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July 31, 2012

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VIA HAND DELIVERY

Bridget Bohac, Office of the Chief Clerk
Texas Commission on Environmental Quality
12100 Park 35 Circle, MC 105
Austin, Texas 78753

Re: **Appeal of Negative Use Determination, Application Number 16409**
Bosque Power Company, LLC
Bosque County Power Plant
575 Bosque CR 3610
Clifton (Bosque County), Texas 76634

Dear Ms. Bohac:

Enclosed for filing is the original and seven copies of Applicant Bosque Power Company, LLC's Appeal of the Negative Use Determination for the referenced Application. A courtesy copy of this Appeal is being served on the persons identified at the end of the Appeal by the methods indicated. Also enclosed is one additional copy that we request be file-stamped and returned to the courier making this delivery.

Very truly yours,



Jeff Civins

Enclosures

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2012 JUL 31 PM 2:49
CHIEF CLERKS OFFICE

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Pursuant to 30 Texas Administrative Code 17.25, Bosque Power Company, LLC (“Bosque” or the “Company”) files this, its appeal of the negative use determination by the Executive Director’s staff (the “Staff”) of the Texas Commission on Environmental Quality (“TCEQ”) for two Heat Recovery Steam Generators (“HRSGs”) and dedicated ancillary systems located at Unit 5 of the Bosque County Power Plant (the “Facility”) in response to Bosque’s Tier III Use Determination Application, No. 16409 (the “Application”). For the reasons set forth below, Bosque requests that the Commission overturn the negative use determination and remand the Application to the agency’s Staff. Because of the relatively short time available for appeals and the lack of any prior notice that the Application was deficient, Bosque also requests an opportunity to supplement its appeal.

I. Background

The Facility is a natural-gas fired combined cycle power generating plant, consisting of three combustion turbines and two steam turbines, with a nominal capacity of 818 MW. An expansion project in 2007 involved the conversion of two existing simple cycle combustion turbine units (CT Units 1 & 2) into a (2 X 1) combined cycle configuration, with two heat recovery steam generators (“HRSGs”) and associated steam turbine, which is known as Unit 5.

On December 1, 2011, Bosque submitted the Application pursuant to TCEQ’s Tax Relief for Pollution Control Property Program for Unit 5, which is the Facility’s eligible Pollution Control Property (“PCP”). A copy of the Application is attached as **Exhibit A**.

On April 20, 2012, the TCEQ issued a Notice of Administrative Completeness to the Company. A copy of the Notice of Administrative Completeness is attached as **Exhibit B**. In a letter dated July 10, 2012, the Staff issued a negative use determination. A copy of the Staff’s negative use

determination is attached as **Exhibit C**. The Staff's determination of negative use appears to have been based not on the Application, but rather on the conclusion that HRSGs in general are not eligible for a positive use determination. The negative use determination explained, without citation of pertinent authority, that: "Heat recovery steam generators and associated dedicated ancillary equipment are used solely for production; therefore, are not eligible for a positive use determination," despite the fact that HRSGs are on the Expedited Review List and despite Bosque's pollution control determination made in accordance with agency rules. This explanation was the sole substantive communication by the Staff with Bosque since the Staff issued its April 20th Notice of Administrative Completion. Bosque received neither a technical completeness letter nor any deficiency notices. As a result, Bosque never received any opportunity to address whatever concerns the Staff had regarding the eligibility of HRSGs for a positive use determination.

II. Basis for Appeal

A. The HRSGs are eligible pollution control property and are not used solely for production.

As noted, the Staff failed to evaluate the Application on its own merits, broadly denying the Application solely because the PCP comprised HRSGs. The sole basis for the Staff's negative use determination is that HRSGs ". . . are used solely for production . . ." ¹ Although the Staff did not cite any authority for this disqualifying standard, the Staff apparently relied on TEX. ADMIN. CODE § 17.6(1)(B), which states that property "used, constructed, acquired or installed wholly to produce a good or provide a service" is "not entitled to a positive use determination." The Staff ignored the fact that this particular PCP was not chosen or used wholly to produce a good or service, but rather provided *both* production and pollution control benefits.

