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March 12, 2015

Via Electronic Filing

Ms. Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
MC105
P. O. Box 13087
Austin, Texas 78711-3087

**Re: TCEQ Docket No. 2015-0180-MIS-U (UD 17852/Panda Sherman Power, LLC); and
TCEQ Docket No. 2015-0181-MIS-U (UD 17854/Panda Temple Power, LLC)**

Dear Ms. Bohac:

Attached hereto, for filing in the above-referenced cases, please find Panda Sherman Power, LLC and Panda Temple Power, LLC's Reply Brief. I would appreciate receiving confirmation of the filing of this Reply Brief at your earliest convenience.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

Regards,

A handwritten signature in black ink, appearing to read "Kory L. Ryan", written over a horizontal line.

Kory L. Ryan

/s/
Enclosure

TCEQ DOCKET NOS. 2015-0180-MIS-U & 2015-0181-MIS-U

APPEALS OF THE EXECUTIVE DIRECTOR'S NEGATIVE USE DETERMINATION ISSUED TO PANDA SHERMAN POWER, LLC & PANDA TEMPLE POWER, LLC	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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PANDA SHERMAN POWER, LLC & PANDA TEMPLE POWER, LLC'S REPLY BRIEF

TO THE HONORABLE COMMISSIONERS:

Panda Sherman Power, LLC and Panda Temple Power, LLC (collectively "Panda") come now and file this Reply Brief to (1) the Office of Public Interest Counsel's Response to Appeals of Use Determinations and (2) the Executive Director's Response to Appeals of the Executive Director's Negative Use Determinations for Application for Determination Nos. 17852 and 17854 (collectively "Responses").

Background

- February 3, 2014 - Panda submitted two separate applications for use determination to the Texas Commission on Environmental Quality ("TCEQ"). The applications involved heat recovery steam generators ("HRSG"). HRSG are used at Panda's natural gas-fired combined cycle power plants in Sherman and Temple, Texas.
- January 8, 2015 - TCEQ's executive director ("Executive Director") issued negative use determinations for both applications.
- February 2, 2015 - Panda timely filed their appeals of the Executive Director's negative use determinations ("Appeals").
- February 26, 2015 - the Office of Public Interest's counsel and the Executive Director filed the Responses.

Reply to Responses

The negative use determinations and Responses incorrectly found that Panda's HRSG are not entitled to exemption as mandated by Texas Tax Code § 11.31. HRSG produce a positive environmental benefit and therefore warrant exemption. TCEQ's methodology and calculations for positive use determinations for HRSG are unreasonable and unfounded. By creating its own rules that effectively remove HRSG from the list provided in § 11.31, TCEQ has exceeded the authority bestowed upon it by

the Texas Tax Code.¹ § 11.31 by its clear and plain meaning includes HRSG as a device that -- merely by its use -- produces some environmental benefit.²

The Executive Director has presented no compelling evidence to deny Panda's HRSG a positive use determination. The Executive Director's position is simply not supported by reasonable, substantial evidence. More importantly, the negative use determinations and Responses have obviously misinterpreted the Texas Tax Code's pollution control exemption provisions.³ Therefore, TCEQ has ran afoul of the Texas Tax Code's clear intention to reward Texas taxpayers for building and operating facilities that reduce harmful pollution.⁴

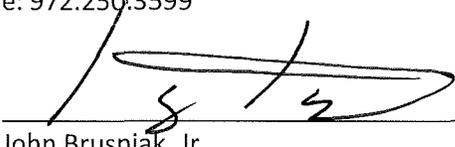
Conclusion

Based on the foregoing, Panda respectfully requests that this matter be remanded to the Executive Director for issuance of a positive use determination for Application Nos. 17852 and 17854.

Respectfully submitted,

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COUNSEL FOR APPELLANT

¹ See Tex. Tax Code § 11.31

² *Id.* § 11.31(k).

³ See *id.* § 11.31.

⁴ See *id.*

CERTIFICATE OF SERVICE

I do hereby certify that Panda Sherman Power, LLC and Panda Temple Power, LLC's Reply Brief was electronically filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by facsimile, to all persons listed on the mailing list below:

MAILING LIST
TECQ DOCKET

2015-0180-MIS-U (UD 17852/Panda Sherman Power, LLC – Grayson County)
2015-0181-MIS-U (UD 17854/Panda Temple Power, LLC – Bell County)

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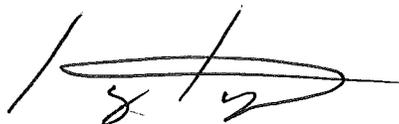
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