="checkbox"/> Tier II \$1,000 Fee | <input checked="" 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: Wise County Power Company, LP
 B. Mailing Address (Street or P.O. Box): 12837 Louetta, Ste 201
 C. City, State, and Zip: Cypress, TX 77429

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: Wise County Power Plant
 B. Type of Mfg. Process or Service: Electricity Generation
 C. Street Address: Hwy 155
 D. City, State, and Zip: Poolville, TX
 E. Tracking Number (Optional): _____
 F. Company or Registration Number (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

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

07-12202

6. **CONTACT NAME**

A. Company/Organization Name Cummings Westlake LLC
 B. Name of Individual to Contact: Dale Cummings
 C. Mailing Address (Street or P.O. Box): 12837 Louetta, Suite 201
 D. City, State, and Zip: Cypress, TX 77429
 E. Telephone number and fax number: (713) 266-4456 X-1
 F. E-Mail address (if available): dcummings@cwlp.net

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	30 TAC 106.512
Water	
Waste	

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.

Wise County Power Company installed two heat recovery steam generators in 2003 to reduce air emissions. Please see attached description.

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

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	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property <u>Heat recovery steam generators</u>	<u>No</u>	<u>7</u>	<u>B-8</u>	<u>\$46,000,000</u>	<u>62.1%</u>
Totals				<u>\$46,000,000</u>	

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.

Name:

Dale Cummings

Date: 4/18/08

Title:

Authorized Agent

Company:

Cummings Westlake LLC

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)

ATTACHMENT TO WISE COUNTY POWER COMPANY, LP TCEQ APPLICATION

The Wise County plant is constructed as a Combined Cycle facility, and as such utilizes two Heat Recovery Steam Generators (HRSGs) as key components of its process. The HRSGs are designed to capture exhaust gases from a combustion turbine, and to convert this heat energy into high pressure and temperature steam. Heat transfer occurs through banks of finned tubes in the HRSG that contain water on the inside, contacted by the hot exhaust gases on the outside.

The use of a HRSG in Combined Cycle facilities results in an improvement in efficiency of the thermal cycle of a traditional power plant from approximately 36% to 50%. This allows more electrical energy to be produced for a given heat input than is possible by a simple cycle or traditional steam boiler/turbine (Rankin cycle) configuration. Since less fuel is utilized per kilowatt of power produced, less exhaust gas emissions (NO_x, CO, CO₂, etc) are produced as a result. The HRSG' primary purpose of capturing and converting waste heat therefore results in positive environmental benefits.

Wise County Power Company is claiming 61.2% of the cost of the HRSG is pollution control equipment.

The calculation is based upon the difference between the thermal efficiency in simple cycle versus combined cycle mode.

Efficiency gain due to HRSG: $(50\%/36\%) - 1 = 38.8\%$

Environmental benefit : $(1 - \text{efficiency gain of } 38.8\%) = 61.2\%$

6. **CONTACT NAME**

A. Company/Organization Name	Cummings Westlake LLC
B. Name of Individual to Contact:	Dale Cummings
C. Mailing Address (Street or P.O. Box):	12837 Louetta, Suite 201
D. City, State, and Zip:	Cypress, TX 77429
E. Telephone number and fax number:	(713) 266-4456 X-1
F. E-Mail address (if available):	dcummings@cwlp.net

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	30 TAC 117.1310
Water	
Waste	

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.

Ennis-Tractebel Power Company installed a heat recovery steam generator in 2001 to reduce air emissions. Please see attached description.

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

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	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
<u>Heat recovery steam generator</u>	No	7	B-8	\$22,020,000	62.1%
_____	_____	_____	_____	_____	_____
Totals				\$22,020,000	

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.

Name:

Dale Cummings

Date: 4/18/08

Title:

Authorized Agent

Company:

Cummings Westlake LLC

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)

ATTACHMENT TO ENNIS-TRACTEBEL POWER COMPANY, LP TCEQ APPLICATION

The Ennis plant is constructed as a Combined Cycle facility, and as such utilizes a Heat Recovery Steam Generator (HRSG) as a key component of its process. The HRSG is designed to capture exhaust gases from a combustion turbine, and to convert this heat energy into high pressure and temperature steam. Heat transfer occurs through banks of finned tubes in the HRSG that contain water on the inside, contacted by the hot exhaust gases on the outside.

The use of a HRSG in Combined Cycle facilities results in an improvement in efficiency of the thermal cycle of a traditional power plant from approximately 36% to 50%. This allows more electrical energy to be produced for a given heat input than is possible by a simple cycle or traditional steam boiler/turbine (Rankin cycle) configuration. Since less fuel is utilized per kilowatt of power produced, less exhaust gas emissions (NO_x, CO, CO₂, etc) are produced as a result. The HRSG's primary purpose of capturing and converting waste heat therefore results in positive environmental benefits.

Ennis-Tractebel Power Company is claiming 61.2% of the cost of the HRSG is pollution control equipment.

The calculation is based upon the difference between the thermal efficiency in simple cycle versus combined cycle mode.

Efficiency gain due to HRSG: $(50\%/36\%) - 1 = 38.8\%$

Environmental benefit : $(1 - \text{efficiency gain of } 38.8\%) = 61.2\%$

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?

- Corporation Sole Proprietor
 Partnership Utility
 Limited Partnership Other:

B. Size of company: Number of Employees

- 1 to 99 1,000 to 1,999
 100 to 499 2,000 to 4,999
 500 to 999 5,000 or more

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

2. TYPE OF APPLICATION

- Tier I \$150 Fee Tier III \$2,500 Fee
 Tier II \$1,000 Fee 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: Midlothian Energy Limited Partnership
B. Mailing Address (Street or P.O. Box): 5000 V.V Jones Road
C. City, State, and Zip: Venus, Texas 76084

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: Midlothian Energy Limited Partnership
B. Type of Mfg. Process or Service: Electric Power Generation
C. Street Address: 5000 V.V Jones Road
D. City, State, and Zip: Venus, TX 76084
E. Tracking Number (Optional): 08-RC-MEL 2008
F. Company or Registration Number (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Ellis County Appraisal District
B. Appraisal District Account Number: P 0079678

0772271

6. CONTACT NAME

A. Company/Organization Name Ryan, Inc.
 B. Name of Individual to Contact: Mr. Greg Odell
 C. Mailing Address (Street or P.O. Box): Three Galleria Towers
13155 Noel Road
12th FL-LB 72
 D. City, State, and Zip: Dallas, TX 75240
 E. Telephone number and fax number: 972-934-0022
 F. E-Mail address (if available): greg.odell@ryanco.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	See Attached Exhibit
Water	
Waste	

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 Attached Exhibit

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

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	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property <u>See Attached Exhibit</u>	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
Totals					

150750

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.

Name:

Garrett

Date: April 25, 2008

Title:

Agent

Company:

Ryan, Inc.

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)

Midlothian Energy Limited Partnership
Pollution Control Exemption Calculation

Condition	Heat Input (LHV) KJ/sec	GT Power Output kW	ST Power Output kW	Total Power Output kW
1	418,000	147,700	82,400	230,100
2	438,900	160,900	86,200	247,100
3	449,000	167,000	87,400	254,400
4	492,400	191,000	87,900	278,900
	1,798,300	666,600	343,900	1,010,500

Using the formula for Plant Thermal Efficiency: $\text{Eff} = (\text{Gas Output} / \text{Total Heat Input}) \times 100$

Using the formula for Plant Thermal Efficiency: $\text{Eff} = (\text{Steam Output} / \text{Total Heat Input}) \times 100$

Condition	CC Efficiency %	Simple Cycle Efficiency %	Steam Cycle Efficiency %
1	55.05	35.33	19.71
2	56.30	36.66	19.64
3	56.66	37.19	19.47
4	56.64	38.79	17.85
	56.19	37.07	19.12

Condition	Station Service kW	Total Power Output (Net) kW	CC Efficiency (Net) %	Net Heat Rate (LHV) KJ/KWH
1	5,400	224,700	53.76	6,696.93
2	5,400	249,000	55.46	6,491.57
3	5,400	273,500	55.54	6,481.32
4	5,400	747,200	42	6,556.60

Efficiency Gain

(CCE/SCE)-1=Efficiency Gain
1-Efficiency Gain = Environmental Benefit
CCE = 56.19
SCE = 37.07
 $(56.19/37.07)-1=.52$
 $1-.52 = .48$

Environmental Benefit		0.48
Tier IV Equipment Cost	\$	82,412,314.00
Total Plant Cost	\$	445,616,370.00
Pollution Control Exempt Cost @ 48% of Total Plant Cost	\$	213,895,857.60
Tier IV Pollution Control Exempt Percentage		100%

07-12271

Update to application

11. PROPERTY CATEGORIES AND COST										7. RELEVANT RULE, REGULATION, OR STATUTORY PROVISION		8. DESCRIPTION OF PROPERTY
PROPERTY	TAXABLE ON OR BEFORE 1/1/84 (Y/N)	DECISION FLOW CHART BOX PART B	FEEL	ESTIMATED PURCHASE COST	PERCENT EXEMP	ADJUSTED COST	MEDIUM	RULE/REGULATION/LAW	DESCRIPTION/ENVIRONMENTAL BENEFIT			
Twelve Enhanced Steam Turbines in Units 1 through 6	N	3	B-10	\$41,832,828	100%	\$41,832,828	Air	30 Texas Administrative Code §106.512(e)(B) 30 Texas Administrative Code §111.111(a) 30 Texas Administrative Code §111.151(a) 30 Texas Administrative Code §111.153(b)	Steam Turbines are used to convert steam from gas turbines in rotational energy. Steam turbines recycle steam containing dangerous emissions in rotational mechanical energy. The regenerative cycle prevents the dispersion of the emissions into the atmosphere.			
Six Heat Recovery Steam Generators (HRSG) in Units 1 through 6	N	3	B-8	\$40,579,486	100%	\$40,579,486	Air	30 Texas Administrative Code §106.512(e)(B) 30 Texas Administrative Code §111.111(a) 30 Texas Administrative Code §111.151(a) 30 Texas Administrative Code §111.153(b)	The HRSG uses the heat from the exhaust of the gas fired turbines to create steam before releasing the exhaust into the atmosphere. The exhaust stacks control the dispersion of the emissions into atmosphere.			
GRAND TOTAL				\$82,412,314		\$82,412,314						

6. **CONTACT NAME**

A. Company/Organization Name: Ryan, Inc.
 B. Name of Individual to Contact: Greg Odell
 C. Mailing Address (Street or P.O. Box): 13155 Noel Road, Suite 100
 D. City, State, and Zip: Dallas, TX 75240
 E. Telephone number and fax number: 972.934.0022
 F. E-Mail address (if available): greg.odell@ryanco.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	See Attached Exhibit
Water	
Waste	

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.