~~1. The HRSGs were not used solely for production; they were also used to control air pollution.~~

The HRSGs are described in the Application as being--and are--PCP used in the reduction/prevention of nitrogen oxides ("NOx") emissions due to the combined cycle design of the Facility. The HRSGs also resulted in the reduction/prevention of other products of combustion.

Within the definition outlined in TEXAS TAX CODE §11.31(b), the HRSGs represent a:

"facility, device or method for the control of air, water or land pollution,"
meaning "...any structure, building, installation excavation, machinery,

¹ The only basis for the Staff's decision was that HRSGs are not eligible for a positive use determination because HRSGs are used solely for production. The Staff did not cite any other technical reasons for its negative use determination, such as CAP considerations, LCOE Model Assumptions and Construction, or the failure to meet or exceed the requirements of any rule provision. In this Appeal, Bosque will not restate the technical justification for these requirements since the Staff has issued its final determination without identifying that any technical requirements were not satisfied. The Application is attached as Exhibit A.

*equipment or device, and any attachment or addition to or reconstruction, replacement or improvement of that property, that is 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.” [emphasis added]*

The use of otherwise wasted heat in the turbine exhaust gas within the HRSGs results in higher plant thermal efficiency (net power output of the plant divided by the heating value of the fuel), compared to other power generation technologies. The Facility, incorporating a combined cycle design, provides for less NOx emissions per pound of fossil fuel combusted due to the incorporation of both the Brayton and Rankine Thermodynamic cycles within plant design operations. Specifically, the equipment’s increased thermal efficiency, as compared to a traditional steam boiler unit, reduces the fuel needs for the same power outputs, while emitting no additional air emissions, i.e., NOx, CO, and other products of combustion.

2. HRSGs are on the Expedited List and are eligible for a positive use determination.

Pursuant to the mandate in TEX. TAX CODE § 11.31(k)(8),² the TCEQ adopted an Expedited Review List, which included HRSGs.³ The Expedited Review List is “a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution.” *Id.* Rule 17.17(b) indicates this list was “adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution” and explains that items may be added or removed from the list only if there is compelling evidence to support the conclusion that the item does or does not render pollution control benefits. Under applicable law, therefore, HRSGs are eligible for positive use determination since they have been defined by statute and rule as equipment that controls pollution.

As justification for the negative use determination, the Staff indicates that: “Heat recovery steam generators and associated dedicated ancillary equipment are used solely for production; therefore, are not eligible for a positive use determination.” *See* Exhibit C. This determination is inconsistent with statutes and ignores the TCEQ’s own rule that states that HRSGs are eligible for positive use determination.

² This section provides that the TCEQ “**shall** adopt rules establishing 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.”

³ Heat recovery system generators are specifically listed in the Expedited Review List (No. B-8) for Tier III applications. 30 TEX. ADMIN. CODE § 17.17 (b). The description for a HRSG under Expedited Review List #B-8 is as follows:

A counter-flow heat exchanger consisting of a series of super-heater, boiler (or evaporator) and economizer tube sections, arranged from the gas inlet to the gas outlet to maximize heat recovery from the gas turbine exhaust gas.

Bosque’s HRSG is exactly the type of equipment described in the definition.

As discussed below, the TCEQ has not removed HRSGs from the Expedited List. Therefore, the Staff's determination that HRSGs are used solely for production is contrary to the current statutes and rules governing use determination. An agency rule, such as the Expedited Review List, has the force and effect of law and is binding on the agency that issues it. *Northeast Tarrant County Water Auth. v. Board of Water Eng'rs*, 367 S.W.2d 720, 723 (Tex. Civ. App.—Austin 1963, no writ) (agency rule has force and effect of legislative enactment). An agency cannot exercise a power contradictory to its statute. *Public Util. Comm'n v. City Pub. Serv. Bd.*, 53 S.W.3d 310, 312 (Tex. 2001). When an agency fails to follow its own regulations, the agency's action is invalid. *Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954). By failing to follow the TCEQ's determination, as expressed in Chapter 17.17(b) and in TEX. TAX CODE § 11.31(k)(8), that HRSGs are eligible for a positive use determination, the Staff has acted in an arbitrary and capricious manner. *El Paso v. Pub. Util Comm'n of Tex.*, 883 S.W.2d 179, 184 (Tex. 1994) (agency decision is arbitrary when agency fails to consider factor legislature directed it to considered). Bosque, therefore, requests that the Staff remand the negative use determination in order to be consistent with current law.

