

BEFORE THE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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**APPEAL OF NOTICE OF NEGATIVE USE  
DETERMINATION TO  
EIF CHANNELVIEW COGENERATION, LLC,  
CHANNELVIEW COGEN FACILITY  
(P.O. Box 1639, Channelview, Texas 77530)**

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APPLICATION NO. **12826**

CHIEF CLERKS OFFICE

2011  
MAY 31 PM 2:03

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

TO THE HONORABLE COMMISSIONERS:

By recovering waste heat from its gas turbines to produce steam, EIF Channelview Cogeneration, LLC's ("EIF Channelview") heat recovery steam generators ("HRSGs") substantially reduce the facility's NOx emissions per unit of output. The Legislature recognized HRSGs pollution control benefits in 2007, when it required TCEQ to adopt rules listing HRSGs as pollution control property. And so in 2008, EIF Channelview applied for a pollution control property use determination for its HRSGs (Attachment 1).<sup>1</sup> In 2012, the Executive Director ("ED") responded with a negative use determination ("NUD") (Attachment 2), but EIF Channelview appealed (Attachment 3) and the Commission remanded consideration of EIF Channelview's application to the ED (Attachment 4).<sup>2</sup> The ED responded with another NUD on June 5, 2014 (Attachment 5). EIF Channelview again requests that the Commission replace the ED's NUD with a positive use determination.

**BASIS FOR APPEAL**

The ED issued the NUD (1) because the ED did not find that HRSGs are used to meet or exceed environmental laws, (2) based on a use determination calculation methodology that always yields a sub-zero result. These errors, which provide the grounds for this appeal, find fuller briefing in EIF Channelview's responses (Attachments 6 and 7) to the ED's notices of deficiency (Attachments 8 and 9) that culminated in the June 5 NUD. In sum:

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<sup>1</sup> The application was filed by GIM Channelview Cogeneration, LLC. An investment fund managed by EIF Management, LLC recently acquired the indirect ownership interests in GIM Channelview Cogeneration, LLC and legally changed its name to EIF Channelview Cogeneration, LLC. The ED issued its most recent negative use determination to EIF Channelview.

<sup>2</sup> TCEQ Docket No. 2012-1683-MIS-U is incorporated here by reference.

## I. Whether HRSGs Are Used To Meet Or Exceed Environmental Laws Is Irrelevant.

The ED's first reason for issuing the NUD is that he "does not find that the HRSGs are used to meet or exceed any of the environmental laws that were cited in your application." But—even if that were true (it is not), such a finding has no bearing on the disposition of a use determination for HRSG properties. The Legislature's listing of HRSGs as a Tax Code Section 11.31(k) pollution control device, *see* TEX. TAX CODE § 11.31(k)(8), reflects its determination as a matter of law that HRSGs are used to meet or exceed environmental laws.<sup>3</sup> Having listed HRSGs as pollution control devices, the Legislature in Tax Code Section 11.31(m) directed that HRSG use determination applications need only contain information regarding the device's cost and purpose, expressly excluding any further obligation to demonstrate functionality in meeting or exceeding rules. *See* TEX. TAX CODE § 11.31(m) ("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 exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director . . . 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 application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution . . . ." (emphases added).

The Commission already has indicated an unwillingness to impose extra-statutory burdens on use determinations for HRSG properties. During the December 5, 2012, Agenda meeting at which the Commission first considered EIF Channelview's application, Chairman Shaw observed that "it's problematic to suggest that negative use determination should be made because [HRSG applicants] failed to cite an applicable rule . . . I think that it makes it difficult to square that with what the Legislature was intending whenever they included that in the rule or in their legislation."

The ED's reasoning is not only inconsistent with legislative pronouncements and Commission directives, but also inconsistently applied. Although a rule citation is unnecessary, EIF

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<sup>3</sup> The Legislature in Section 11.31(k) listed "facilities, devices, or methods for the control of air, water, or land pollution." For purposes of Section 11.31, that phrase encompasses devices "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." *See* TEX. TAX CODE § 11.31(b). And so the Legislature's listing of pollution control devices in Section 11.31(k) rests on its determination that those devices are used to meet or exceed environmental rules. Having been settled by the Legislature, the question need not—cannot—be revisited by the Agency.

Channelview's application and later submittals identified a number of rules for which HRSGs serve as an aid to compliance. EIF Channelview cited the same or similar rules as other applicants/appellants, but the ED did not identify lack of environmental rule citations as a NUD basis in each case.<sup>4</sup>

## **II. A Calculation Methodology That Always Yields A Negative Result For Property That Indisputably Provides Pollution Control Benefits Cannot Meet The Legislature's (or the Commission's) Expectations.**

The ED's second reason for issuing the NUD is that his preferred use determination calculation methodology yields a sub-zero result. But that preferred methodology is based on the "cost analysis procedure" established in TCEQ rules. That procedure is inapplicable to Tier IV applicants like EIF Channelview, who can instead offer their own methodology for calculating the use determination percentage. 30 TEX. ADMIN. CODE § 17.17(d) (2008).

EIF Channelview's offering was an "avoided emissions approach" that relies on thermal output differences between conventional electric power and steam generation equipment and the cogeneration system at the plant. The percentage is determined by calculating the displacement of emissions associated with the plant's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from conventional equipment.

This approach is authorized under the Texas Tax Code, which provides that equipment qualifies for the exemption if it is used in whole or in part for pollution control, pollution prevention, pollution monitoring, or the reduction of pollution. TEX. TAX CODE § 11.31(b). The Commission recognized and expressly approved the concept of avoided emissions when it heard the first round of HRSG property use determination appeals at its December 2012 Agenda.

That approach did not gain the ED's approval, perhaps because the ED did not review it. Although the ED said he had "careful[ly] review[ed] the two methods for calculating a partial positive use determination in [EIF Channelview's] submittals," he did not. The ED's NUD does not address EIF Channelview's avoided emissions approach, instead rejecting the methodology EIF Channelview proposed in its original 2008 application (that EIF Channelview has not since re-proposed).

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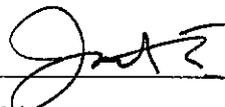
<sup>4</sup> See, e.g., ED's NUD for Application No. 11969.