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

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	Taxable on 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land					
Property See Attached Exhibit					
Totals					

02-15-11

Hays Energy Limited Partnership
Tier IV Application

PROPERTY IDENTIFICATION	AVAILABLE ON OR BEFORE 1/1/84 (Y/N)	DEPRESSION FLOW CAPABILITY (GAL/HR/INCH)	ESTIMATED PURCHASE COST	PERCENT BENEFIT	ADJUSTED COST	MEDIUM	RULE REGULATION/AWA	DESCRIPTION OF ENVIRONMENTAL BENEFIT
Four Heat Recovery Steam Generators (HRSG) in Units 1 through 4	N	7	\$18,055,344	35%	\$8,297,134	Air	30 Texas Administrative Code §105.512(6)(E) 30 Texas Administrative Code §111.111(a)	The HRSG uses the heat from the exhaust of the gas fired turbines to create steam before releasing the exhaust into the atmosphere. The exhaust stacks control the dispersion of the emissions into atmosphere.
Eight Enhanced Steam Turbines in Units 1 through 4	N	3	\$ 26,085,228	35%	\$9,101,192	Air	30 Texas Administrative Code §105.512(6)(E) 30 Texas Administrative Code §111.111(a)	Steam Turbines are used to convert steam from gas turbines in rotational energy. Steam turbines recycle steam containing dangerous emissions in rotational mechanical energy. The regenerative cycle prevents the dispersion of the emissions into the atmosphere.
Grand Total								

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.

Name:

Casull

Date: April 25, 2008

Title:

Agent

Company:

Ryan, Inc.

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)

Hays Energy Limited Partnership
Partial Determination Calculation

Condition	Heat Input (LHV)	GT Power Output	ST Power Output	Total Power Output
	KJ/sec	kW	kW	kW
1	418,000	147,700	82,400	230,100
2	438,900	160,900	86,200	247,100
3	449,000	167,000	87,400	254,400
4	492,400	191,000	87,900	278,900
	1,798,300.00	666,600.00	343,900.00	1,010,500.00
Production %		66%	34%	

Condition	CC Efficiency (Gross)	Simple Cycle Efficiency (Gross)	Steam Cycle Efficiency
	%	%	%
1	55.05	35.33	19.71
2	56.30	36.66	19.64
3	56.66	37.19	19.47
4	56.64	38.79	17.85
	56.19	37.07	19.12

Condition	Station Service	Total Power Output (Net)	CC Efficiency (Net)	Net Heat Rate (LHV)
	kW	kW	%	KJ/KWH
1	5,400	224,700	53.76	6,696.93
2	5,400	249,000	55.46	6,491.57
3	5,400	273,500	55.54	6,481.32
4	5,400.00	747,200.00	41.55	6,556.60

Production Capacity of Gas Turbine		\$	666,600.00
Production Capacity of Steam Turbine		\$	1,010,500.00
Production Capacity Factor			0.66
Capital Cost of Gas Turbine Process	CCO	\$	105,195,352.00
Capital Cost of Steam Turbine Process	CCN	\$	338,352,088.00
Partial Percentage Factor	$\frac{[(PCF*CCN)-CCO]}{CCN}$		0.35
Tier IV Equipment Value		\$	64,343,938.00
Total Pollution Control Exempt		\$	22,441,134.92

Assumptions:

Production Capacity Factor (PCF) is used to adjust the capacity of the new process to the capacity of the existing process. When there is a increase in production capacity, PCF is used to adjust the capacity of the new process to the existing process. In this case, the method of calculation is modified so that PCF is applied to Capital Cost Old rather than Capital Cost New.

The total production capacity of the gas power turbines are use to determined the production capacity before steam generators are placed in to service; therefore, **Capital Cost Old (CCO)** is the cost of total process without the pollution control. The total process cost of all Non-Pollution Control Equipment is \$105,195,352

The total production capacity of the steam power turbines are used to determine the production capacity of the new process; therefore, **Capital Cost New (CCN)** is the total cost of pollution control equipment. This would also correlate to the fact that steam output from gas turbine is captured by the steam turbine. The total process cost for pollution control equipment is \$338,352,088;

Note:
This sheet approximates the simple cycle efficiency based on the design data given in the ABB Heat Balance Drawings applicable to Hays Energy Project.
ABB Ref Drawings: 1 AHV 302 871 sheets 1-4

	Fuel	Ambient Air Temp	Condenser Type	Steam Injection
Condition 1	Natural Gas	40 C	ACC	No
Condition 2	Natural Gas	27 C	ACC	No
Condition 3	Natural Gas	20 C	ACC	No
Condition 4	Natural Gas	-9 C	ACC	No

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
APPLICATION FOR USE DETERMINATION
FOR POLLUTION CONTROL PROPERTY
(REVISED JANUARY 2008)

The Texas Commission on Environmental Quality (TCEQ) has the responsibility to determine whether a property is a pollution control property. A person or political subdivision seeking a use determination for pollution control property must complete the attached application or use 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 TCEQ Tax Relief for Pollution Control Property Program at (512) 239-3100. The application should be completed and mailed, with the appropriate fee, to: TCEQ MC-214, Cashiers Office, P.O. Box 13088, Austin, Texas 78711-3088.

1. GENERAL INFORMATION

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

- Corporation Sole Proprietor
 Partnership Utility
 Limited Partnership Other

B. Size of company: Number of Employees

- 1 to 99 1,000 to 1,999
 100 to 499 2,000 or more
 500 to 999

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

2. TYPE OF APPLICATION

- Tier I \$150 Fee. Tier III \$2,500 Fee.
 Tier II \$1,000 Fee. Tier IV \$500 Fee

NOTE: Enclose a check or money order to the TCEQ along with the application to cover the required fee.

3. NAME OF APPLICANT

- A. Company Name: EN Services LP, (representing Entergy Power Ventures LP,
Northeast Texas Electric Cooperative and East Texas Electric Cooperative)
B. Mailing Address: PO Box 61000, % Gene Doss (L-ENT-12B)
C. City, State, ZIP: New Orleans, LA 70161

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

- A. Name of Facility or Unit: Harrison County Power Project
B. Type of Mfg. Process or Service: Natural Gas Fired Combined Cycle Electric
Power Generation
C. Street Address: Approximately 8 miles south of Marshall, TX on Hwy 43
D. City, State: Marshall, TX
E. Tracking Number (Optional): _____
F. Customer Registration Number (Optional): _____

08-12696

844673 #38
PAY TO THE ORDER
OF STATE COMPTROLLER
TCEQ

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

- A. Name of Appraisal District: Harrison County Central Appraisal District
- B. Appraisal District Account Number: 7 24 200300100000000000

6. **CONTACT NAME (must be provided)**

- A. Company/Organization Name: Entergy Services Inc
- B. Name of Individual to Contact: Gene Doss, T-TMBR-2N
- C. Mailing Address: 2001 Timberloch Place, 2nd Floor North
- D. City, State, ZIP: The Woodlands, TX 77380
- E. Telephone number and fax number: 281-297-3675 (fax: 281-297-3745)
- F. E-Mail address (if available): gdoss@entergy.com

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

MEDIUM	RULE/REGULATION/LAW
Air	TCEQ Rules (Chapter 30): 101.21. The National Primary and Secondary Ambient Air Quality Standards, as promulgated pursuant to Section 109 of the Federal Clean Air Act, as amended, will be enforced throughout all parts of Texas
Water	
Waste	

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

The Harrison County Power Project (HCPP) is a competitive, merchant electric generating facility. HCPP incorporates a two-on-one configuration - 2 General Electric Frame 7 FA combustion turbines, two fired HRSGs and one General Electric D 11 steam turbine - which provides for a nominal generating capacity of 570 MW with the fired duct burners.

Ambient air is drawn through an air filtration intake structure into the inlet compressor section of the turbine, mixed with natural gas and is burned in the dry low-NOx combustors, which exhaust the hot gases through rows of stationary vanes and rotating blades. These hot exhaust gases turn the turbine and drive a generator to produce electric power for distribution. The combustion turbine (CT) are General Electric Frame 7 FA units with the capacity of producing a nominal 170 MW of electricity each. The exhaust gases pass through the HRSG where boiler feed water is converted into steam. The steam is used to drive a steam turbine and generator, which nominally produces an additional 230 MW of electricity. Collectively, the combustion gas turbine generator and steam turbine form a combined cycle power plant. The gas turbines and duct burners are fueled solely by natural gas.

The combustion emissions from the turbines and duct burners are vented to the HRSGs where the exhaust gases pass through the Selective Catalytic Reduction (SCR) unit. After passing through the SCR, the exhaust gases are vented to the atmosphere through two stacks (EPN STACK1 and STACK2).

9. PARTIAL PERCENTAGE CALCULATION

This application is for the same 100% determination as previously issued to others by the TCEQ for similar HRSGs.