3. EPA agrees that HRSGs on a power plant are pollution control technology.

In addition to HRSG's presence on the state's Expedited Review List, the EPA has also determined that HRSGs, specifically HRSGs on a power plant, have pollution control benefits. The EPA has ordered Wisconsin officials to consider combined cycle turbines and combined heat and power systems (CHP) as part of their best available control technology (BACT) evaluation for a proposed permit for a simple cycle landfill gas-fired power plant.⁴ In directing Wisconsin officials to consider combined cycle turbines or combined heat and power systems, EPA explained that “[c]ombined cycle turbines are generally more energy efficient than simple cycle turbines.”⁵ According to the EPA, the BACT determination includes the use of good combustion/efficient operation for turbines. Because BACT is a federal pollution control standard, the EPA's order indicates that HRSGs do control pollution when used in electricity generation. By directing a permit applicant to demonstrate why its proposed simple cycle plant should not be required to be built as a combined cycle plant as a matter of BACT, the EPA has established its position that HRSGs on a power plant have pollution control benefits.

B. The Staff failed to comply with TCEQ regulations and procedures.

The negative use determination should also be reconsidered because the Staff failed to comply with its own regulations and procedures. On December 2, 2011, Bosque submitted its Application. The review of the Application, however, did not follow ordinary procedures. Without notice to Bosque, the Staff ignored the Expedited Review List, effectively removing

⁴ See EPA Region 5 Letter to Wisconsin Department of Natural Resources (March 15, 2012), available at <http://epa.gov/nsr/ghgdocs/20120315Milwaukee.pdf>.

⁵ Wisconsin then agreed to consider combined cycle turbines or CHP in the BACT analysis. After evaluating the use of combined systems, Wisconsin determined that the combined system was not feasible since the facility did not have the space to accommodate the technology.

HSRGs, and applied a “new list” to Bosque’s Application. In addition, the Staff did not complete a technical review of the Application or provide any deficiency notice. Moreover, the Staff did not explain its decision or articulate why Bosque’s Application, in particular, which satisfied applicable legal requirements, was denied. Further, the Staff had issued positive use determinations for other HSRGs. In denying the Application, the Staff acted inconsistently and treated Bosque differently than other similarly-situated applicants. As discussed below, by failing to follow its own regulations and procedures and by treating Bosque in a different manner than similarly situated applicants, the Staff has acted arbitrarily and unlawfully.

1. By effectively taking HSRGs off the Expedited Review List, the Staff failed to follow the rule-making requirements of the Texas Administrative Procedure Act and the Tax Code.

The Staff’s determination that HSRGs are *not eligible* for a positive use determination constitutes an ad hoc amendment to the TCEQ’s rules, which is in violation of formal rulemaking procedures. Because HSRGs are included on the Expedited Review List, it has previously been determined that HSRGs do in fact render pollution control benefits and are therefore eligible for a positive use determination. In order to remove HSRGs from the Expedited Review List, the Staff would need to address this issue through future rulemaking. Under 30 TEX. ADMIN. CODE 17.17(b), “the commission may remove an item from [the Expedited Review List] only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.” The Staff has made no such finding.

A state agency must promulgate new rules through formal rulemaking procedures, which include giving notice of a proposed new rule, soliciting public comment, submitting to legislative review, and entering an order to adopt the new rule. TEX. GOV’T CODE §§ 2001.23; 2001.029; 2001.032-.033. The Texas Administrative Procedure Act demands that an agency give notice of a proposed rule with sufficient information so that interested persons can determine whether it is necessary for them to participate in order to protect their legal rights and privileges. *Tex. Workers’ Comp. Comm’n v. Patient Advocates.*, 136 S.W.3d 643, 650 (Tex. 2004).