The methodology the ED did find acceptable is based on the inapplicable cost analysis procedure. That methodology will always yield a sub-zero result because it requires that the value of “capital cost old” be the value of retired boilers. The ED has never explained why retired boilers are “comparable equipment . . . without the pollution control feature” that should represent “capital cost old.” See 30 TEX. ADMIN. CODE § 17.17(c)(1) (explaining how to calculate “capital cost old”). That result is inconsistent with the Legislature’s statutory finding in Tax Code Section 11.31(m) that Tax Code Section 11.31(k) devices, such as HRSGs, are used wholly or partly for pollution control.

### III. Conclusion

For these reasons (and as further elaborated in Attachments 6 and 7), EIF Channelview respectfully requests that the Commission set a briefing schedule and ultimately replace the ED’s NUD with a positive use determination.

Respectfully Submitted,



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State Bar No. 24074429  
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*Attorneys for EIF Channelview Cogeneration LLC*

Attachment 1

**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 49<sup>th</sup> Street, 38<sup>th</sup> 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 49<sup>th</sup> St, 38<sup>th</sup> 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<sub>x</sub>) emissions for stationary gas turbine generators. 30 TAC 117.1205 establishes the allowable amount of NO<sub>x</sub> 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<sub>x</sub>.

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<sub>x</sub> for stationary gas turbine generators. 30 TAC 117.1205 establishes the allowable amount of NO<sub>x</sub> 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<sub>x</sub>.

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<sub>e</sub>") (nominal net capacity) natural gas-fired, facility that generates electricity and steam. The Facility utilizes four 170 (MW<sub>e</sub>) combustion turbine generators coupled with four thermally efficient heat recovery steam generators (HRSGs). The HRSGs supply steam to a single 150 MW<sub>e</sub> 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<sub>m</sub>/hr; and the low-pressure (LP) steam is 600 psig, at 700F, with a flow rate of 500,000 lb<sub>m</sub>/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  $W_{\text{Thermal}}$  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( $h_x$ )	Mass Flow( $\dot{m}$ )
	kJ/kg	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,  $W_{\text{Thermal}}$  is 191MW<sub>t</sub>. For steam at 1500 psi and 900F,  $W_{\text{Thermal}}$  is 506MW<sub>t</sub>. The combined thermal energy of the steam is 697MW<sub>t</sub>. 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,  $\eta_{\text{Thermal}}$ , 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<sub>e</sub>. Without the HRSGs and the steam turbine, the equivalent of 250MW<sub>e</sub> of electrical power is lost. In order to replace the equivalent electrical power generation of 250MW<sub>e</sub>, 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%
<b>Total</b>				<b>\$ 93,737,276</b>	
<b>Total Pollution Control Exemption</b>				<b>\$ 44,512,152</b>	

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

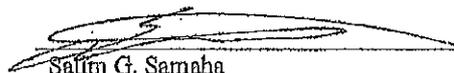
12. **APPLICATION DEFICIENCIES**

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

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)

**Attachment 2**

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. 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](mailto: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

Attachment 3

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  
2012 AUG - 2 4 10:17  
CHIEF DEPT'S OFFICE

**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,<sup>1</sup> Channelview filed a Tier IV Application, including a reasonable partial determination calculation based on TCEQ Task Force recommended percentages.

<sup>1</sup> 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<sub>x</sub> emissions associated with the production of an additional 250 MW<sub>e</sub> would have to occur at the Facility. Rather than burn more fossil fuel in additional pollution-emitting sources (triggering requirements for add-on NO<sub>x</sub> 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 of 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<sub>x</sub> 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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Facsimile: (512) 236-3272  
[egroten@velaw.com](mailto:egroten@velaw.com)

ATTORNEYS FOR GIM CHANNELVIEW  
COGENERATION LLC

Attachment 4

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** concerning the thirteen Appeals of the Executive Director's Negative Use Determinations filed by:

- 1) EN Services LP, Application No. 12696, TCEQ Docket No. 2012-1529-MIS-U;
- 2) Bosque Power Company LLC, Application No. 16409, TCEQ Docket No. 2012-1552-MIS-U;
- 3) Topaz Power Group, LLC, Application Nos. 12210 and 12211, TCEQ Docket No. 2012-1559-MIS-U;
- 4) Cottonwood Energy Company LP, Application Nos. 15505, 16410, 16411, and 16412, TCEQ Docket No. 2012-1562-MIS-U;
- 5) Wolf Hollow I, LP, Application No. 12268, TCEQ Docket No. 2012-1586-MIS-U;
- 6) South Texas Electric Cooperative, Inc., Application No. 13534, TCEQ Docket No. 2012-1587-MIS-U;
- 7) Brazos Electric Cooperative, Application No. 13544, TCEQ Docket No. 2012-1635-MIS-U;
- 8) Brazos Electric Cooperative, Application No. 16413, TCEQ Docket No. 2012-1648-MIS-U;
- 9) Midlothian Energy Limited Partnership, Application No. 12271, TCEQ Docket No. 2012-1650-MIS-U;
- 10) Wise County Power Company, LLC, Application No. 12202, TCEQ Docket No. 2012-1660-MIS-U;
- 11) Hays Energy Limited Partnership, Application No. 12272, TCEQ Docket No. 2012-1682-MIS-U;
- 12) Ennis Power Company, LLC, Application No. 12203, TCEQ Docket No. 2012-1662-MIS-U; and
- 13) GIM Channelview Cogeneration LLC, Application No. 12826, TCEQ Docket No. 2012-1683-MIS-U

On December 5, 2012, the Texas Commission on Environmental Quality (Commission) considered the thirteen appeals (listed in the caption above) of the Executive Director's July 10, 2012 Negative Use Determinations with regard to Application Numbers 12696, 16409, 12210,

12211, 15505, 16410, 16411, 16412, 12268, 13534, 13544, 16413, 12271, 12202, 12272, 12203, and 12826. The Commission also considered the applications; responses filed by the Bosque County Appraisal District, the Newton County Appraisal District, the Hood County Appraisal District, the Victoria County Appraisal District, the Jack County Appraisal District, the Wise County Appraisal District, the Harris County Appraisal District, the Executive Director, and the Office of Public Interest Counsel; the replies filed by the Appellants; and the oral arguments made by the parties. The appeals were evaluated under applicable statutes and Commission rules, including Texas Tax Code § 11.31 and 30 Texas Administrative Code Chapter 17.