10. PROPERTY CATEGORIES AND COSTS

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

Property	Taxable On 1/01/94?	DFC Box	ECL #	Estimated Cost	Use %
Land	Not applicable	-----	-----	-----	-----
Property Two (2) Heat Recovery Steam Generators used in the generation of electricity	No	Part B – DFC 3 (yes)	B-8	\$24,762,475	100%
Totals					

11. EMISSION REDUCTION INCENTIVE GRANT

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.

NAME: Gene E Doss DATE: 6.30.08

TITLE: Tax Advisor

COMPANY: Entergy Services Inc

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)

TCEQ-00611 (Revised January 2008)



Tax Relief for Pollution Control Property

Application Form – Effective January 2008

12826

DISCLAIMER

This document is intended to assist persons in applying for a use determination, pursuant to Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Conformance with these guidelines is expected to result in applications that meet the regulatory standards required by the Texas Commission on Environmental Quality (TCEQ). However, the TCEQ will not in all cases limit its approval of applications to those that correspond with the guidelines in this document. These guidelines are not regulation and should not be used as such. Personnel should exercise discretion in using this guidelines document. It should be used along with other relevant information when developing an application.

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)
The Plant is a utility cogeneration facility producing electricity and steam.

2. TYPE OF APPLICATION

- | | |
|--|---|
| <input type="checkbox"/> Tier I \$150 Fee | <input type="checkbox"/> Tier III \$2,500 Fee |
| <input type="checkbox"/> Tier II \$1,000 Fee | <input checked="" 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: GIM Channelview Cogeneration LLC
B. Mailing Address (Street or P.O. Box): Tower 49, 12 East 49th Street, 38th Floor
C. City, State, and Zip: New York, NY 10017

4. PHYSICAL LOCATION OF PROPERTY REQUESTING A TAX EXEMPTION

A. Name of Facility or Unit: Channelview Cogeneration Facility
B. Type of Mfg. Process or Service: Power Generation
C. Street Address: 8580 Sheldon Road
D. City, State, and Zip: Houston, TX 77049
E. Tracking Number (Optional): CCF-2008-1 (Revised)
F. Company or Registration Number (Optional): _____

5. APPRAISAL DISTRICT WITH TAXING AUTHORITY OVER PROPERTY

A. Name of Appraisal District: Harris Central Appraisal District
B. Appraisal District Account Number: 0502120000015

6. CONTACT NAME

A. Company/Organization Name GIM Channelview Cogeneration LLC
B. Name of Individual to Contact: Salim G. Samaha
C. Mailing Address (Street or P.O. Box): Tower 49, 12 East 49th St, 38th Floor
D. City, State, and Zip: New York, NY 10017
E. Telephone number and fax number: (212) 315-8199 (Tel) / (646) 282-1599 (Fax)
F. E-Mail address (if available): Salim.Samaha@global-infra.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	Title 40 of the Code of Federal Regulations, Chapter 1, Subchapter C, Part 60, Subpart GG, Section 332 ("40 CFR 60.332") Title 30 of the Texas Administrative Code, Part 1, Chapter 117, Subchapter C, Division 3, Rule 117.1205 ("30 TAC 117.1205")
Water	N/A
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 attached property descriptions.

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

AIR POLLUTION CONTROL PROPERTY

Channelview Units 1-4 – Heat Recovery Steam Generators (“HRSGs”) *ECL Item Number B-8*

Statutes and Regulations

40 CFR 60.332 establishes standards of performance for nitrogen oxides (NO_x) emissions for stationary gas turbine generators. 30 TAC 117.1205 establishes the allowable amount of NO_x emissions in the Houston-Galveston-Brazoria ozone non-attainment areas for utility electric generation sources.

Property/Equipment Description

The heat recovery steam generators (“HRSGs”) on Units 1-4 use waste heat from the Westinghouse 501DF2 gas turbines to produce steam. Without an HRSG to ensure combined-cycle operation, the heat energy would be lost. The steam produced by the HRSGs is used to power a steam turbine, as well as meeting the cogeneration steam needs. Without the energy recovered by the HRSGs and steam turbine, the Channelview Cogeneration Facility (“Channelview” or the “Facility”) would need to add more gas turbines or an equivalent type of generation to supply a similar amount of power. The additional generation would increase air emissions of NO_x.

The partial percentage calculations and further descriptions are provided in Section 9 of this document.

GIM Channelview Cogeneration LLC – The Units 1-4 HRSGs were acquired in July 2008.

Channelview Unit 5 – Enhanced Steam Turbine *ECL Item Number B-10*

Statutes and Regulations

40 CFR 60.332 establishes standards of performance for NO_x for stationary gas turbine generators. 30 TAC 117.1205 establishes the allowable amount of NO_x emissions in the Houston-Galveston-Brazoria ozone non-attainment areas for utility electric generation sources.

Property/Equipment Description

The Unit 5 enhanced steam turbine uses the steam generated by the recovered heat in the HRSGs on Units 1-4 to produce electricity. The steam turbine allows the waste heat from the gas turbines to be converted to electricity. Without the power recovered by the HRSGs and steam turbine, Channelview would need to add another gas turbine or equivalent type of generation to supply a similar amount of power. The additional generation would increase air emissions of NO_x.

The partial percentage calculations and descriptions are provided in Section 9 of this document.

GIM Channelview Cogeneration LLC – The Unit 5 Heat Enhanced Steam Turbine was acquired in July 2008.

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.

Channelview is an 830 Megawatt ("MW_e") (nominal net capacity) natural gas-fired, facility that generates electricity and steam. The Facility utilizes four 170 (MW_e) combustion turbine generators coupled with four thermally efficient heat recovery steam generators (HRSGs). The HRSGs supply steam to a single 150 MW_e steam turbine, as well as cogeneration steam needs. The steam turbine extracts steam at a high and low pressure. The high-pressure (HP) steam is 1500 psig, at 900F, with a flow rate of 1,250,000 lb_m/hr; and the low-pressure (LP) steam is 600 psig, at 700F, with a flow rate of 500,000 lb_m/hr.

Without the HRSGs and the steam turbine, the Facility would have a short-fall in the production of steam and electricity. The Facility would need to replace the steam from the HRSGs with an equivalent output, necessitating additional fossil fuel burning sources. The steam turbine and HRSGs would likely be replaced with additional pollutant emitting sources to meet the equivalent energy output. The additional fossil fuel fired sources needed to replace the energy output would lead to more air pollutant emissions when compared to the HRSGs and steam turbine. The following paragraphs describe why the HRSGs and steam turbine should be considered pollution control for property tax purposes, and what partial percentage should be used for pollution control property tax exemptions.

Steam Generation

The export steam generated by the Facility has the ability to perform work that could result in electrical power. Using steam tables and basic thermodynamic equations the thermal energy of the steam can be determined. The formula for determining the thermal power required to produce steam is as follows (all calculations with values are provided on page 8):

$$W_{\text{Thermal}} = (h_1 - h_0) \times \dot{m} \tag{1}$$

Where W_{Thermal} is the thermal power required to change saturated water to steam, h_0 is the initial enthalpy of the saturated liquid (h_f), h_1 is the enthalpy of steam at a given temperature and pressure (for Channelview the temperature and pressure values are supplied), and \dot{m} is the mass-flow rate of the steam. Listed below are the thermodynamic properties (these values have been taken from the steam tables of the Engineer-In-Training manual).

Thermodynamic Properties		
Steam Properties	Enthalpy(h_x) kJ/kg	Mass Flow(\dot{m}) kg/s
600 psi – 700F	3141.5	63.0
1500 psi – 900F	3322.6	157.5
Saturated Liquid @ 80F	111.8	-

Table 1 – Thermodynamic Properties for Steam and Saturated Liquid

Using Equation 1, for steam at 600 psi and 700F, W_{Thermal} is 191MW_t. For steam at 1500 psi and 900F, W_{Thermal} is 506MW_t. The combined thermal energy of the steam is 697MW_t. To compare the thermal and electrical energies captured by the HRSGs, the thermal energy must be converted to electrical energy. Typical steam turbine thermal efficiencies for non-nuclear application range from 30% to 42%, not including ultra-critical units. For this example, the average thermal efficiency, η_{Thermal} , will be 36%. The equation for electrical efficiency is as follows:

$$W_{\text{Electrical}} = W_{\text{Thermal}} \times \eta_{\text{Thermal}} \tag{2}$$

Using Equation 2, $W_{\text{Electrical}}$ is 250MW_e. Without the HRSGs and the steam turbine, the equivalent of 250MW_e of electrical power is lost. In order to replace the equivalent electrical power generation of 250MW_e, the facility would need to recover the production with new pollution emitting gas turbines.

Pollution Reduction Percentage

On December 3, 2008, the Executive Director ("the Director") of the TCEQ issued a response to the Tier IV HRSG Appeals. In the appeal the Director states that a percentage of 61% was created by the workgroup tasked with finding a reasonable use determination percentage that could be applied uniformly to combined cycle facilities. The percentage stated in Section IV of the response is based on the fact that an HRSG increases the efficiency of facilities by approximately 39% so the production value for a combined-cycle HRSG is 61%. Therefore the partial percentage for HRSGs is equal to 61%.

Furthermore, in the same response document dated December 3, 2008, the Director is also recommending 0% exemption for the enhanced steam turbine.

Partial Pollution Control Percentage Calculations

$$\text{Eq. 1(a)} \quad 191 \text{ MW}_t = \left(3,141.5 \frac{\text{kJ}}{\text{kg}} - 111.8 \frac{\text{kJ}}{\text{kg}} \right) \times 63 \frac{\text{kg}}{\text{s}} \times \frac{1 \text{ MJ}}{1,000 \text{ kJ}}$$

$$\text{Eq. 1(b)} \quad 506 \text{ MW}_t = \left(3,322.6 \frac{\text{kJ}}{\text{kg}} - 111.8 \frac{\text{kJ}}{\text{kg}} \right) \times 157.5 \frac{\text{kg}}{\text{s}} \times \frac{1 \text{ MJ}}{1,000 \text{ kJ}}$$

$$\text{Eq. 2} \quad 697 \text{ MW}_t = 191 \text{ MW}_t + 506 \text{ MW}_t$$

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>					
Heat Recovery Steam Generators -- Units 1-4	No	7	B-8	\$ 72,970,741	61%
Enhanced Steam Turbine - Unit 5	No	7	B-10	20,766,535	0%
Total				\$ 93,737,276	
Total Pollution Control Exemption				\$ 44,512,152	

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

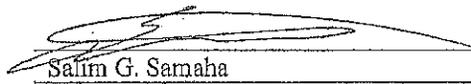
12. **APPLICATION DEFICIENCIES**

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.

