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November 19, 2012

BY ELECTRONIC MAIL AND CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Les Trobman, Esq.
Mr. Jim Risk, Esq.
Ms. Tracy H. Gross, Esq.
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Notice of Agenda Setting for Appeals Regarding the Executive Director's Negative Use Determinations applicable to the following HRSG Applications (the "Notice"):

APPLICATION NO./TCEQ DOCKET NO.	APPELLANT	COUNTY
No. 12696/ Docket No. 2012-1529-MIS-U	EN Services LP	Harrison County
No. 16409/Docket No. 2012-1552-MIS-U	Bosque Power Company LLC	Bosque County
No. 07-11926/ Docket No. 2008-0851-MIS-U	CER-Colorado Bend Energy LLC	Wharton County
Nos. 12210 and 12211/ Docket No. 2012-1559-MIS-U	Topaz Power Group, LLC	Nueces County
Nos. 15505, 16410, 16411, and 16412/ Docket No. 2012-1562-MIS-	Cottonwood Energy Company LP	Newton County
No. 12268/Docket No. 2012-1586-MIS-U	Wolf Hollow I, LP	Hood County
No. 13534/Docket No. 2012-1587-MIS-U	South Texas Electric Cooperative, Inc.	Victoria County
No. 13544/Docket No. 2012-1635-MIS-U	Brazos Electric Cooperative	Johnson County
No. 16413/Docket No. 2012-1648-MIS-U	Brazos Electric Cooperative	Jack County
No. 12271/Docket No. 2012-1650-MIS-U	Midlothian Energy Limited Partnership	Ellis County
No. 12202/Docket No. 2012-1660-MIS-U	Wise County Power Company, LLC	Wise County
No. 12272/Docket No. 2012-1682-MIS-U	Hays Energy Limited Partnership	Hays County
No. 12203/ Docket No. 2012-1662-MIS-U	Ennis Power Company, LLC	Ellis County
No. 07-11914/ Docket No. 2008-0830-MIS-U	Tenaska Gateway Partners, Ltd.	Rusk County
No. 07-11971/ Docket No. 2008-0832-MIS-U	Borger Energy Associates, LP	Hutchinson County
No. 07-11994/ Docket No. 2008-0850-MIS-U	Freeport Energy Center, LLC	Brazoria County
No. 07-11969/ Docket No. 2008-0849-MIS-U	Brazos Valley Energy Center LLC	Fort Bend County
No. 07-11966/ Docket No. 2008-0831-MIS-U	Freestone Power Generation, LLC	Freestone County

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Dear Mr. Trobman, Mr. Rizk and Ms. Gross:

As requested, Appellants met to discuss the time allocations set forth in the subject Notice. I am writing to present most all Appellants'¹ shared concerns regarding those time allocations and to respectfully request that they be adjusted based on the following.

As you know, 30 TAC §17.25(e)(1) specifically provides that every person seeking a positive use determination may testify at the Commission meeting at which their appeal is considered. By rule, each Appellant has a right to have their own attorneys or representatives orally present their individual positions and Applications to the Commission, and Appellants hired counsel expecting them to actually be heard by the Commission. However, the Notice's time allocations only allow all nineteen (19) Appellants a collective twenty (20) minutes of argument. The Notice clearly contemplates (and would compel, as a practical matter) that some Appellants waive the valuable right of orally supporting their own Applications before the Commission. Appellants are not unmindful of the fact that there is some overlap in their respective positions and briefing. However, there are also numerous distinctions among the positions of various Appellants, including without limitation: applicable Constitutional considerations, other laws and regulations; factual support for their various Applications; and the equipment covered by each Application. The Executive Director's own Response to the Notices of Appeal filed in this matter recognized the existence of two discrete groups of Appellants, those which initially received 100% Positive Use Determinations and those which did not, and identified differences between them. Each of these distinctions deserves discussion at the hearing and consideration by the Commission in the context of oral presentations. There is simply no way Appellants can effectively present all their points to the Commission in twenty minutes.

Moreover, it is plain that all Appraisal Districts have adopted and rely primarily upon the briefing of the Executive Director. The Office of Public Interest Counsel (OPIC) likewise has expressly "deferred" to the Executive Director and his briefing, stipulating the Executive Director's actual decision giving rise to these appeals was not sufficiently supported for OPIC to address it more specifically. While the Executive Director, Appraisal Districts and OPIC are even more aligned that Appellants, they have been collectively allocated forty (40) minutes. It is fundamentally unfair to allow the opposing "side" twice Appellants' time allocation simply to respond to Appellants' arguments.

Appellants recognize and share the Commission's desire for efficiency and the avoidance of repetition. Were each Appellant to insist on its right to present its own, individual appeal and Application to the Commission at the hearing, there is no doubt that the time required for the entire hearing would exceed several hours. However, in the spirit of compromise and to avoid

¹ Appellant GIM Channelview Cogeneration LLC does not join in the request made herein.

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duplication of arguments while allowing fair presentation of all pertinent issues, Appellants are willing to consolidate arguments and presenters to the extent it makes sense to do so. Given all the above, Appellants therefore respectfully request that they be allocated a total of at least sixty (60) minutes for their collective oral presentations.

Please give this request your careful consideration. Appellants appreciate your understanding and look forward to your response.

Very truly yours,


Edward Kliever III

EK/bsp