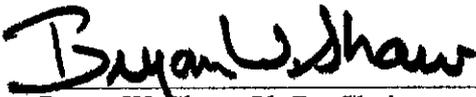
After considering the written filings and arguments made by the Appellants, the appraisal districts, the Executive Director, and the Office of Public Interest Counsel, the Commission determined to set aside the Executive Director's Negative Use Determinations and remand the matters to the Executive Director for new determinations.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

- 1) The Executive Director's Negative Use Determinations for Application Nos. 12696, 16409, 12210, 12211, 15505, 16410, 16411, 16412, 12268, 13534, 13544, 16413, 12271, 12202, 12272, 12203, and 12826 are SET ASIDE; and
- 2) The matters are hereby REMANDED to the Executive Director for new use determinations.

Issue date: **DEC 10 2012**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Bryan W. Shaw, Ph.D., Chairman

Attachment 5

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 5, 2014

Mr. Matt Wolske  
Project General Manager  
EIF Channelview Cogeneration, LLC  
P.O. Box 1639  
Channelview, TX 77530

Re: Notice of Negative Use Determination  
EIF Channelview Cogeneration, LLC  
Channelview Cogeneration Facility  
Houston (Harris County)  
Regulated Entity Number: RN100220276  
Customer Reference Number: CN603385741  
Application Number: 12826  
Tracking Number: CCF-2008-1

Dear Mr. Wolske:

This letter responds to EIF Channelview Cogeneration, LLC's Application for Use Determination for the Channelview Cogeneration Facility, originally submitted on December 30, 2008 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 four Heat Recovery Steam Generators (HRSGs).

The ED has completed the review for application #08-12826 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 for the following reasons: 1) the ED cannot find that the property is used, constructed, acquired, or installed wholly or partly to meet or exceed any cited laws, rules, or regulations 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; and 2) even if there were an applicable law cited in the application for the subject property, the ED does not find your methods for determining the use determination percentage to be reasonable.

Commission rule at 30 TAC §17.10(d) requires an applicant to cite to a specific law, rule, or regulation that is being met or exceeded by the use, construction, acquisition, or installation of the pollution control property. As specified in 30 TAC §17.4(a) and authorized by Article VIII, § 1-l, of the Texas Constitution, for a property to be eligible for an exemption from ad valorem taxation, all or part of property must be used,

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constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by any environmental protection agency of the United States, Texas, or a political subdivision for the prevention, monitoring, control, or reduction of air, water, or land pollution. Commission rules do not allow an applicant to omit the requirement to cite a specific environmental law even for property that is specified on the list of property in Texas Tax Code §11.31(k).

The ED does not require a citation to a law or rule that mandates the installation of a specific type of equipment. However, the ED does not find that the HRSGs are used to meet or exceed any of the environmental laws that were cited in your application. While the application and responses provided numerous rule citations, none were to rules that the HRSGs were required to meet. Therefore, the HRSGs do not meet the applicability requirements of 30 TAC §17.4(a) to be eligible for exemption from ad valorem taxation.

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 two methods for calculating a partial positive use determination included in the applicant's submittals, the ED has determined that only one of the methods is acceptable. The method proposed by the applicant does not reasonably distinguish the proportion of the HRSGs that provides a purported pollution control benefit from the proportion of the HRSGs 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.
- CAP as proposed by the executive director (-107%): 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,

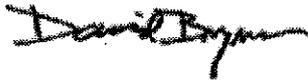
Mr. Matt Wolske  
June 5, 2014  
Page 3

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 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](mailto: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, Harris County Appraisal District, P.O. Box 922004, Houston,  
Texas, 77292

Attachment 6



June 24, 2013

*Via Hand Delivery and Certified Mail, RRR No. 7012 1010 0001 1562 2393*

Chance Goodin  
Team Leader, Stationary Source Programs  
Texas Commission on Environmental Quality  
MC 206  
P.O. Box 13087  
Austin, Texas 78711

Re: Notice of Technical Deficiency dated February 21, 2013  
GIM Channelview Cogeneration, LLC  
Channelview Cogeneration Facility  
CN603385741/RN100220276  
Application Number 12826

Dear Mr. Goodin:

This letter transmits GIM Channelview Cogeneration, LLC's responses to the issues identified in the Texas Commission on Environmental Quality's February 21, 2013, Notice of Technical Deficiency. If you have any questions, please contact me at 281-860-4107.

Sincerely,

A handwritten signature in black ink, appearing to read "William Chenette", with a horizontal line extending to the right.

William Chenette  
General Manager, Channelview Cogeneration

cc: TCEQ Tax Relief for Pollution Control Property Program  
MC 110  
P.O. Box 13087  
Austin, Texas 78711

RESPONSES TO ISSUES RAISED BY TCEQ

***ISSUE 1: Please review the enclosed application to ensure that all information is still current.***

All information in the application is current. However, Channelview is supplementing its application with the information presented here, which includes citations to additional environmental regulations and a proposed method for calculating the use determination that is different from its original application.

***ISSUE 2: Please remove the steam turbine generator from the application. This equipment has been evaluated and determined to not be eligible.***

Channelview's original application did not seek a partial use determination for its steam turbine, and Channelview's proposed Tier IV method of calculating a use determination percentage in response to Issue 5 also does not include consideration of the steam turbine. Note, however, that if the Tier III CAP is to be calculated as proposed by the Executive Director in its Notice of Deficiency, then consideration of the steam turbine must be on the table because it is inequitable to assume that HRSGs can convert "no cost" steam into electricity without the equipment required to make the conversion.

***ISSUE 3: Please provide a citation to the subsection level of an adopted environmental rule that requires the installation of a HRSG. Explain how the HRSG reduces the amount of NOx being generated by the associated stationary gas turbine in order to meet the emission standard established in Title 40 CFR § 60.332. Please explain which subsections of Title 30 TAC § 117.1205 are being met by the installation of the HRSG.***

Applicable law, including the Texas Tax Code, does not require an applicant seeking a use determination to cite to a subsection level of an adopted environmental rule that specifically requires the installation of a HRSG.<sup>1</sup> Instead, the Tax Code requires that to obtain a tax exemption, a facility or device be used, constructed, acquired, or installed "wholly or partly to meet or exceed rules or regulations" adopted by a regulatory agency.

The HRSGs at Channelview were installed partly to meet a number of environmental rules, including:

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<sup>1</sup> In fact, applicable law makes clear that there is no need for Channelview to establish its right to the tax exemption by citing to an environmental regulation. The Texas Legislature expressed its intent that HRSGs be treated as pollution control devices when it amended Section 11.31 of the Tax Code in 2007 to include subsection (k). That subsection requires the TCEQ to adopt a list of such devices and mandates that HRSGs be included on that list. Further, subsection (m) directs that with respect to devices, like HRSGs, that are included in the subsection (k) list, TCEQ "shall determine that the . . . device . . . is used wholly or partly as a . . . device . . . for the control of . . . pollution." Indeed, Chairman Shaw, in discussing Section 11.31(m) of the Texas Tax Code at the December 5, 2012, Agenda meeting, remarked: "At a minimum, it's problematic to suggest that negative use determination should be made because they failed to cite an applicable rule . . . I think that it makes it difficult to square that with what the Legislature was intending whenever they included that in the rule or in their legislation."