Name:



Date: 01/29/09

Salim G. Samaha

Title:

VICE PRESIDENT

Company:

GIM Channelview Cogeneration LLC

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)

15020

Air Quality Division

Texas Commission on Environmental Quality

Use Determination for Pollution Control Property Application

A person seeking a use determination must complete this application form. For assistance in completing the application form please refer to the *Instructions for Use Determination for Pollution Control Property Application Form TCEQ-00611*, as well as the rules governing the Tax Relief Program in Title 30 Texas Administrative Code Chapter 17 (30 TAC 17). Information relating to completing this application form is also available in the TCEQ regulatory guidance document, *Property-Tax Exemptions for Pollution Control Property, RG-461*. For additional assistance, please call the Tax Relief Program at 512-239-4900.

You must supply information for each field of this application form unless otherwise noted.

Section 1. Eligibility

1. Is the property/equipment subject to any lease, lease-to-own agreement, or environmental incentive grant? Yes No
2. Is the property/equipment used solely to manufacture or produce a product or provide a service that prevents, monitors, controls, or reduces air, water or land pollution?
Yes No
3. Was the property/equipment acquired, constructed, installed, or replaced before January 1, 1994? Yes No

If the answer to any of these questions is 'Yes', then the property/equipment is not eligible for a tax exemption under this program.

Section 2. General Information

1. What is the type of ownership of this facility?
Corporation Partnership Utility
Sole Proprietor Limited Partner Other:
2. Size of Company: Number of Employees
1 to 99 500 to 999 2,000 to 4,999
100 to 499 1,000 to 1,999 5,000 or more
3. Business Description: (Briefly describe the type of business or activity at the facility)
Petroleum Refining
4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility. 324110

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Section 3. Type of Application and Fee

1. Select only one:

Tier I – Fee: \$150

Tier II – Fee: \$1,000

Tier III – Fee: \$2,500

2. Payment Information:

Check/Money Order/Electronic Payment Receipt Number: 5000013111

Payment Type: Check

Payment Amount: \$2,500.00

Name on payment: Texas Commission of Environ Quality

Total Amount: \$2,500.00

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.

Section 4. Property/Equipment Owner Information

1. Company Name of Owner: Motiva Enterprises, LLC

2. Mailing Address: 2555 Savannah Avenue

3. City, State, Zip: Port Arthur, TX77640

4. Customer Number (CN): CN601311277

5. Regulated Entity Number (RN):

6. Is this property/equipment owned by the CN listed in Question 4? Yes No

If the answer is 'No,' please explain:

7. Is this property/equipment leased from a third party? Yes No

If the answer is 'Yes,' please explain:

8. Is this property/equipment operated by the RN listed in Question 5? Yes No

If the answer is 'No,' please explain:

Section 5. Name of Property/Equipment Operator (If different from Owner)

1. Company Name:

2. Mailing Address:

3. City, State, Zip:

4. Customer Number (CN):

5. Regulated Entity Number (RN):

Section 6. Physical Location of Property/Equipment

1. Name of Facility or Unit where the property/equipment is physically located: Motiva Port Arthur Refinery

2. Type of Mfg. Process or Service: Petroleum Refining

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3. Street Address: 2555 Savannah Avenue
4. City, State, Zip: Port Arthur, TX 77640

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Jefferson County Appraisal District
2. District Account Number(s):

Section 8. Contact Name

1. Company Name: Motiva Enterprises, LLC
2. First Name of Contact: Joe
3. Last Name of Contact: Baker
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title: Tax Manager
6. Mailing Address: PO Box 4237 4369
7. City, State, Zip: Houston, TX 772527210
8. Phone Number/Fax Number: 713-241-3039 /713-241-3095 (Fax)
9. Email Address: joe.baker@shell.com
10. Tracking Number (optional): Motiva-PA- 2010-12

Section 9. Property/Equipment Description, Applicable Rule, and Environmental Benefit

For each piece, or each category, of pollution control property/equipment for which a use determination is being sought, answer the following questions.

Attach additional response sheets to the application for each piece of integrated pollution control property/equipment if a use determination is being sought for more than one (1) piece.

General Information

1. Name the property/equipment: Power Station 4 Heat Recovery Steam Generators
2. Is the property/equipment used 100% as pollution control equipment? Yes No
If the answer is 'Yes,' explain how it was determined that the equipment is used 100% for pollution control:
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product:
4. What is the appropriate Tier I Table or Expedited Review List number? B-8
5. Is the property/equipment integrated pollution control equipment? Yes No
If the answer is 'No,' separate applications must be filed for each piece of property/equipment.
6. List applicable permit number(s) for the property/equipment: N/A

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Incremental Cost Difference

7. Is the Tier I Table percentage based on the incremental cost difference? Yes No

If the answer is 'Yes,' answer the following questions:

8. What is the cost of the new piece of property/equipment?
9. What is the cost of the comparable property/equipment?
10. How was the value of the comparable property/equipment calculated?

Property/Equipment Description

11. Describe the property/equipment. (What is it? Where is it? How is it used?)

Power Station 4 Heat Recovery Steam Generators:

As part of the Port Arthur Refinery (PAR) Expansion Project a cogeneration power plant consisting of four combined cycle combustion turbines, nominally rated at 40 MW each, and each equipped with a heat recovery steam generator (HRSG) capable of supplemental duct burners will be installed. All four turbines will be fired with pipeline specification natural gas and equipped with Dry Low NOx combustion burners. The supplemental duct burners on the HRSG's will be fired with refinery fuel gas to increase steam production when needed and will also be equipped with Low NOx combustion burners. Additionally one direct fired boiler using refinery fuel gas with Dry Low NOx combustion burners will be installed to provide steam to the refinery processes.

Each HRSG's stack will be equipped with Selective Catalytic Reduction (SCR) systems to further reduce NOx emissions from the turbines and the HRSG. The Selective Catalytic Reduction (SCRs) that will result in NOx emissions performance that is considerably better than that which is required to satisfy BACT. The NOx emissions will be limited to 5.0 ppmvd (hourly basis) and 4.0 ppmvd (annual basis). The direct fired boiler will also be equipped with an SCR limiting NOx emissions to 0.035 lb NOx/MMBtu.

The steam capacity of both the direct fired boiler and each HRSG is 400,000 lbs per hour. The HRSG's will act as a fuel substitute in the combined cycle installation. A typical HRSG captures waste heat in the hot exhaust gases from a combustion turbine. This waste heat is converted into high pressure and temperature steam which will then be used in various production processes in the refinery. The HRSG will reduce the need for the additional burning of hydrocarbon based fuel in order to provide the process steam at the site. Installation of a HRSG in a combined cycle allows more steam to be produced for a given amount of fuel combusted.

Applicable Rule

12. What adopted environmental rule or regulation is being met by the construction or installation of the property/equipment? The citation must be to the subsection level.

30 TAC 117 Rule 117.115 sets alternative plant-wide emission specifications for Nitrogen compounds from major sources in the Beaumont-Port Arthur Nonattainment Area

30 TAC 116 Rule 116.710 sets the applicability of Flexible Permits for the control of air pollution. The Motiva Port Arthur Refinery operates under Flexible Permit 8404 which was renewed/amended on November 15, 2006 to authorize the Crude Expansion Project. The refinery cap under the flexible permit for NOx will be 281.6 lb/hr and 861.68 tons per year. The refinery expansion as designed will have total NOx emissions of 254.85 lb/hr and 751.92 tons per year.

Environmental Benefit

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13. What is the anticipated environmental benefit related to the construction or installation of the property/equipment?

The installation of the Power Station 4 HRSG's will result in the emission of an estimated 83.6 tons/year less of NOx than the installation of 4 direct fired boilers in place of the HRSG's.

Section 10. Process Flow Diagram (Optional)

Attach documentation to the application showing a Process Flow Diagram for the property/equipment.

See Attached Diagrams

Section 11. Partial-Use Percentage Calculation

This section must be completed for all Tier III applications. Attach documentation to the application showing the calculations used to determine the partial-use percentage for the property/equipment.

The steam capacity of the HRSG with Duct Burners is 400,000 lbs of steam per hour. The duct burners provide 250,000 lbs of steam per hour and have a firing rate of 263 MMBtu/hr. The remainder of the steam is produced by the heat exhausted from the combustion turbines and captured by the HRSG. By comparison the Direct Fired Boiler has steam capacity of 400,000 lbs of steam per hour and a firing rate of 587 MMBtu/hr.

With an estimated NOx emission rate of 0.08 lbs of NOx per MMBtu of refinery fuel gas combusted, the following NOx will be emitted from the Duct Burners and the Direct Fired Boiler prior to the SCR's:

	Steam Capacity (lb/hr)	Firing Rate (MMBtu/hr)	NOX (lb/hr)
HRSG/Duct Burner	400,000	263	21.04
Direct Fired Boiler	400,000	587	46.96

The thermal efficiency or production gain derived from the installation is approximately 55%. Since this percentage represents the additional amount of steam produced for a given fuel input, it represents the production value of the equipment. Based on this production value, the pollution control percentage of the HRSG's installed at a combined cycle facility is 45%. Comparing the NOx emissions on a lb/hr basis shows that a direct fired boiler would produce approximately 223% more NOx prior to control by the SCR's.

The installed cost of the four HRSG's is estimated to range from \$130,940,000 to \$150,000,000. At a use percentage of 45%, the pollution control portion of the installation would range from \$58,923,000 to \$67,725,000.

