

BEFORE THE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

APPEAL OF NOTICE OF NEGATIVE §
USE DETERMINATION TO GIM §
CHANNELVIEW COGENERATION LLC, § APPLICATION NO. 12826; TRACKING
CHANNELVIEW COGENERATION § NUMBER CCF-2008-1
FACILITY §

TO THE HONORABLE COMMISSIONERS:

In accordance with 30 Texas Administrative Code (“T.A.C.”) § 17.25 (2012), GIM Channelview Cogeneration LLC requests that the Commission reconsider the Notice of Negative Use Determination dated July 10, 2012 for Channelview’s Application for Use Determination #12826 (the “Application”), and issue instead a Positive Use Determination consistent with the Application. The Negative Use Determination was issued to GIM Channelview Cogeneration LLC (“Channelview”), Tower 49 38th Floor, 12 East 49th St., New York, New York 10017 in reference to the Channelview Cogeneration Facility, 8580 Sheldon Road, Houston (Harris County), 77049. A copy is attached.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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Appeal Description

The Application, dated December 30, 2008, was filed for the Channelview Cogeneration Facility’s eligible Pollution Control Property (“PCP”) pursuant to the Texas Commission on Environmental Quality (“TCEQ”) Tax Relief for Pollution Control Property Program. The eligible PCP includes four heat recovery steam generators (“HRSGs”) and one enhanced steam turbine. In accordance with the rules in place as of the date of the Application,¹ Channelview filed a Tier IV Application, including a reasonable partial determination calculation based on TCEQ Task Force recommended percentages.

¹ All references to the Texas Administrative Code are to the provisions in effect as of December 20, 2008, unless otherwise noted.

Basis for the Appeal

The Application explains that absent the installation of the PCP, additional NO_x emissions associated with the production of an additional 250 MW_e would have to occur at the Facility. Rather than burn more fossil fuel in additional pollution-emitting sources (triggering requirements for add-on NO_x controls), the HRSGs and enhanced steam turbine provide a *mix* of production and pollution control that achieves both environmental and economic efficiencies. Accordingly, HRSGs and enhanced steam generators were specifically recognized – by the Legislature and by TCEQ – to be eligible for a partial use determination. *See* Texas House Bill 3732 (2007), *codified at* Tex. Tax Code § 11.31, and 30 T.A.C. § 17.14(a) Tbl. Part B. Because of the statutory recognition of the environmental benefits of Tier IV equipment, the TCEQ rules went so far as to exempt Tier IV Applications from describing “the anticipated environmental benefits from the installation of the pollution control property.” 30 T.A.C. § 17.10(d)(1); 30 Tex. Reg. 932, 933 (Feb. 1, 2008); *see also* 30 T.A.C. § 17.14(b)(2) (item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not provide pollution control benefits). Rather, the regulations define the issue as one of evaluating an appropriate use percentage under a reasonable methodology. *See* 30 T.A.C. § 17.10(d)(6); 30 T.A.C. § 17.17(d).

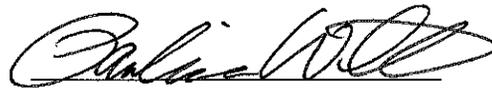
At the time of Channelview’s application, it was the “responsibility of the [Tier IV] applicant to propose a reasonable method for determining the use determination percentage,” and “the responsibility of the executive director to review the proposed method and make the final determination.” 30 T.A.C. § 17.17(d). “If the cost analysis procedure or the method accepted by the executive director produced a zero or negative number, the property would not be eligible for a positive determination.” *Id.* at § 17.17(e). But, notably, the Executive Director was not charged or authorized to create his own methodology out of whole cloth; in fact, as a logical corollary to his reviewing role, he was charged with a statutory duty to complete technical review of Tier IV applications within 30 days of receipt of an administratively complete application. Tex. Tax Code § 11.31(m); 30 T.A.C. § 17.12(3).

The Negative Use Determination issued to Channelview did not state that the methodology or calculations used in the Application were unreasonable or inaccurately calculated the tax exempt percentage of the subject property. The Determination stated only that the “[h]eat recovery steam

generators and steam turbines are used solely for production; therefore, are not eligible for a positive use determination.” But the Application used the percentages recommended by the Executive Director in a December 3, 2008 response to other Tier IV heat recovery steam generator and enhanced steam turbine appeals – 61% for the HRSGs and 0% for the enhanced steam turbine – and endorsed by a TCEQ task force. There is no reasoned basis for rejecting the recommended percentages or for failing to articulate any flaws in the basis for the percentages. There is no description of some alternative methodology that would yield a 0% for the HRSGs, but only the conclusion that, because this equipment is involved in the production of electricity, it is “used solely for production.” The Negative Use Determination thus ignores the clear reduction of NO_x emissions that would otherwise necessarily be generated at the Facility, and the Legislature’s and TCEQ’s own prior recognition that this attribute of the HRSG warrants the partial pollution control designation sought in Channelview’s application.

For the foregoing reasons, which are supported by TCEQ’s records in this matter, Channelview respectfully requests that the Negative Use Determination be replaced with a Positive Use Determination for the eligible historical costs of the PCP described in the Application.

Respectfully submitted,



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ATTORNEYS FOR GIM CHANNELVIEW
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Bryan W. Shaw, Ph.D., *Chairman*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 10, 2012

Mr. Salim Samahas
Vice President
GIM Channelview Cogeneration LLC
Tower 49 38th Floor
12 East 49th
New York, New York 10017

Re: Notice of Negative Use Determination
GIM Channelview Cogeneration LLC
Channelview Cogeneration Facility
8580 Sheldon Road
Houston (Harris County)
Application Number: 12826; Tracking Number: CCF-2008-1

Dear Mr. Samaha:

This letter responds to GIM Channelview Cogeneration LLC's Application for Use Determination, received December 30, 2008, pursuant to the Texas Commission on Environmental Quality's (TCEQ) Tax Relief for Pollution Control Property Program for the Channelview Cogeneration Facility.

The TCEQ has completed the review for application #12826 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