- Title 30, Chapter 101, Subchapter H, Division 3 of TCEQ's Rules. These rules (including 30 TAC 101.352(b)) establish a cap on NOx emissions for sources in the Houston-Galveston-Brazoria ozone nonattainment area, and prohibit emissions of NOx from covered sources without allowances sufficient to cover actual emissions. The use of HRSGs lowers Channelview's emissions per ton of output in such a way as to allow it to more readily meet its allowance obligations under this Mass Emission Cap and Trade ("MECT") program.
- Title 30, Chapter 117, Subchapter C, Division 3 of TCEQ's Rules. These rules subject stationary gas turbines used in an electric power generating system to "reasonably available control technology" requirements by virtue of their location in the Houston-Galveston-Brazoria ozone non-attainment area. Specifically, § 117.1205(f) requires that "[n]o person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in megawatt-hours (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NOx emissions in excess of a block one-hour average of 42 parts per million by volume at 15% oxygen, dry basis, while firing natural gas." As more fully shown in Channelview's response to Issue 5, installation of the HRSGs resulted in NOx emissions approximately 91.2% lower than the level of NOx emissions resulting from the boilers originally on-site, ensuring compliance with TCEQ's Chapter 117 rules applicable to the Houston-Galveston-Brazoria ozone non-attainment area.
- 40 C.F.R. Part 60, Subpart Da. These rules establish standards of performance for NOx emissions for certain electric utility steam generating units for which construction, modification, or reconstruction commenced after September 18, 1978. Channelview's HRSGs were installed in part to help Channelview meet or exceed 40 C.F.R. Part 60, Subpart Da's emission standards, primarily by reducing fossil fuel consumption and related NOx emissions. *See, e.g.,* 40 C.F.R. § 60.44Da(a), (d). Without the energy recovered from the HRSGs, Channelview would need to add more gas turbines or an equivalent type of generation to supply a similar amount of power, and that additional generation would increase air emissions of NOx. HRSGs reduce fossil fuel consumption and related NOx emissions by capturing/recycling and using heat generated by Channelview's combustion turbines to convert water into steam to power steam turbines which produce additional power without the use of additional fossil fuel or its associated, additional NOx emissions.
- Clean Air Interstate Rule (CAIR). The facility's HRSGs also help Channelview meet or exceed the requirements of CAIR. CAIR was adopted by EPA to reduce the interstate transport of pollutants, especially NOx and sulfur dioxide. 70 Fed. Reg. 25,162 (May 12, 2005). TCEQ's rules implementing CAIR's NOx reductions in Texas directly relies upon increased fuel efficiency. 30 TEX. ADMIN. CODE §101.506. The increased fuel

efficiency resulting from the use of HRSGs advances § 101.506's goal of reducing NOx emissions.

***ISSUE 4: In addition to the proposed calculation use the cost analysis procedure (CAP) contained in 30 TAC § 17.17 to calculate a proposed use determination percentage.***

The Tier III CAP formula is not in any way applicable to the Channelview cogeneration plant and is not relevant for tax exemption purposes, primarily because Channelview submitted its application prior to January 1, 2009, and therefore can propose its own method of calculating a use determination percentage.

In addition, application of the "Tier III" CAP formula as presented in TCEQ's Notice of Deficiency requires the applicant to imagine a world of gas turbine-based cogeneration that bears little resemblance to reality (and, as calculated using the variables provided by TCEQ in its Notice of Technical Deficiency, oddly results in a use determination percentage that is significantly sub-zero). HRSGs must either exist and function in a complete, combined cycle design, or the subject plant must function pursuant to a completely different, simple-cycle design, without HRSGs. Application of the Tier III CAP formula as proposed presumes that HRSGs operate as a stand-alone revenue source and are able to 1) produce steam without a fuel input and 2) convert no cost steam into electricity without the equipment required to make the conversion.

The CAP is intended to fit for "scrubber-like" equipment that is susceptible to being added to or removed from existing equipment without requiring any fundamental change in overall plant design or function. Such an evaluative scenario is not logically applicable to the fundamental design changes that HRSGs require when designing a combined cycle, as opposed to a simple-cycle, generating plant, or when converting the latter to the former. Arguably, it is because of this very type of conflict in application that Tier IV was originally conceived and implemented. Applicants whose pollution control equipment does not fit the logical prerequisites to application of the CAP formula should be allowed the requisite freedom and creativity under the law to develop a calculation of a positive use determination which fits their individual circumstances.

Moreover, GIM Channelview respectfully asserts that the logical inconsistency of determining the alleged percentage of pollution control function solely by a comparison of equipment costs less certain revenues (without any actual consideration of, for example, actual emissions reduction) affirmatively establishes that the proposed use of the CAP in this instance was flawed in conception and application from the outset.

With these caveats in mind, Channelview has made an effort to fully respond to TCEQ's request. If one were to draw a box around just the HRSGs and consider them as a "stand alone" entity and if one were to correct the logical inconsistencies of the "Tier III" CAP formula as proposed by TCEQ in its Notice of Deficiency, here is how the calculation unfolds for GIM Channelview:

- a) *Production Capacity Factor*. TCEQ's Notice of Deficiency directs that the PCF should be calculated "by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process." Because steam turbines and ancillary equipment cannot be considered in any HRSG use determination, the additional electricity generation from that equipment likewise should not be considered when calculating PCF for the HRSGs. Consequently, "Old" and "New" production capacity should be the same, making the PCF equal to 1.
- b) *Capital Cost New*. TCEQ's Notice of Deficiency directs that the CCN should be equal to the cost of the HRSGs. The cost of the four HRSGs at Channelview, and therefore the CCN, is \$72,970,741.
- c) *Capital Cost Old*. TCEQ's Notice of Deficiency directs that the CCO should be equal to the cost of a boiler(s) required to produce the same amount of steam produced by the HRSGs. Relying on TCEQ's traditional definition of CCO (*see* 30 TEX. ADMIN. CODE §17.17(c)(1)), there is not "comparable equipment . . . without the pollution control feature" because the pollution control feature in a combined cycle unit is process efficiency and reduced emissions, and a combined cycle plant without the "pollution control feature" does not exist. Adhering to TCEQ's newly-proposed definition would effectively impose a whole plant design change (to simple cycle or boiler). In addition, the formula as written calculates what is the incremental cost of HRSGs (= CCN - CCO) and then subtracts the full value, if any, of the marketable product. This approach is illogical and only serves to unnecessarily reduce the exemption percentage. At best, the cost of the piping that would have been used to vent heat in the absence of the HRSGs would be the CCO. In the case of GIM Channelview, there is no comparable equipment without the pollution control feature that can be used for CCO purposes and there is no "old" replacement equipment. Therefore, CCO equals \$0.
- d) *Net Present Value of the Marketable Product and Production Costs*. It is not clear that it is appropriate to apply the NPVMP factor to GIM Channelview because at the time the application was filed, only byproduct (defined as "recovered waste materials") was considered in the CAP. Byproduct was calculated using the net present value of the byproduct of the process less the storage and transportation costs over the useful life of the equipment. The underlying premise in calculating the byproduct value was that the process being evaluated by the CAP was a production unit that included usable or sellable byproduct that needed to be incorporated in the CAP economic analysis. Such a formula is unworkable in evaluating a HRSG where there is no byproduct produced or any storage or transportation costs. Under the 2008 rules governing this application, the NPVMP is \$0.

Regardless, under more recent (but arguably inapplicable) rules, calculation of NPVMP for the HRSGs requires consideration of an energy input cost, i.e. BTUs in the form of

heated air, because the HRSGs produce steam only with the energy that is directed to it. This energy has value and, in the alternate reality of a stand-alone HRSG, it would require compensation to the provider of the energy. For GIM Channelview, the “marketable” product of steam has only one customer, and this is typical of many cogeneration facilities. The steam purchaser is willing to pay for the amount of BTUs necessary to produce the steam as well as the actual O&M costs attributed to steam and, in exchange, the purchaser avoids any capital outlay. When the value of the marketable product and production costs<sup>2</sup> are equal, the NPVMP equals \$0.

- e) *Interest Rate.* 10%.
- f) *Estimated useful life.* 20 years.

The foregoing inputs reduce the Tier III CAP formula to the following:

$$\begin{aligned}
 & ((1 \times \$72,970,741) - 0 - 0) / (\$72,970,741) \times 100 \\
 & = \\
 & ((\$72,970,741) / (\$72,970,741)) \times 100 \\
 & = \\
 & 1 \times 100 \\
 & = \\
 & 100
 \end{aligned}$$

Given these parameters, GIM Channelview’s HRSGs would be entitled to a 100% Positive Use Determination.

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<sup>2</sup> TCEQ has directed in its Notice of Deficiency that fuel costs should not be considered in calculating production costs. A full explanation of the “production cost” factor is not necessary here because, as applied to Channelview, marketable product equals production costs, but note that Channelview rejects the contention that fuel costs should be excluded from production costs. Simply put, there can be no steam generation without a heat source, fueled in these cases by natural gas. Thus, fuel costs must be considered in the production cost calculation.

***ISSUE 5: Under the administrative rules in place at the time this application was filed the applicant could propose the method of calculating a use determination percentage for a HRSG. Please provide an alternative method for calculating the proposed use determination. The method proposed by December 3, 2008 Executive Director's Response Brief is no longer supported by the executive director.***

To calculate the percentage of the equipment deemed to be pollution control equipment, Channelview proposes to calculate a partial use determination by examining the level of avoided NOx emissions resulting from installation of the HRSGs. The avoided emissions approach is authorized under the Texas Tax Code, which provides that equipment qualifies for the exemption if it is used in whole or in part for pollution control, pollution prevention, pollution monitoring, or the reduction of pollution. TEX. TAX CODE § 11.31(b). The Commissioners recognized and expressly approved the concept of avoided emissions during the December 5, 2012 Agenda meeting.

This approach relies on thermal output differences between conventional electric power and steam generation equipment and the cogeneration system at the plant. Specifically, the percentage is determined by calculating the displacement of emissions associated with the plant's thermal output and subtracting these emissions from a baseline emission rate. These displaced emissions are emissions that would have been generated by the same thermal output from conventional equipment. It should be noted that not only are NOx emissions reduced by the use of HRSGs due to lower fuel consumption, but emissions of all other pollutants are also reduced.

As the attached avoided NOx emissions table demonstrates (Attachment 1), a 91.2% reduction in NOx emissions resulted from the use of HRSGs to produce steam in lieu of conventional equipment (i.e., boilers), and so our application seeks a positive use determination of 91.2%.

**Attachment 1**





Attachment 7



EIF Channelview Cogeneration, LLC  
PO Box 1639  
Channelview, TX 77530

March 7, 2014

*Via Hand Delivery*

Chance Goodin  
Stationary Source Programs  
TCEQ, Building F  
12100 Park 35 Circle  
Austin, Texas 78753

Re: Notice of Technical Deficiency dated January 30, 2014  
Channelview Cogeneration Facility  
CN603385741/RN100220276  
Application Number 12826

Dear Mr. Goodin:

This letter transmits EIF Channelview Cogeneration, LLC's responses to the questions the Executive Director raised in his January 30, 2014, Notice of Technical Deficiency.

Please note that an investment fund managed by EIF Management, LLC recently acquired the indirect ownership interests in GIM Channelview Cogeneration, LLC and legally changed its name to EIF Channelview Cogeneration, LLC. Therefore, please direct all future correspondence to me. If you have any questions, you can contact me at (281) 860-4107.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Wolske", is written over a faint, larger version of the same signature.

Matt Wolske  
Projects General Manager  
EIF Channelview Cogeneration, LLC

cc: Ron Hatlett  
Tax Relief for Pollution Control Property Program  
TCEQ, Building F  
12100 Park 35 Circle  
Austin, Texas 78753

## RESPONSES TO QUESTIONS RAISED BY TCEQ

### **ISSUE 1: Review of Environmental Rule Citations**

The Executive Director (“ED”) seeks clarification regarding whether Channelview’s HRSGs are required to meet environmental rules. The Texas Legislature made this inquiry unnecessary, as the listing of HRSGs as a Tax Code Section 11.31(k) pollution control device<sup>1</sup> necessarily presupposes that HRSGs are used to meet or exceed environmental rules.<sup>2</sup> Having decided that HRSGs are pollution control devices, the Legislature in Tax Code Section 11.31(m) directed that HRSG use determination applications need only contain information regarding the device’s cost and purpose, and—again, because their functionality in meeting or exceeding rules has been legislatively established—requires no information related to that topic.<sup>3</sup>

The Commission’s Chairman already has indicated an unwillingness to impose extra-statutory burdens on HRSG property applications. At TCEQ’s December 5, 2012, Agenda meeting, Chairman Shaw observed that “it’s problematic to suggest that negative use determination should be made because they failed to cite an applicable rule . . . I think that it makes it difficult to square that with what the Legislature was intending whenever they included that in the rule or in their legislation.”