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Section 12. Property Categories and Costs

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List each piece of property/equipment of integrated pollution control property/equipment for which a use determination is being sought.

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Property/Equipment Name	Tier 1 Table No. or Expedited Review List No.	Use Percent	Estimated Dollar Value
Land:			
Property: Power Station 4 HRSG's	B-8	45%	\$58,923,000 to \$67,725,000
Property:			
Property:			
Total:			\$58,923,000 to \$67,725,000

Attach additional response sheets to the application if more than three (3) pieces.

NOTE: Separate applications must be filed for each piece of nonintegrated pollution control property/equipment.

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Section 13. Certification Signature

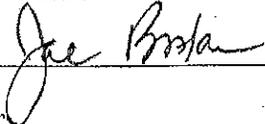
Must be signed by owner or designated representative.

By signing this application, I certify that I am duly authorized to submit this application form to the TCEQ and that the information supplied here is true and accurate to the best of my knowledge and belief.

Printed Name: Joe Baker

Date:

Signature: _____



1/27/2011

Title: Tax Manager

Company Name: Motiva Enterprises, LLC

Under Texas Penal Code 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.

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Application Submission

Send the completed application and the appropriate fee, along with a complete copy of the completed application for the appraisal district, to:

U.S. Mail

Cashiers Office, MC 214
Tax Relief Program
TCEQ
PO Box 13088
Austin TX 78711-3088

Physical Address

Cashier's Office, MC 214
Building A
TCEQ
12100 Park 35 Circle
Austin TX 78753

ATTACHMENT C

Application Review Summary

Application Number: 12211
Company: Topaz Power Group LLC
Facility: Nueces Bay Power Plant
County: Nueces
Tier: IV
Estimated Cost of Property: \$121,103,714.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed two heat recovery steam generators (HRSGs) and one steam turbine. Use of the HRSG and the steam turbine increases the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

40 Code of Federal Regulations §60 Subpart KKKK. This subpart establishes performance standards for stationary combustion turbines. 30 Texas Administrative Code §116.110: Control of Air Pollution by Permits for New Construction or Modifications, New Source Review Permits, Applicability. This section establishes requirements to obtain a permit to construct. These rules do not require the installation of heat recovery steam generators or steam turbines.

Final Determination

A negative determination was issued. The two heat recovery steam generators and the steam turbine are used for production not pollution control and therefore not eligible for tax relief. Further, the cited regulations do not require installation of a heat recovery steam generator or steam turbine.

Administrative Review

Administrative Review Chronology

Received Date: 04/23/2008
Date Application Was Declared Administratively Complete: 04/25/2008

Fee Information

Application Fee Paid: Yes
Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/25/2008
Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12
Project Reviewer Date

[Signature] 7/9
Work Leader Date

Application Review Summary

Application Number: 12210
Company: Topaz Power Group LLC
Facility: Barney Davis Power Plant
County: Nueces
Tier: IV
Estimated Cost of Property: \$120,879,829.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed two heat recovery steam generators (HRSGs) and one steam turbine. Use of the HRSGs and the steam turbine increases the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

40 Code of Federal Regulations §60 Subpart KKKK. This subpart establishes performance standards for stationary combustion turbines. 30 Texas Administrative Code §116.110: Control of Air Pollution by Permits for New Construction or Modifications, New Source Review Permits, Applicability. This section establishes requirements to obtain a permit to construct. These rules do not require the installation of heat recovery steam generators or steam turbines.

Final Determination

A negative determination was issued. The two heat recovery steam generators and the steam turbine are used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulations do not require installation of a heat recovery steam generator or the steam turbine.

Administrative Review

Administrative Review Chronology

Received Date: 04/23/2008
Date Application Was Declared Administratively Complete: 04/25/2008

Fee Information

Application Fee Paid: Yes
Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/25/2008
Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12
Project Reviewer Date

[Signature] 7/9/12
Work Leader Date

Application Review Summary

Application Number: 11971
Company: Borger Energy Associates, LP
Facility: Blackhawk Station
County: Hutchinson
Tier: IV
Estimated Cost of Property: \$13,906,514.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs). Use of the equipment will improve the thermal efficiency of the plant.

Tier IV Partial Percentage: 100%. Calculation based on NOx avoidance.

Rule Citation(s)

40 CFR 60. Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, on 7/10/2012 a negative determination was issued stating that heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 03/31/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

Technical Review Completion Date: 04/30/2008

Determination Issued: 5/01/2008

Appeal Date: 5/16/2008

Remand Date: 6/29/2012

Technical Review Start Date: 7/02/2012

Technical Review Completion Date: 04/30/2008

Re-Determination Date: 7/09/2012

Ronald Hatlett 7/9/12
Project Reviewer Date

Spencer D. 7/9/12
Work Leader Date

Application Review Summary

Application Number: 11914
Company: Tenaska Gateway Partners, Ltd.
Facility: Tenaska Gateway Generating Station
County: Rusk
Tier: IV
Estimated Cost of Property: \$48,038,346.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines. Use of the equipment will improve the thermal efficiency of the plant.

Tier IV Partial Percentage: 25%. Calculation based on alternative use of SCR.

Rule Citation(s)

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators and a negative determination was issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site and is not considered to be pollution control equipment. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, and on 7/10/2012, a negative determination was issued stating that heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 03/14/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

Technical Review Completion Date: 04/30/2008

Determination Issued: 5/01/2008

Appeal Date: 5/16/2008

Remand Date: 6/29/2012

Technical Review Start Date: 7/02/2012

Technical Review Completion Date: 04/30/2008

Re-Determination Date: 7/09/2012

Ronald Hatlett 7/10/12
Project Reviewer Date

[Signature] 7/17/12
Work Leader Date

Application Review Summary

Application Number: 11926
Company: Navasota Wharton Energy Partners, LP
Facility: Colorado Bend Energy Center
County: Wharton
Tier: IV
Estimated Cost of Property: \$41,300,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines. Use of the equipment will improve the thermal efficiency of the plant.

Tier IV Partial Percentage: 100%. Calculation based on NOx avoidance.

Rule Citation(s)

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators and a negative determination was issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site and is not considered to be pollution control equipment. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, on 7/10/2012, a negative determination was issued stating that heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 03/19/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

Technical Review Completion Date: 04/30/2008

Determination Issued: 5/01/2008

Appeal Date: 5/16/2008

Remand Date: 6/29/2012

Technical Review Start Date: 7/02/2012

Technical Review Completion Date: 04/30/2008

Re-Determination Date: 7/09/2012

Ronald Hatlett 7/18/12
Project Reviewer Date

Spauldi 7/11/12
Work Leader Date

Application Review Summary

Application Number: 12268
Company: Wolf Hollow I, LP
Facility: Wolf Hollow Plant
County: Hood
Tier: IV
Estimated Cost of Property: \$35,000,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed two heat recovery steam generators (HRSGs) at a cogeneration facility. Use of the HRSG improves the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

30 TAC §117.1310: Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources. This section establishes NOx emission specifications for eight-hour attainment demonstration. This is not an applicable citation.

Final Determination

A negative determination was issued. The two heat recovery steam generators are used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulation does not require installation of a heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 04/23/2008

Date Application Was Declared Administratively Complete: 04/29/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/29/2008

First Technical Notice of Deficiency (TNOD): More info

Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12
Project Reviewer Date

cyon 7/9
Work Leader Date

Application Review Summary

Application Number: 13534
Company: South Texas Electric Cooperative, Inc.
Facility: Sam Rayburn Power Plant Expansion
County: Victoria
Tier: IV
Estimated Cost of Property: \$13,764,301.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed three heat recovery steam generators (HRSG). Use of the HRSGs increases the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

40 Code of Federal Regulations §60. This chapter establishes performance standards for new sources. 30 Texas Administrative Code (TAC) §116.110: Control of Air Pollution by Permits for New Construction or Modifications, New Source Review Permits, Applicability. This section establishes requirements to obtain a permit to construct. These rules do not require the installation of heat recovery steam generators or steam turbines. 30 TAC §116.911: establishes requirements for obtaining a permit for electric generating facilities. 30 TAC §117.131 (now .3000): Control of Air Pollution from Nitrogen Compounds, Multi-Region Combustion Control, Utility Electric Generation In East And Central Texas, Applicability. Defines standards which facilities must meet to comply with this section. None of these citations require the installation of HRSGs.

Final Determination

A negative determination was issued. The heat recovery steam generators are used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulations do not require installation of a heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 04/20/2009

Date Application Was Declared Administratively Complete: 04/30/2009

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R923142

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 05/29/2009

Technical Review Completion Date: 07/05/2012

Paul H. [Signature] 7/5/12
Project Reviewer Date

Spill [Signature] 7/9/12
Work Leader Date

Application Review Summary

Application Number: 16410
Company: Cottonwood Energy Compnay, LP
Facility: Cottonwood Energy Center
County: Newton
Tier: III
Estimated Cost of Property: \$60,584,645.00
Project Reviewer: Ronald Hatlett

Description of Property

Unit 4 heat recovery steam generator and dedicated ancillary system.

Tier III Partial Percentage: 42.99%

Environmental Benefit

Use of this equipment improves the thermal efficiency of the plant.

Rule Citation(s)

The applicant cites 40 Code of Federal Regulations (CFR) §60.44Da(a) – Standard for nitrogen oxides (NOx) for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. This citation establishes NOx emission standards for certain power plants. In addition, the applicant cites 30 Texas Administrative Code §122.143(4). This citation requires the permit holder to comply with all terms and conditions codified in the permit. Neither citation requires the installation of heat recovery steam generators and dedicated ancillary systems.

Final Determination

A negative determination for the heat recovery steam generator and associated dedicated ancillary equipment.