The purpose of Chapter 17 is to establish the procedure and mechanism for an owner of pollution control property to apply for a use determination. 30 TEX. ADMIN. CODE § 17.1. Thus, the use determination affects individual rights and is not meant to implement new requirements of general applicability, which must be accomplished through the formal notice and comment process. The adoption and application of an ad hoc rule without a hearing to allow a party notice and right to be heard is fundamentally unfair. *Tex. State Bd. of Pharmacy v. Seely*, 764 S.W.2d 806, 813 (Tex. App.—Austin 1988, writ denied). The Staff’s removal of HSRGs from the Expedited Review List is invalid because it was not in the form of a promulgated rule pursuant to the proper procedure set forth in the Texas Administrative Procedure Act. The Commission, therefore, should remand the negative use determination to the Staff.

2. The Staff failed to follow established procedures and deprived Bosque of due process by not providing a notice of technical completeness review or any deficiency notice.

A detailed technical review is required. Despite this requirement, Bosque never received any affirmation that a technical review occurred, as required by the application review schedule set forth in TCEQ's regulations. See 30 TEX. ADMIN. CODE 17.12. Contrary to the provisions in 30 TEX. ADMIN. CODE §17.12(3), the Executive Director did not complete the technical review of the application within 30 days of receipt of all required application information. As reflected in the negative use determination, a detailed technical review of the Tier III application does not appear to have been performed. Rather, the Staff determined that the HRSGs in general were not eligible, which purportedly removed the requirement for a technical review.

In addition, the Company did not receive a Notice of Deficiency requesting additional information for the TCEQ to complete an administrative or technical review, as described in 30 TEX. ADMIN. CODE §17.12(2) and (2)(B). The lack of Notice of Deficiency resulted in Bosque not having notice of the standards that would apply to its Application. Fundamental fairness required by the due process clause requires the Staff to inform Bosque of its application requirements and to explain its decision. *Langford v. Employees Ret. Sys.*, 73 S.W.3d 560, 565-66 (Tex. App.—Austin 2002, pet. denied) (due process concerns arose when agency failed to give applicant grounds on which it would rely for its decision and when agency denied application without deliberation).

3. The Staff acted arbitrarily and unlawfully by treating Bosque differently than similarly-situated applicants.

In 2008, approximately 37 Tier IV Applications, a then newly-instituted Use Determination Application format, were received by the TCEQ. These applications covered eighteen (18) new pollution control items. HRSGs were one of the 18 enumerated items. Bosque believes that twenty (20) Tier IV requests involving HRSGs have previously been issued positive use determinations. Tier IV Applications, which are no longer in use, are substantially similar to Tier III Applications. Thus, the Staff has treated Bosque differently than twenty similarly-situated applicants, who were each granted a positive use determination for HRSGs.

Arbitrary actions of an agency cannot stand. *Lewis v. Metro Sav. & Loan Ass'n*, 550 S.W.2d 11, 16 (Tex. 1977). The United States Constitution also protects similarly-situated regulated persons from arbitrary legal distinctions. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). An agency acts arbitrarily and unlawfully if it treats similarly situated applicants differently without an articulated justification. *BMW of N. Am. v. Motor Vehicle Bd.*, 115 S.W.3d 722, 726 (Tex. App.—Austin 2003, pet. denied); *Flores v. Employees Ret. Sys.*, 74 S.W.3d 532, 538-545 (Tex. App.—Austin 2002, pet. denied) (agency acted arbitrarily and capriciously by failing to give pre-hearing notice of intention not to follow previous decisions). An agency action that is inconsistent with other decisions of the same agency will be set aside. *Id.*; *Occidental Permian Ltd. v. R.R. Comm'n*, 47 S.W.3d 801, 810-12 (Tex. App.—Austin 2001, no pet.).

The Staff's decision to afford Bosque different treatment than other similarly-situated Tier IV Applicants is an arbitrary and capricious exercise of agency discretion. By suddenly changing direction, the Staff has acted unlawfully to the detriment of Bosque, who relied on past policy. The Commission, therefore, should remand the negative use determination to the Staff.

4. The negative use determination failed to offer an explanation for denial of the Application.

Pursuant to 30 TEX. ADMIN. CODE 17.12 (4)(B), upon a negative use determination, "the executive director shall issue a denial letter explaining the reason for the denial." Contrary to the regulatory requirements, the Staff failed to provide *any* reason why the Application failed to qualify for a positive use determination, other than a broad generalization applicable to all HRSGs,⁶ which, as earlier discussed, is actually an invalid rule.