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<sup>1</sup> See TEX. TAX CODE § 11.31(k)(8).

<sup>2</sup> The Legislature in Section 11.31(k) listed “facilities, devices, or methods for the control of air, water, or land pollution.” For purposes of Section 11.31, that phrase encompasses devices “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.” See *id.* at § 11.31(b). And so the Legislature’s listing of pollution control devices in Section 11.31(k) rests on its determination that those devices are used to meet or exceed environmental rules. Having been settled by the Legislature, the question need not—cannot—be revisited by the Agency.

<sup>3</sup> See TEX. TAX CODE § 11.31(m). (“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 exemption under this section is a facility, device, or method included on the list adopted under Subsection (k), the executive director . . . 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 application is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution . . . .” (emphases added))

Any doubt about the continued validity of the Legislature's pre-determinations for HRSG property is dispelled by recent Agency rulemakings. In its rules, TCEQ restates the statutory list of pollution control devices, including HRSGs. See 30 Tex. Admin. Code § 17.17(b). The Legislature requires TCEQ to update this list at least once every three years, and allows a pollution control device to be removed from the list only "if the commission finds compelling evidence to support the conclusion that the item does not provide pollution control benefits.<sup>4</sup> That has not occurred; on the contrary: On February 7, 2014, the Executive Director completed his triennial review of the pollution control device list and proposed no changes.<sup>5</sup>

Although a rule citation is unnecessary, Channelview identifies the following rules whose compliance with which is advanced by use of HRSGs:

1) MECT/CAIR

In response to the ED's first Notice of Deficiency, Channelview cited TCEQ's Mass Emissions Cap and Trade ("MECT") program. The MECT program establishes a NOx emissions cap for sources in the Houston-Galveston-Brazoria ozone nonattainment area. Channelview also cited to the Clean Air Interstate Rule ("CAIR"), which was adopted by EPA to reduce interstate transportation of pollutants, especially NOx and SO<sub>2</sub>.

The ED asks how a HRSG is *required* to meet a MECT or CAIR obligation. But that's not what applicable law requires. The Tax Code requires only that a device be installed wholly or partly to meet or exceed rules, not that a rule specifically require HRSG installation. The ED's position contradicts his earlier interpretation of the term "exceed" (in the context of a pollution control device being used to meet or exceed an environmental rule) as including "*voluntary* projects which go beyond the minimum requirements of environmental laws, rules, or regulations, provided that the projects are initiated pursuant to *or* in compliance with an adopted or enacted law, rule, or regulation."<sup>6</sup> Indeed, no other interpretation would give any meaning to the term "exceed."

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<sup>4</sup> See TEX. TAX CODE § 11.31(l).

<sup>5</sup> See Memorandum from Steve Hagle, Deputy Director (Office of Air), to TCEQ Commissioners (Feb. 7, 2014).

<sup>6</sup> See 19 Tex. Reg. 7,737, 7,793 (Sept. 30, 1994) (emphases added).

The purpose of TCEQ's emission banking rules is "to allow the operator of a facility . . . to generate emission credits by reducing emissions beyond the level required by any local, state, and federal regulation."<sup>7</sup> These rules provide that "[r]eductions of criteria pollutants . . . or precursors of criteria pollutants for which an area is designated nonattainment may qualify as emission credits."<sup>8</sup> With respect to the MECT program, HRSGs reduce NOx emissions by lowering emissions per ton of output. And with respect to CAIR, the HRSGs' ability to increase Channelview's fuel efficiency (and reduce associated emissions) ensures Channelview complies with applicable NOx allowance requirements. It also creates reductions that might "exceed" specific limitations, which otherwise inures to the benefit of meeting air quality standards in the Houston-Galveston-Brazoria ozone nonattainment area, which are themselves rules.

2) 30 TEX. ADMIN. CODE § 117.1205(f)

In response to the ED's first Notice of Deficiency, Channelview cited TCEQ rules subjecting stationary gas turbines in the Houston-Galveston-Brazoria ozone non-attainment area to "reasonably available control technology" requirements. The ED questions whether compliance with this rule has been superseded by MECT rules.

Even assuming this rule no longer applies, applicable tax exemption rules do not direct that an applicant's right to tax exemption terminates when a previously applicable rule becomes inapplicable. In any event, Channelview also cited TCEQ's MECT rules. Both sets of rules require significant NOx emissions reductions in the Houston-Galveston-Brazoria ozone non-attainment area, which Channelview achieved by replacing boilers with HRSG-equipped combustion turbines.

3) 40 C.F.R. Part 60, Subpart Da

In response to the ED's first Notice of Deficiency, Channelview cited 40 C.F.R. Part 60, Subpart Da, which establishes steam generating unit performance standards. The ED posits that "given that Da only applies to the HRSG itself, it does not appear that use of the HRSG is required to meet Da or that it helps the facility meet the emission limit for the HRSG itself." Again, applicable law does not require an applicant seeking a use determination to cite an environmental

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<sup>7</sup> 30 TEX. ADMIN. CODE § 101.301.

<sup>8</sup> *Id.* at § 101.302.

rule specifically requiring installation of a HRSG. And the ED's position contradicts precedent: The ED has approved HRSG tax exemption applications in the past that cited Subpart Da as an applicable rule.<sup>9</sup>

The ED also asserts that the absence of a HRSG would not affect emission limitations of other sources at the plant. But TCEQ rules acknowledge that pollution control property includes property used to prevent air pollution.<sup>10</sup> Installation of a HRSG allows more electrical energy to be produced for a given input compared to a HRSG-less simple-cycle or traditional steam boiler configuration. And so HRSGs allow Channelview to produce the required amount of energy with relatively less fuel usage and associated emissions, ensuring that emissions from Channelview's combustion turbines do not exceed Subpart GG's NOx limits. In addition, HRSGs make the combustion process inherently less polluting, in part by providing the temperature reduction necessary to operate the SCR,<sup>11</sup> which is critical to the facility's compliance with BACT emission limits.