Administrative Review

Administrative Review Chronology

Application Received: 12/02/11

Application Administrative Review Start: 04/19/12

Application Administrative Review Complete: 04/19/12

Fee Information

Application Fee Paid: \$2,500.00

Fee Receipt Number(s):

R211803

Does Applicant Have Past Due Fees: No.

Technical Review

Technical Review Chronology

Application Technical Review Started: 07/06/12

Application Technical Review Complete: 07/06/12

Ronald Matt 7/6/12
Project Reviewer Date

[Signature] 7/9/12
Work Leader Date

Application Review Summary

Application Number: 16411
Company: Cottonwood Energy Compnay, LP
Facility: Cottonwood Energy Center
County: Newton
Tier: III
Estimated Cost of Property: \$26,043,320.00
Project Reviewer: Ronald Hatlett

Description of Property

Unit 3 heat recovery steam generator and dedicated ancillary system.

Tier III Partial Percentage: 42.99%

Environmental Benefit

Use of this equipment improves the thermal efficiency of the plant.

Rule Citation(s)

The applicant cites 40 Code of Federal Regulations (CFR) §60.44Da(a) – Standard for nitrogen oxides (NOx) for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. This citation establishes NOx emission standards for certain power plants. In addition, the applicant cites 30 Texas Administrative Code §122.143(4). This citation requires the permit holder to comply with all terms and conditions codified in the permit. Neither citation requires the installation of heat recovery steam generators and dedicated ancillary systems.

Final Determination

A negative determination for the heat recovery steam generator and associated dedicated ancillary equipment.

Administrative Review

Administrative Review Chronology

Application Received: 12/02/11

Application Administrative Review Start: 04/19/12

Application Administrative Review Complete: 04/19/12

Fee Information

Application Fee Paid: \$2,500.00

Fee Receipt Number(s):

R211804

Does Applicant Have Past Due Fees: No.

Technical Review

Technical Review Chronology

Application Technical Review Started: 07/06/12

Application Technical Review Complete: 07/06/12

Ronald Hatt 7/6/12
Project Reviewer Date

Spill 7/9/12
Work Leader Date

Application Review Summary

Application Number: 16412
Company: Cottonwood Energy Compnay, LP
Facility: Cottonwood Energy Center
County: Newton
Tier: III
Estimated Cost of Property: \$60,584,465.00
Project Reviewer: Ronald Hatlett

Description of Property

Unit 2 heat recovery steam generator and dedicated ancillary system.

Tier III Partial Percentage: 42.99%

Environmental Benefit

Use of this equipment improves the thermal efficiency of the plant.

Rule Citation(s)

The applicant cites 40 Code of Federal Regulations (CFR) §60.44Da(a) – Standard for nitrogen oxides (NOx) for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. This citation establishes NOx emission standards for certain power plants. In addition, the applicant cites 30 Texas Administrative Code §122.143(4). This citation requires the permit holder to comply with all terms and conditions codified in the permit. Neither citation requires the installation of heat recovery steam generators and dedicated ancillary systems.

Final Determination

A negative determination for the heat recovery steam generator and associated dedicated ancillary equipment.

Administrative Review

Administrative Review Chronology

Application Received: 12/02/11

Application Administrative Review Start: 04/19/12

Application Administrative Review Complete: 04/19/12

Fee Information

Application Fee Paid: \$2,500.00

Fee Receipt Number(s):

R211805

Does Applicant Have Past Due Fees: No.

Technical Review

Technical Review Chronology

Application Technical Review Started: 07/06/12

Application Technical Review Complete: 07/06/12

Donald Hatfield 7/6/12
Project Reviewer Date

gpa 7/9
Work Leader Date

Application Review Summary

Application Number: 15505
Company: Cottonwood Energy Company, LP
Facility: Cottonwood Energy Center
County: Newton
Tier: III
Estimated Cost of Property: \$26,043,320.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed a heat recovery steam generator and dedicated ancillary systems. The equipment allows the facility to generate more electricity per unit of fuel burned. However, the equipment does not result in an actual reduction of emissions at the facility.

Rule Citation(s)

40 CFR 60.44Da: Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978; Standard for nitrogen oxides (NOX). This regulation does not require the installation of heat recovery steam generators. The applicant states that the use of this equipment allows the facility to meet Best Available Control Technology emission limitations established in their Federal Operating Permit. Neither of these are appropriate citations.

Final Determination

A negative determination for the heat recovery steam generator and its dedicated ancillary equipment are used for production not pollution control and therefore not eligible for tax relief. Further, the cited regulations do not require installation of the heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 07/05/2011

Date Application Was Declared Administratively Complete: 07/13/2011

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R128598

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 11/14/2011

Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12

Project Reviewer

Date

gordon 7/9

Work Leader

Date

Application Review Summary

Application Number: 11994
Company: Freeport Energy Center LP
Facility: Freeport Energy Center
County: Brazoria
Tier: IV
Estimated Cost of Property: \$41,300,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs), steam turbines and a condenser with ancillary pumps. Use of the equipment will improve the thermal efficiency of the plant.
Tier IV Partial Percentage: 98%. Calculation based on NOx reduction.

Rule Citation(s)

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators and a negative determination was issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site and is not considered to be pollution control equipment. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, on 7/10/2012 a negative determination was issued stating that heat recovery steam generators and condenser with ancillary pumps are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 04/03/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

Technical Review Completion Date: 04/30/2008

Determination Issued: 5/01/2008

Appeal Date: 5/16/2008

Remand Date: 6/29/2012

Technical Review Start Date: 7/02/2012

Technical Review Completion Date: 04/30/2008

Re-Determination Date: 7/09/2012

Ronald Hatlett 7/4/12

Project Reviewer

Date

[Signature] 7/9/12

Work Leader

Date

Application Review Summary

Application Number: 11966
Company: Freestone Power Generation, LP
Facility: Freeport Energy Center
County: Freestone
Tier: IV
Estimated Cost of Property: \$62,267,059.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines. Use of the equipment will improve the thermal efficiency of the plant.

Tier IV Partial Percentage: 100%. Calculation based on NOx avoidance.

Rule Citation(s)

40 CFR 60.Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators and a negative determination was issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site and is not considered to be pollution control equipment. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, on 7/10/2012, a negative determination was issued stating that heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 03/28/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

Technical Review Completion Date: 04/30/2008

Determination Issued: 5/01/2008

Appeal Date: 5/16/2008

Remand Date: 6/29/2012

Technical Review Start Date: 7/02/2012

Technical Review Completion Date: 04/30/2008

Re-Determination Date: 7/09/2012

Ronald Hatlett 7/9/12

Project Reviewer

Date

[Signature] 7/9/12

Work Leader

Date

Application Review Summary

Application Number: 11969
Company: Brazos Valley Energy, LP
Facility: Brazos Valley Energy Center
County: Fort Bend
Tier: IV
Estimated Cost of Property: \$56,913,424.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This facility has thermally efficient heat recovery steam generators (HRSGs) and steam turbines. Use of the equipment will improve the thermal efficiency of the plant.

Tier IV Partial Percentage: 100%. Calculation based on NOx avoidance.

Rule Citation(s)

40 CFR 60, Subpart DA: Standards of Performance for New Stationary Sources. Standards of performance for Electric Utility Steam Generating Units for Which Construction is Commenced after September 18, 1978. This rule does not require the installation of this equipment.

Final Determination

A positive use determination was issued on 5/1/2008, as 100% pollution control for the Heat Recovery Steam Generators and a negative determination was issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site and is not considered to be pollution control equipment. The determination was appealed on 5/19/2008. The application was remanded to the executive director for further review on 6/29/2012, on 7/10/2012, a negative determination was issued stating that heat recovery steam generators are used solely for production and, therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 03/28/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

Technical Review Completion Date: 04/30/2008

Determination Issued: 5/01/2008

Appeal Date: 5/16/2008

Remand Date: 6/29/2012

Technical Review Start Date: 7/02/2012

Technical Review Completion Date: 04/30/2008

Re-Determination Date: 7/09/2012

Ronald Hatlett 7/10/12

Project Reviewer

Date

Spencer 7/9/12

Work Leader

Date

Application Review Summary

Application Number: 12004
Company: NRG Texas Power LLC
Facility: Limestone Electric Generating Station
County: Limestone
Tier: IV
Estimated Cost of Property: \$9,347,452.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project replaced the economizers units 1 and 2. Use of this equipment improves the thermal efficiency of the plant.

Tier I Table Number: B6

Rule Citation(s)

The applicant cites 40 Code of Federal Regulations (CFR) §60.44Da(a) – Standard for nitrogen oxides (NOx) for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. This citation establishes NOx emission standards for certain power plants. In addition, the applicant cites 30 Texas Administrative Code §111.151 and §111.153. These citations establish particulate matter emissions rates.

Final Determination

A negative determination was issued. Unit's 1 and 2 economizers are used solely for production and, therefore, not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 04/01/2008

Date Application Was Declared Administratively Complete: 04/08/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/08/2008

First Technical Notice of Deficiency (TNOD): Issue 1: Provide a description of the property installed and a process flow diagram of the facility.

Issue 2: Provide a replacement cost analysis procedure calculation using actual emission reduction data and costs.

Date First TNOD Was Sent: 05/14/2008

Date Applicant's Response Was Received: 06/04/2008

Technical Review Completion Date: 07/05/2012

Ronald Hatfield 7/9/12
Project Reviewer Date

cyon I 7/9/12
Work Leader Date

Application Review Summary

Application Number: 12202
Company: Wise County Power Company LP
Facility: Wise County Power Plant
County: Wise
Tier: IV
Estimated Cost of Property: \$46,000,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed two heat recovery steam generators (HRSGs) as part of a combined cycle electric generating facility. Use of the HRSGs improved thermal efficiency.

Tier I Table Number: B8

Rule Citation(s)

30 TAC §106.512: Permits by Rule, Turbines and Engines, Stationary Engines and Turbines. This rule establishes standards under which a gas turbine may operate under a permit by rule. This is not an appropriate citation for heat recovery steam generators.