The TCEQ regulatory guidance reflects that some equipment has both environmental and production elements. *See* TCEQ Regulatory Guidance Air Quality Division, Pub. No. RG-461 (March 2011 draft) ("Tier III property/equipment may offer environmental benefits and improvements . . . that has both environmental and production elements"). The Staff failed to explain why Unit 5, which has both production and environmental elements, was deemed to be "not eligible for positive use determination." Because the Staff is required to provide a reason for the negative use determination, its failure to do so constitutes an abuse of discretion.

In addition, to comport with due process, the Staff is required to explain why it treated Bosque differently than the 31 Tier IV applicants who received a positive use determination. An agency is required to explain its reasoning when "an agency has departed from its earlier administrative policy or there exists an apparent inconsistency in agency determinations." *Flores v. Employees Retirement System of Texas*, 74 S.W.3d 532, 533-34 (Tex. App.—Austin 2003, pet. denied).

In order to satisfy due process, the Staff is required to "engage in reasoned decision-making." *Starr County v. Starr Indus. Serv., Inc.*, 584 S.W.2d 352, 356 (Tex. Civ. App.—Austin 1979, ref. n.r.e.). Because the Staff has not offered any reasoned explanation as to their determination that HRSGs are not eligible for a positive use determination, the due process rights of Bosque have been denied. As a result, remand is required.

⁶ The CAP determination established a pollution control benefit. Although the Staff does not appear to have considered Bosque's CAP calculation, the Application establishes a 39.65% partial-use percentage pursuant to the 30 Tex. Admin. Code § 17.17 and the TCEQ guidance that was in effect at the time of the Application preparation. The Application utilizes the TCEQ's established CAP in conjunction with a Levelized Cost of Energy ("LCOE") model developed by the U.S. Department of Energy ("U.S. DOE").

**III.
Conclusion**

On behalf of Bosque, we respectfully request that the Commission remand the negative use determination to its Staff. Please feel free to contact me if you have any questions regarding this Appeal.

Sincerely,



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cc:

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VIA HAND-DELIVERY

Rosemary Galaviz, Chief Appraiser

VIA EMAIL & FIRST CLASS MAIL

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VIA EMAIL

Exhibit A

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 Limited Partner Other: **Limited Liability Corporation**
Sole Proprietor Utility
Partnership
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)
Natural Gas-Fired Electric Power Generation
4. Provide the North American Industry Classification System (NAICS) six-digit code for this facility. **221122 - Electric Power Generation, fossil fuel**

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:

Payment Type: Check *5116*

Payment Amount: \$2,500

Name on payment: Duff & Phelps

Total Amount: \$2,500

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: Bosque Power Company, LLC

2. Mailing Address: 575 Bosque County Road 3610

3. City, State, Zip: Clifton, TX 76634

4. Customer Number (CN): CN603196148

5. Regulated Entity Number (RN):RN100226232

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

If the answer is 'No,' please explain: N/A

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

If the answer is 'Yes,' please explain: N/A

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

If the answer is 'No,' please explain: N/A

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

1. Company Name: N/A

2. Mailing Address: N/A

3. City, State, Zip: N/A

4. Customer Number (CN): N/A

5. Regulated Entity Number (RN):N/A

Section 6. Physical Location of Property/Equipment

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

Bosque County Power Plant

2. Type of Mfg. Process or Service: **Natural Gas-Fired Electric Power Generation**

3. Street Address: 575 Bosque County Road 3610
4. City, State, Zip: Clifton, TX 76634

Section 7. Appraisal District with Taxing Authority

1. Appraisal District: Bosque County Appraisal District
2. District Account Number(s): P29200 & R03085

Section 8. Contact Name

1. Company Name: Duff & Phelps, LLC
2. First Name of Contact: Greg
3. Last Name of Contact: Maxim
4. Salutation: Mr. Mrs. Ms. Dr. Other:
5. Title: Director
6. Mailing Address: 919 Congress Avenue, Suite 1450
7. City, State, Zip: Austin, TX 78701
8. Phone Number/Fax Number: (P) 512-671-5580; (F) 512-351-7911
9. Email Address: Gregory.maxim@duffandphelps.com
10. Tracking Number (optional): BQ-2012-01