## **ISSUE 2: Calculation of an Appropriate Partial Positive Use Determination**

### **A. Channelview's Tier IV Calculation**

The ED disfavors Channelview's Tier IV "avoided emissions" approach to calculating a positive use determination percentage because "it does not distinguish the proportion of property that is used to control, monitor, prevent, or reduce pollution from the proportion that is used to produce goods or services."

Because it's difficult to quantify a HRSG's production benefits, in 2008 the Executive Director assembled a Workgroup comprised of industry applicants, appraisal districts, and environmental and public interest groups. Its task was to assign an appropriate percentage to the pollution control aspect of HRSGs while taking into account the production gain associated with their installation. Shortly before Channelview submitted its application for use determination, the ED settled on a 61% positive use determination for HRSGs based on the thermal efficiency increase derived from HRSGs

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<sup>9</sup> See, e.g., GS Electric Generating Cooperative's Application for Use Determination, Application Number 11972 (Approved May 1, 2008); Tenaska Frontier Partners, Ltd.'s Application for Use Determination, Application Number 11915 (Approved May 1, 2008).

<sup>10</sup> See 30 TEX. ADMIN. CODE § 17.2(4) (indicating that "environmental benefit" and "pollution control" are synonymous, and defining "environmental benefit" as "[t]he prevention of . . . air . . . pollution").

<sup>11</sup> If Channelview's HRSGs were not installed, emissions per ton of output would rise and the associated rise in outlet temperature would negatively impact SCR operation.

being 39%. Accordingly, Channelview requested precisely that determination, but notices of deficiencies from the Executive Director have followed. It is not clear why the Executive Director reversed course.

In Channelview's case, the HRSGs don't directly produce a valuable product and doesn't have an independent value, so the percentage assigned to the HRSGs' production component arguably should be zero. The HRSGs' product—steam—achieves value only if run through a steam turbine. With these considerations in mind, Channelview continues to believe that its "avoided emissions" approach is the appropriate method for calculating a positive use determination percentage. As further detailed in its June 24, 2013, response to TCEQ's first NOD, that method yields a 91.2% positive use determination.

#### B. Channelview's Tier III CAP Calculation

The ED asks Channelview to recalculate the Tier III CAP equation with updated production costs (including costs related to the operation of the duct burners) and an updated capital cost old (including the value of retired boilers calculated using method 3.3 located in Figure 30 TAC 17.17(c)(1)).

Because Channelview submitted its application prior to January 1, 2009, the Tier III CAP formula is not relevant for tax exemption purposes. Even so, Channelview has provided an updated Tier III CAP equation to fully respond to the ED's request.

With respect to production costs, the updated input is \$3,425,122, which is based off of the 2013 O&M costs attributable to the duct burners. But as explained in its June 24, 2013, response to TCEQ's first NOD, marketable product and production costs are equal for Channelview since the steam purchaser is only willing to pay for (i) the amount of BTUs necessary to produce the steam and (ii) the actual O&M costs attributed to steam. As a result, the net present value of the marketable product equals \$0, with or without duct burner costs factored in as production costs.

With respect to capital cost old, the updated input is \$151,000,000. Channelview calculated this value using current-day capital cost dollars of boilers needed to replace the steam capacity that the Channelview facility currently provides.

With the updated inputs, the yield is a negative use determination of -107%, as depicted below.

$$((1 \times \$72,970,741) - \$151,000,000 - 0) / (\$72,970,741) \times 100$$

=

$$((\$-78,029,259) / (\$72,970,741)) \times 100$$

=

$$-1.07 \times 100$$

=

$$-107$$

This result is inconsistent with the Legislature's directive in Tax Code Section 11.31(m) that TCEQ determine that Tax Code Section 11.31(k) devices, like HRSGs, are used wholly or partly for pollution control. Channelview does not waive any of its prior-stated objections to the use of the CAP equation or to the manner in which the Executive Director has directed certain CAP inputs be defined.

**Attachment 8**

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*

February 21, 2013

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

Re: Notice of Technical Deficiency  
GIM Channelview Cogeneration LLC  
Channelview Cogeneration Facility  
8580 Sheldon Road  
Houston (Harris County)  
Regulated Entity Number: RN100220276  
Customer Reference Number: CN603385741  
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 conducted further technical review and determined that additional information required by Title 30 Texas Administrative Code (TAC) §17.10 is warranted for application #12826. Please revise your application to include the following information.

- Issue 1: Please review the enclosed application to ensure that all information is still current.
- Issue 2: Please remove the steam turbine generator from the application. This equipment has been evaluated and determined to not be eligible.
- Issue 3: Please provide a citation to the subsection level of an adopted environmental rule that requires the installation of a HRSG. Explain how the HRSG reduces the amount of NOx being generated by the associated stationary gas turbine in order to meet the emission standard.

established in Title 40 CFR §60.332. Please explain which subsections of Title 30 TAC §117.1205 are being met by the installation of the HRSG.

Issue 4: In addition to the proposed calculation use the cost analysis procedure (CAP) contained in 30 TAC §17.17 to calculate a proposed use determination percentage. The variables used in the CAP should be calculated as follows:

$$\frac{(\text{Production Capacity Factor} \times \text{Capital Cost New}) - \text{Capital Cost Old} - \text{NPVMP}}{\text{Capital Cost New}} \times 100$$

The variables used in the CAP should be calculated as follows:

- Production Capacity Factor: calculated by dividing the capacity of the existing equipment or process by the capacity of the new equipment or process.
- Capital Cost New: Cost of HRSGs
- Capital Cost Old: Cost of a boiler(s) required to produce the same amount of steam produced by the HRSGs.
- Net Present Value of the Marketable Product: The net present value of the marketable product recovered for the expected lifetime of the property, calculated using the equation in §17.17(c)(2).

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

- Marketable Product:
  1. If steam is used to generate electricity that is sold to external parties or used on site, then the value of the marketable product is considered the value of electricity sold or used on site as a result of the steam generated by the HRSG.
  2. If steam is sold to an external party, then the value of the marketable product is considered to be the retail value of the steam sold.
  3. If steam is used on site, then the value of the marketable product is the value assigned to the steam for internal accounting purposes. It is the responsibility of the applicant to show that the internally assigned value is comparable to the value assigned by other similar producers of steam.