Final Determination

A negative determination was issued. The heat recovery steam generators are used solely for production; therefore, not eligible a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 04/21/2008
Date Application Was Declared Administratively Complete: 04/24/2008

Fee Information

Application Fee Paid: Yes
Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 05/08/2008
First Technical Notice of Deficiency (TNOD): More info
Date First TNOD Was Sent: 05/08/2008
Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12
Project Reviewer Date

Spauld 7/9/12
Work Leader Date

Application Review Summary

Application Number: 12203
Company: Ennis-Tractebel Power Company LP
Facility: Ennis Power Plant
County: Ellis
Tier: IV
Estimated Cost of Property: \$22,020,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed a heat recovery steam generator (HRSG). Use of the HRSG increases the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

30 TAC §117.1310: Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources. This rule establishes NOx emission specifications for eight-hour attainment demonstration.

Final Determination

A negative determination was issued. The heat recovery steam generator is used for production not pollution control and therefore ~~is~~ not eligible for tax relief. Further, the cited regulations do not require installation of the heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 04/21/2008

Date Application Was Declared Administratively Complete: 04/24/2008

Fee Information

Application Fee Paid: Yes

Does Applicant Have Past Due Fees: No

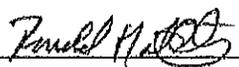
Technical Review

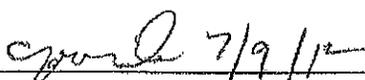
Technical Review Chronology

Technical Review Start Date: 05/08/2008

First Technical Notice of Deficiency (TNOD): More info

Technical Review Completion Date: 07/05/2012


Project Reviewer 7/15/12
Date


Work Leader 7/9/12
Date

Application Review Summary

Application Number: 12271
Company: Midlothian Energy Limited Partnership
Facility: Midlothian Energy
County: Ellis
Tier: IV
Estimated Cost of Property: \$82,412,314.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed twelve enhanced steam turbines and six heat recovery steam generators. Use of this equipment increases the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

30 Texas Administrative Code (TAC) §106.512: Permits by Rule, Turbines and Engines, Stationary Engines and Turbines. This section establishes emission standards for gas turbines. 30 TAC §111.151 and §111.153. These citations establish particulate matter emissions rates. These are not appropriate citations for heat recovery steam generators and enhanced steam turbines.

Final Determination

A negative determination was issued. The heat recovery steam generators and enhanced steam turbines are used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulations do not require installation of a heat recovery steam generator or enhanced steam turbines.

Administrative Review

Administrative Review Chronology

Received Date: 04/29/2008

Date Application Was Declared Administratively Complete: 04/29/2008

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R83593C

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 05/19/2008

Technical Review Completion Date: 07/05/2012

Ronald Hat 7/5/12
Project Reviewer Date

Steve D 7/9
Work Leader Date

Application Review Summary

Application Number: 12272
Company: Hays Energy Limited Partnership
Facility: Hays Energy, LP
County: Hays
Tier: IV
Estimated Cost of Property: \$44,150,572.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed eight enhanced steam turbines and four heat recovery steam generators (HRSGs). Use of the HRSGs and enhanced steam turbines improves the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

30 TAC §106.512: Permits by Rule, Turbines and Engines, Stationary Engines and Turbines. This section establishes emission standards for gas turbines. This is not an appropriate citation.

Final Determination

A negative determination was issued. The eight enhanced steam turbines and four HRSGs are used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulation does not require installation of a enhanced steam turbine or a heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 04/29/2008

Date Application Was Declared Administratively Complete: 04/29/2008

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R83593C

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 04/29/2008

Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/15/12
Project Reviewer Date

ajp 7/9
Work Leader Date

Application Review Summary

Application Number: 12696
Company: EN Services LP
Facility: Harrison County Power Project
County: Harrison
Tier: IV
Estimated Cost of Property: \$24,762,475.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed two heat recovery steam generators (HRSGs) used in the generation of electricity. Use of the HRSGs improves the thermal efficiency of the facility.

Tier I Table Number: B8

Rule Citation(s)

30 TAC §101.21 requires facilities to be in compliance with national primary and secondary ambient air quality standards. This not an appropriate rule citation for the installation of heat recovery steam generators.

Final Determination

A negative determination was issued. The heat recovery steam generators are used for production not pollution control and therefore not eligible for tax relief. Further, the cited regulation does not require the installation of a heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 07/03/2008

Date Application Was Declared Administratively Complete: 07/15/2008

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: 844673

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 07/15/2008

Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12
Project Reviewer Date

april 7/9/12
Work Leader Date

Application Review Summary

Application Number: 12826
Company: GIM Channelview Cogeneration LLC
Facility: Channelview Cogeneration Facility
County: Harris
Tier: IV
Estimated Cost of Property: \$72,790,741.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed four heat recovery steam generators (HRSGs) and an enhanced steam turbine at a combined cycle power plant. Use of this equipment improves thermal efficiency of the facility.

Tier I Table Number: B-8

Rule Citation(s)

40 CFR §60.332: Standards of Performance for New Stationary Sources, Standards of Performance for Stationary Gas Turbines, Standard for nitrogen oxides. 30 TAC §117.1205: Control of Air Pollution from Nitrogen Compounds, Combustion Control At Major Utility Electric Generation Sources In Ozone Nonattainment Areas, Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources, Emission Specifications For Reasonably Available Control Technology (RACT). These regulations do not require the installation of HRSGs or enhanced steam turbines.

Final Determination

A negative determination was issued. The four heat recovery steam generators and enhanced steam turbine are used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulation does not require installation of a heat recovery steam generator of the enhanced steam turbine.

Administrative Review

Administrative Review Chronology

Received Date: 12/30/2008

First Administrative Notice of Deficiency (ANOD): The application contains several unrelated types of pollution control equipment, some of which are Tier I and others which are Tier IV items. Per the rule requirements at 30 TAC 17.10(b), unrelated equipment must be filed under separate applications with separate fees. Additionally, the guidance for these applications specifies that each application can include only items in the same Tier level. Therefore, the items in the application must be divided into separate applications based on integrated units at the same Tier level, and the applications must be resubmitted with additional fees. Since a \$500 fee has been paid for one Tier IV application, the heat recovery steam generator and enhanced steam generator can be left in the submitted application if you agree to remove the other items from that application and if you specify which environmental laws apply to these Tier IV items.

Date First ANOD Was Sent: 01/15/2009

Date Applicant's Response Was Received: 02/09/2009

Date Application Was Declared Administratively Complete: 02/09/2009

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R912700

Does Applicant Have Past Due Fees: No

Technical Review.

Technical Review Chronology

Technical Review Start Date: 02/11/2009

Technical Review Completion Date: 07/05/2012

Ronald H. [Signature] 7/5/12
Project Reviewer Date

[Signature] 7/9/12
Work Leader Date

Application Review Summary

Application Number: 13544
Company: Brazos Electric Power Cooperative, Inc.
Facility: Johnson County Generation Facility
County: Johnson
Tier: III
Estimated Cost of Property: \$28,111,986.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project reconstructed a heat recovery steam generator (HRSG). Use of the HRSG will improve thermal efficiency of the plant.

Tier I Table Number: B8

Rule Citation(s)

40 Code of Federal Regulations §60: Standards of Performance for New Stationary Sources. This rule establishes emission standards. 30 Texas Administrative Code (TAC) §116.110: Control of Air Pollution by Permits for New Construction or Modification, Permit Application, Applicability. This section establishes permit standards. 30 TAC §116.911: De Minimis Facilities or Sources. This section establishes conditions that if met allow a facility to begin construction before authorization is received. 30 TAC §117.3000 (was 131): Control of Air Pollution from Nitrogen Compounds, Multi-Region Combustion Control, Utility Electric Generation In East And Central Texas, Applicability. This section defines emission standards. None of these rules require the installation of HRSGs.

Final Determination

A negative determination is issued. Heat recovery steam generators are used solely for production; therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Received Date: 04/27/2009

Date Application Was Declared Administratively Complete: 05/07/2009

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R923656

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 05/18/2009

Technical Review Completion Date: 07/05/2012

Ronald H. [Signature] 7/5/12
Project Reviewer Date

[Signature] 7/9/12
Work Leader Date

Application Review Summary

Application Number: 15020
Company: Motiva Enterprises, LLC
Facility: Motiva Port Arthur Refinery
County: Jefferson
Tier: III
Estimated Cost of Property: \$67,725,000.00
Project Reviewer: Ronald Hatlett

Description of Property and Environmental Benefit

This project installed a heat recovery steam generator (HRSG) with duct burners. Use of this equipment improves the thermal efficiency of the facility.

Tier I Table Number: B-8

Rule Citation(s)

30 Texas Administrative Code §117.115: Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Beaumont-Port Arthur Ozone Nonattainment Area Major Sources; Alternative Plant-Wide Emission Specifications. This section establishes alternative emission limits. This is not an appropriate citation.

Final Determination

A negative determination was issued. The heat recovery steam generator with duct burners is used for production not pollution control and therefore are not eligible for tax relief. Further, the cited regulation does not require installation of a heat recovery steam generator.

Administrative Review

Administrative Review Chronology

Received Date: 02/03/2011

Date Application Was Declared Administratively Complete: 03/10/2011

Fee Information

Application Fee Paid: Yes

Fee Receipt Number: R115811

Does Applicant Have Past Due Fees: No

Technical Review

Technical Review Chronology

Technical Review Start Date: 08/09/2011

Technical Review Completion Date: 07/05/2012

Ronald Hatlett 7/5/12
Project Reviewer Date

april 7/9
Work Leader Date

Application Review Summary

Application Number: 16409
Company: Bosque Power Company, LLC
Facility: Bosque County Power Plant
County: Bosque
Tier: III
Estimated Cost of Property: \$113,250,888.00
Project Reviewer: Ronald Hatlett

Description of Property

two heat recovery steam generators and dedicated ancillary systems.