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:
Heat Recovery Steam Generators ("HRSGs") and Dedicated Ancillary Systems
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: N/A. See Calculation of Percentage of pollution control Property in attached Cost Analysis Procedure ("CAP") Model.
3. Does the property/equipment generate a Marketable Product? Yes No
If the answer is 'Yes,' describe the marketable product: Electricity
4. What is the appropriate Tier I Table or Expedited Review List number?
Expedited Review List #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:

Title V Operating Permit O1886

Incremental Cost Difference

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

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

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

Property/Equipment Description

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

Facility Background

The Bosque County Power Plant (the "Facility") is a natural-gas fired combined cycle power generating plant, consisting of three combustion turbines and two steam turbines, with a nominal capacity of 818 MW. An expansion project in 2007 involved the conversion of two existing simple cycle combustion turbine units (CT Units 1 & 2) into a (2 x 1) combined cycle configuration, with two HRSGs and associated steam turbine, which is known as Unit 5.¹

Pollution Control Property Description – Bosque Unit 5 HRSG

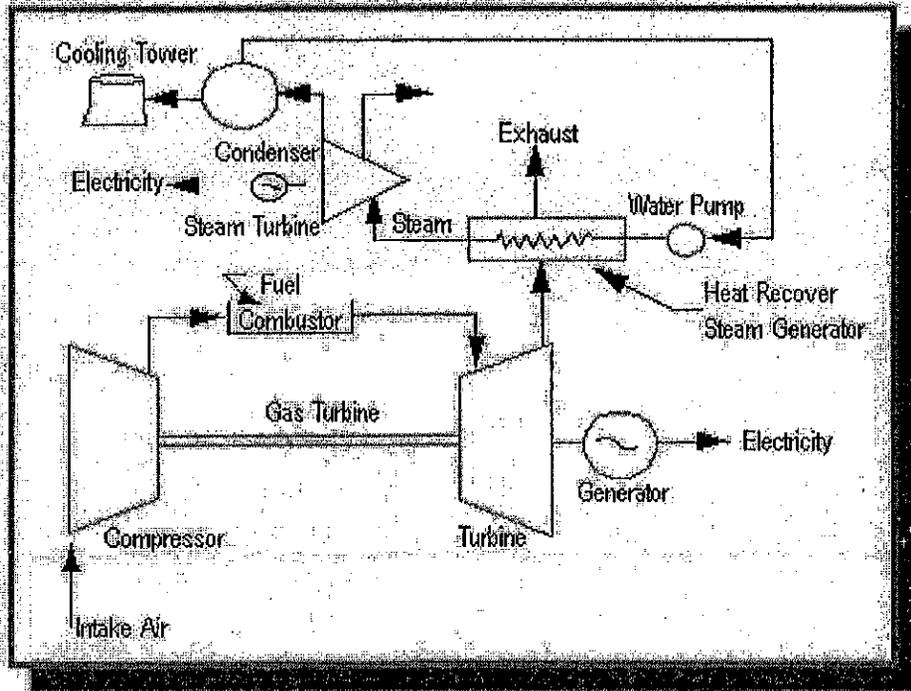
The pollution control property described in this Application are the Facility's Unit 5 HRSGs and dedicated ancillary systems (the "PC Property").

The Facility consists of a combined-cycle gas turbine power plant with two (2) gas Combustion Turbines ("CTs") equipped with two (2) HRSGs and dedicated ancillary systems necessary to capture heat from the CTs' exhaust and convert it into electrical power. The Unit 5 HRSGs capture the waste heat of combustion from the CT Units 1 & 2 exhaust gas and utilize this waste heat to produce steam, which in turn powers a steam turbine-generator set to produce electric power at the Facility, in addition to the electric power generated by the CTs alone.

The Facility gains both production and pollution control benefits from the subject PC Property. First, the use of this waste heat of combustion by the Unit 5 HRSGs creates a thermal efficiency benefit for the Facility. Specifically, the use of waste heat in the CT Units 1 & 2 exhaust gas results in the conversion of approximately 50% of the chemical energy of the natural gas utilized at the Facility into electricity (HHV basis), a gain over the use of the fuel by these CTs alone. Secondly, due to this efficiency gain, the Facility is able to generate fewer emissions (particularly NOx emissions) than a traditional power generation facility utilizing a single thermodynamic cycle; thus supporting the subject PC Property's inclusion on the Expedited Review List.