For 1 above, the thermal power of steam generated by the facility is converted into electrical power. Using steam tables and basic thermodynamic equations, the thermal power of the steam can be determined.

$$W_{\text{thermal}} = (h_1 - h_0) \times m$$

where  $h_0$  is the initial specific enthalpy of the liquid (the HRSG feedwater) and  $h_1$  is the final specific enthalpy of the steam at a given temperature and pressure exiting the HRSG.  $m$  is the mass flow rate of the steam. Use the steam tables to determine the specific enthalpy of the steam based on the required specifications (temperature and pressure) of the steam produced.

To determine the electrical power represented by  $W_{\text{thermal}}$ ,  $W_{\text{thermal}}$  must be converted to electrical power using the thermal efficiency ( $\eta_{\text{thermal}}$ ) of the steam turbine(s). You may either use the rated efficiency of the actual steam turbine at the facility or assume  $\eta_{\text{thermal}}$  of 36%, which is an average steam turbine thermal efficiency for non-nuclear applications.

$$W_{\text{electrical}} = W_{\text{thermal}} \times \eta_{\text{thermal}}$$

$W_{\text{electrical}}$  represents the electrical power generation associated with the HRSG. In order to determine the marketable product value, multiply this value by the number of hours the HRSG operated in each of the last three years while electricity was being generated for sale or use on site. This value should then be multiplied by the average retail rate of electricity sold during each of the last three years in order to determine the marketable product value of the steam used to generate electricity sold to external parties or used on site for the last three years. The marketable product values for the last three years should be added and the sum divided by three to obtain the average marketable product value over the last three years.

- Production Cost: Itemized costs directly attributed to the operation of the HRSG excluding non-cash costs, such as overhead and depreciation and excluding costs related to operating the gas turbine, associated duct burners, or the steam turbine including fuel costs.
- Interest Rate: 10%
- $n$ : estimated useful life in years of the HRSG

Attachment 9

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 30, 2014

Mr. Matt Wolski  
Project General Manager  
EIF Channelview Cogeneration, LLC  
P.O. Box 77530  
Channelview, TX 77530

Re: Notice of Technical Deficiency  
EIF Channelview Cogeneration, LLC  
Channelview Cogeneration Facility  
Houston (Harris County)  
Regulated Entity Number: RN100220276  
Customer Reference Number: CN603385741  
Application Number: 12826  
Tracking Number: CCF-2008-1

Dear Mr. Wolski:

This letter responds to EIF 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 conducted further technical review and determined that additional information required by Title 30 Texas Administrative Code (TAC) §17.10 is warranted for application #12826.

The Executive Director interprets Texas Tax Code (TTC) §§11.31(k) and (m) as establishing an expedited review process and exempting an applicant from providing detailed information regarding the anticipated environmental benefit for property on the k-list. Because Article VIII, Section 1-l, of the state constitution authorizes the exemption only for property used to meet or exceed an environmental rule, the Executive Director does not interpret TTC §11.31 subsection (m) as exempting §11.31(k)-listed property from the TCEQ's review standards at Title 30 Texas Administrative Code (TAC) Chapter 17 or mandating the issuance of a positive use determination, when the property is not used, constructed, acquired, or installed to meet or exceed an environmental rule.

Please revise your application to include the following information.

Issue 1 – Review of Environmental Rule Citations

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In review of the facility's air permits and associated filings, the following comments on rule citations are in part based on representations made in the permit documents. It does not appear that sufficient information has been provided to establish a clear connection between the listed equipment and the cited rules. For each cited rule, please provide an explanation of how the equipment is used to meet a requirement in the rule.

Regarding the Mass Emissions Cap and Trade Program (MECT) and Clean Air Interstate Rule (CAIR), these are cap and trade programs that allocate allowances to all electric generating units. Please explain how a Heat Recovery Steam Generator (HRSG) is required to meet a MECT or CAIR requirement.

Your response cites 30 TAC §117.1205(f) as an applicable rule. Please note 30 TAC §117.1205(l) states, "This section no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9120(2) of this title." It does not appear that your rule citation applies at this time. If you still contend that §117.1205(f) applies, please explain based on the time frames provided in §117.9120(2).

New Source Performance Standard (NSPS) Subpart Da is a standard of performance for electric utility steam generating units, i.e., the HRSG, and provides emission limits for nitrogen oxides (NOx), particulate matter, and sulfur dioxide. Given that Da only applies to the HRSG itself, it does not appear that use of the HRSG is required to meet Da or that it helps the facility meet the emission limit for the HRSG itself. The absence of a HRSG (that is subject to regulation under Da) would not affect emission limitations of other sources at the plant, e.g., the gas turbine (regulated under GG). Please explain in detail how a HRSG is used to meet the requirements of Da.

#### Issue 2 – Calculation of an Appropriate Partial Positive Use Determination

The supplemental application received on June 24, 2013, proposes an Avoided NOx Emissions approach as the method for calculating the appropriate positive partial use determination. The Avoided NOx Emissions approach compares the NOx emissions related to the thermal output of the cogeneration facility and the NOx emissions related to the thermal output of five direct fired boilers owned by Equistar Chemicals, LP. These boilers have been retired and their steam output has been replaced with steam generated by the cogeneration unit. The executive director has previously evaluated emission reduction based calculations and determined that they do not accurately calculate an appropriate use determination. While an emissions based calculation may be appropriate for determining if the equipment is used to control, prevent, or monitor pollution; its use to determine the appropriate positive use determination percentage is not appropriate as it yields different percentages for similar equipment. In addition it does not 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.

Please resubmit your application using the CAP with the variables calculated as explained in the February 21, 2013, letter with the following exceptions:

- Production Costs should include the costs related to the operation of the duct burners, if any, including fuel costs.
- The value of Capital Cost Old is the value of the retired boilers calculated using method 3.3 located in Figure 30 TAC §17.17(c)(1).

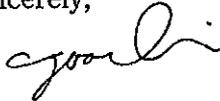
The TCEQ appreciates your response in this matter. The revised application must be submitted by March 7, 2014 to the TCEQ Tax Relief for Pollution Control Property Program, MC-110, P.O. Box 13087, Austin, Texas 78711-3087. Failure to submit a complete application, including the

Mr. Matt Wolski  
January 30, 2014  
Page 3

requested information, may result in your application being voided and the associated application fee being forfeited in accordance with 30 TAC §17.20(b).

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](mailto: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,



Chance Goodin, Team Leader  
Stationary Source Programs  
Air Quality Division

CG/RH

cc: Taylor Holcomb, Vinson & Elkins, 2801 Via Fortuna, Suite 100, Austin, Texas 78746