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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 5, 2014

Mr. J. M. Harris
Agent
H & H Associates
406 FM 3016
Grapeland, Texas 75844

Re: Notice of Negative Use Determination
Brazos Electric Power Cooperative, Inc.
Johnson County Generation Facility
Cleburne (Johnson County)
Regulated Entity Number: RN100221985
Customer Reference Number: CN600128821
Application Number: 13544

Dear Mr. Harris:

This letter responds to Brazos Electric Power Cooperative, Inc.'s Application for Use Determination for Johnson County Generation Facility, originally submitted on April 27, 2009 and remanded to the executive director (ED) on December 5, 2012 by the Texas Commission on Environmental Quality (TCEQ) commissioners. Your Tier IV partial use determination application seeks a use determination for one Heat Recovery Steam Generator (HRSG) and dedicated ancillary systems.

The ED has completed the review for application #13544 and the associated notice of deficiency (NOD) responses and has issued a Negative Use Determination for the property in accordance with Title 30 Texas Administrative Code (TAC) Chapter 17. The Negative Use Determination is issued because the methods for determining the use determination percentage were not reasonable.

The Tier IV application process, in place in commission rules between February 2008 and December 2010, allowed an applicant to propose a method for calculating a partial use determination. The commission rules allow for determinations that distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods or services. If the property is not used wholly for the control of air, water, or land pollution, the applicant must present information in the application for the determination of the proportion of the property that is pollution control. It is the responsibility of the applicant to propose a reasonable method for determining the use determination percentage. It is the responsibility of the ED to review the proposed method and make the final determination.

After careful review of the five methods for calculating a partial positive use determination included in the applicant's submittals, the ED has determined that all but one of the methods are unacceptable. The four methods proposed by the applicant do not reasonably distinguish the proportion of the HRSG and dedicated ancillary systems that provides a purported pollution control benefit from the proportion of the HRSG and dedicated ancillary systems that produces steam that is used in a process or to produce electricity for use or sale. The one method that the ED does find acceptable, the Cost Analysis Procedure (CAP) adopted by the commission, produces a negative number. Therefore, the property is not eligible for a positive use determination.

The following is an explanation of the ED's review of the methodologies presented in your application:

- Executive Director's December 3, 2008 Brief (61%): Subsequent to filing the brief where this methodology is presented, the ED determined that the proposed calculation did not accurately calculate an appropriate use determination because the less efficient the equipment, the higher the positive use determination percentage it yielded. This produces an unreasonable result and should not provide the basis for a final determination.

- Avoided Emissions Approach (40%): This approach is not reasonable because it does not distinguish the proportion of property used to control or prevent pollution from the proportion used to produce a product. Furthermore, the avoided emission approach does not attribute any value to production. By attributing the entire avoided emissions to the HRSG and dedicated ancillary systems, this approach ignores nitrogen oxides (NOx) reductions related to other property for which a positive use determination has been issued.

- Modified CAP Calculation (64%): Capital Cost New (CCN) includes dedicated ancillary systems. Allowing Capital Cost Old (CCO) to be equal a pipe or spool piece ignores that HRSGs are alternative production equipment. CCO is the cost of comparable equipment without the pollution control. If the HRSGs produce steam, then comparable equipment that produces steam without pollution control is a boiler. The ED does not find it reasonable to equate CCO to a spool piece.

- Modified CAP Calculation (100%): Capital Cost New (CCN) includes dedicated ancillary systems. Allowing Capital Cost Old (CCO) to be $0 ignores that HRSGs are alternative production equipment. CCO is the cost of comparable equipment without the pollution control. If the HRSGs produce steam, then comparable equipment that produces steam without pollution control is a boiler. The ED does not find it reasonable to attribute $0 cost to CCO in the CAP.

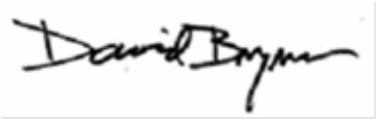
- CAP as proposed by the executive director (-83%): The CAP formula was adopted by the commission to provide a methodology for determinations that distinguishes the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion of property that is used to produce goods

or services. The fact that the CAP calculated results in a negative number shows that the HRSGs' and dedicated ancillary equipment's pollution prevention benefit is negated by its ability to produce a product.

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,



David Brymer, Director
Air Quality Division

DB/rh

cc: Chief Appraiser, Johnson County Appraisal District, 109 N. Main St., Cleburne, Texas, 76033-4941