¹ The Lauren Corporation. Lauren Lantern Corporate Newsletter, August 2007.
http://www.laurenec.com/newsletters/Newsletter_August'07.pdf. Accessed March 29, 2011.

The Figure below is representative of a simplified combined-cycle plant process flow.



Please see the Cost Analysis Procedure ("CAP") Model attached for the calculation of the percentage of the subject pollution control property eligible for property tax exemption.

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.

The PC Property was installed to meet the requirements of 40 CFR Part 60.44da "Standards for nitrogen oxides ("NO_x") for Electric Utility Steam generating units for New Source Performance Standards ("NSPS")".

As well, the PC Property allows emissions to meet or exceed Best Available Control Technology emission limitations established in TCEQ permit O1886. Per 30 Texas Administrative code ("TAC") §122.143(4), the permit holder must comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.

Environmental Benefit

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

The PC Property reduces the formation of and/or controls the emission of NO_x and other air emissions associated with the combustion of natural gas used in combined cycle power generation at the Facility.

Section 10. Process Flow Diagram (Optional)

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

Please see the simplified Process Flow Diagram above for a representation of the combined-cycle power plant.

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.

Please see the attachment to this application for the Cost Analysis Procedure ("CAP") Calculations.

Section 12. Property Categories and Costs

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

| Property/Equipment Name | Tier 1 Table No. or Expedited Review List No. | Use Percent | Estimated Dollar Value |
|--|---|-------------|------------------------|
| Land: | | | |
| Property: Heat Recovery Steam Generators ("HRSGs") and Dedicated Ancillary Systems | N/A | 39.65% | \$ 113,250,888 |
| Property: | | | |
| Property: | | | |
| Total: | | | \$ 44,898,715 |

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.

Section 13. Certification Signature

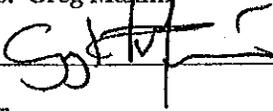
Must be signed by owner or designated representative.

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: Greg Maxim

Date: 12/1/2011

Signature: _____



Title: Director

Company Name: Duff & Phelps, 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.

Exhibit B

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 20, 2012

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

Re: Notice of Administrative Completeness
Bosque Power Company, LLC
Bosque County Power Plant
575 Bosque CR 3610
Clifton (Bosque County)
Regulated Entity Number: RN100226232
Customer Reference Number: CN603196148
Application Number: 16409
Tracking Number: BQ-2012-01

Dear Mr. Maxim:

This letter responds to Bosque Power Company, LLC's Application for Use Determination, received December 2, 2011, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Bosque County Power Plant.

The TCEQ has determined the information required in Title 30 Texas Administrative Code (TAC) §17.10 is complete for application #16409. A copy of the application has been provided to the appropriate county appraisal district. As specified in 30 TAC §17.12, a technical review will be conducted according to the Application Review Schedule. Please note that if additional technical information is needed, a Notice of Deficiency will be issued and any review time associated with this action will not be considered part of the Application Review Schedule.

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.

Exhibit C

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 & Phelps, LLC
919 Congress Avenue
Suite 1450
Austin, Texas 78701

Re: Notice of Negative Use Determination
Bosque Power Company, LLC
Bosque County Power Plant
575 Bosque CR 3610
Clifton (Bosque County)
Regulated Entity Number: RN100226232
Customer Reference Number: CN603196148
Application Number: 16409
Tracking Number: BQ-2012-01

Dear Mr. Maxim:

This letter responds to Bosque Power Company, LLC's Application for Use Determination, received December 2, 2011, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Bosque County Power Plant.

The TCEQ has completed the review for application #16409 and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) §17.4. The justification for the negative use determination is provided below.

Heat recovery steam generators and associated dedicated ancillary equipment 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.

Mr. Greg Maxim
Page 2
July 10, 2012

Sincerely,



Chance Goodin, Team Leader
Stationary Sources Team
Air Quality Division

CG/RH

Enclosure

cc: Chief Appraiser, Bosque County Appraisal District, PO Box 393, Meridian, Texas
76665