Tier III Partial Percentage: 39.65%

Environmental Benefit

Use of this equipment improves the thermal efficiency of the plant.

Rule Citation(s)

The applicant cites 40 Code of Federal Regulations (CFR) §60.44Da(a) – Standard for nitrogen oxides (NOx) for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. This citation establishes NOx emission standards for certain power plants. In addition, the applicant cites 30 Texas Administrative Code §122.143(4). This citation requires the permit holder to comply with all terms and conditions codified in the permit. Neither citation requires the installation of heat recovery steam generators and dedicated ancillary systems.

Final Determination

A negative determination for the heat recovery steam generators and associated dedicated ancillary equipment. Heat recovery steam generators and associated dedicated ancillary equipment are used solely for production; therefore, are not eligible for a positive use determination.

Administrative Review

Administrative Review Chronology

Application Received: 12/02/11

Application Administrative Review Start: 04/19/12

Application Administrative Review Complete: 04/19/12

Fee Information

Application Fee Paid: \$2,500.00

Fee Receipt Number(s):

R211802

Does Applicant Have Past Due Fees: No.

Technical Review

Technical Review Chronology

Application Number 16409

Page 2

Application Technical Review Started: 07/06/12

Application Technical Review Complete: 07/06/12

Ronald H. Holt 7/6/12
Project Reviewer Date

Spencer 7/9/12
Work Leader Date

Application Review Summary

Application Number: 16413
Company: Brazos Electric Cooperative, Inc.
Facility: Jack County Generation Facility
County: Jack
Tier: III
Estimated Cost of Property: \$105,244,426.00
Project Reviewer: Ronald Hatlett

Description of Property

two heat recovery steam generators.

Tier III Partial Percentage: 74.66%

Environmental Benefit

Use of this equipment improves the thermal efficiency of the plant.

Rule Citation(s)

The applicant cites 40 Code of Federal Regulations (CFR) §60.44Da(a) – Standard for nitrogen oxides (NO_x) for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978. This citation establishes NO_x emission standards for certain power plants. In addition, the applicant cites 30 Texas Administrative Code §122.143(4). This citation requires the permit holder to comply with all terms and conditions codified in the permit. Neither citation requires the installation of heat recovery steam generators and dedicated ancillary systems.

Final Determination

A negative determination for the heat recovery steam generator and associated dedicated ancillary equipment.

Administrative Review

Administrative Review Chronology

Application Received: 03/07/12

Application Administrative Review Start: 04/19/12

Application Administrative Review Complete: 04/19/12

Fee Information

Application Fee Paid: \$2,500.00

Fee Receipt Number(s):

R221944

Does Applicant Have Past Due Fees: No.

Technical Review

Technical Review Chronology

Application Technical Review Started: 07/06/12

Application Number 16413

Page 2

Application Technical Review Complete: 07/06/12

Zarek Hatfield 7/6/12
Project Reviewer Date

Spencer 7/9/12
Work Leader Date

ATTACHMENT D

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11972, filed by:

**GS ELECTRICAL GENERATING COOP & DENVER
MUSTANG STATION UNITS 1, 2, & 3
1937 CR 390
DENVER CITY TX 79323**

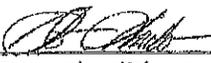
The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director

May 2, 2008
Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11970, filed by:

**BAYTOWN ENERGY CENTER LP
BAYTOWN ENERGY CENTER LP
8605 FM 1405 ROAD
BAYTOWN TX 77521**

The pollution control property/project listed in the Use Determination Application is:

This facility has three thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11968, filed by:

**CORPUS CHRISTI COGENERATION LP
CORPUS CHRISTI COGENERATION
3952 BUDDY LAWRENCE DR
CORPUS CHRISTI TX 78407**

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

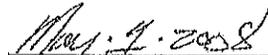
The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11967, filed by:

DEER PARK ENERGY CENTER LP
DEER PARK ENERGY CENTER
5665 HWY 225
HOUSTON TX 77536

The pollution control property/project listed in the Use Determination Application is:

This facility has four thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11964, filed by:

**GENTEX POWER CORPORATION
LOST PINES
HWY 21 NE 4.5 MI
BASTROP TX 78602**

The pollution control property/project listed in the Use Determination Application is:

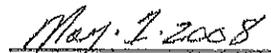
This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11965, filed by:

**CALPINE CORPORATION
CALPINE MAGIC VALLEY GENERATION
3333 N MCOLL RD
EDINBURG TX 78539**

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11942, filed by:

ODESSA-ECTOR POWER PARTNERS
ODESSA-ECTOR POWER PARTNERS
2200 E I-20 SERVICE RD S
ODESSA TX 79766

The pollution control property/project listed in the Use Determination Application is:

This facility has four combustion turbine generators coupled with four thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.

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

Executive Director

A handwritten signature in black ink, appearing to read "May 9, 2008", written over a horizontal line.

Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11943, filed by:

GUADALUPE POWER PARTNERS LP
GUADALUPE POWER PARTNERS
5740 WEIL RD
MARION TX 78124

The pollution control property/project listed in the Use Determination Application is:

This facility has four combustion turbine generators coupled with four thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

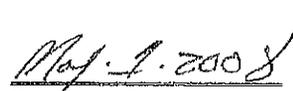
The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application; 07-11927, filed by:

NAVASOTA ODESSA ENERGY PARTNERS LP
QUAIL RUN
2950 E INTERSTATE 20
ODESSA TX 79766

The pollution control property/project listed in the Use Determination Application is:

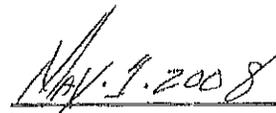
This facility has four thermally efficient heat recovery steam generators (HRSGs) and two steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11921, filed by:

**RIO NOGALES POWER PROJECT LP
RIO NOGALES POWER PROJECT
711 RIO NOGALES DR
SEGUIN TX 78155**

The pollution control property/project listed in the Use Determination Application is:

This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the three HRSGs and the enhanced steam turbines.

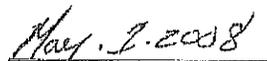
The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11917, filed by:

LAMAR POWER PARTNERS
FPLE PARIS POWER PLANT
HWY 137 1 MI S OF 286
PARIS TX 75461

The pollution control property/project listed in the Use Determination Application is:

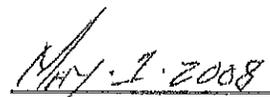
This facility has four thermally efficient heat recovery steam generators (HRSGs) and two enhanced steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the four Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11916, filed by:

**FPLE FORNEY LP
FPLE FORNEY POWER PLANT
900 W BROAD ST
FORNEY TX 75126**

The pollution control property/project listed in the Use Determination Application is:

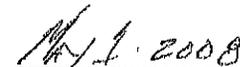
This facility has six thermally efficient heat recovery steam generators (HRSGs) and two enhanced steam turbines. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the six Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the two steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-11915, filed by:

TENSKA FRONTIER PARTNERS LTD
TENASKA FRONTIER GENERATION STAT
17500 HWY 30
SHIRO TX 77876

The pollution control property/project listed in the Use Determination Application is:

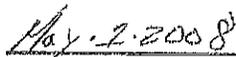
This facility has three combustion turbine generators coupled with three thermally efficient heat recovery steam generators (HRSGs) and one enhanced steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12000, filed by:

**FRONTERA GENERATION LTP
FRONTERA GENERATION PLANT
320 S GOODWIN RD
MISSION TX 78572**

The pollution control property/project listed in the Use Determination Application is:

This facility has two combustion turbine generators coupled with two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the three HRSGs and the enhanced steam turbines.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, **07-12001**, filed by:

**BASTROP ENERGY PARTNERS LP
BASTROP GENERATION PLANT
125 OLD BASTROP RD
CEDAR CREEK TX 78612**

The pollution control property/project listed in the Use Determination Application is:

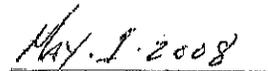
This facility has two combustion turbine generators coupled with two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a use determination for the HRSGs and the steam turbine. The application requests a Tier IV determination.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12003, filed by:

NRG TEXAS POWER LLC
CEDAR BAYOU IV
7705 OLD WEST BAY RD
BAYTOWN TX 77520

The pollution control property/project listed in the Use Determination Application is:

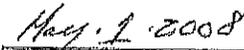
This facility has combustion turbine generators coupled with thermally efficient heat recovery steam generators (HRSGs) and steam turbines. This application is a Tier IV application seeking a use determination for the HRSGs and the steam turbine. The application requests a Tier IV determination.

The outcome of the review is:

A 100% positive use determination for the Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbines. The use of the steam turbines does not provide an environmental benefit at the site. The steam turbines are not considered to be pollution control equipment.


Executive Director


Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12015, filed by:

PASADENA COGENERATION
PASADENA COGENERATION I & II
955 PHILLIPS RD
PASADENA TX 77506

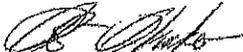
The pollution control property/project listed in the Use Determination Application is:

This facility has three thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbine.

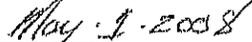
The outcome of the review is:

A 100% positive use determination for the three Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director



Date

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

USE DETERMINATION

The Texas Commission on Environmental Quality has reviewed Use Determination Application, 07-12016, filed by:

CHANNEL ENERGY CENTER LP
CHANNEL ENERGY CENTER LP
12000 LAWNSDALE LCR GT 5
PASADENA TX 77017

The pollution control property/project listed in the Use Determination Application is:

This facility has two thermally efficient heat recovery steam generators (HRSGs) and one steam turbine. This application is a Tier IV application seeking a partial use determination for the HRSGs and the enhanced steam turbine.

The outcome of the review is:

A 100% positive use determination for the two Heat Recovery Steam Generators. This equipment is considered to be pollution control equipment and was installed to meet or exceed federal or state regulations.

A negative determination is issued for the steam turbine. The use of the steam turbine does not provide an environmental benefit at the site. The steam turbine is not considered to be pollution control equipment.



Executive Director

May 1, 2008
Date