

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 22, 2006

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2006 SEP 22 PM 3:29
CHIEF CLERKS OFFICE

RE: Oak Grove Management Company
SOAH Docket No. 582-06-1502; TCEQ Docket No. 2006-0195-AIR

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Reply to Exceptions to the Administrative Law Judges' Proposal for Decision and Order in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Christina Mann".

Christina Mann
Assistant Public Interest Counsel

cc: Service List

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

PHYSICAL CHEMISTRY

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UNIVERSITY OF CHICAGO
5700 S. UNIVERSITY AVENUE
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SOAH DOCKET NO. 582-06-1502
TCEQ DOCKET NO. 2006-0195-AIR

IN THE MATTER OF
THE APPLICATION OF
OAK GROVE
MANAGEMENT
COMPANY FOR AIR
QUALITY PERMIT NO.
76474 AND
PREVENTION OF
SIGNIFICANT
DETERIORATION
PERMIT NO. PSD-TX-
1056

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BEFORE THE STATE
OFFICE OF
ADMINISTRATIVE
HEARINGS

2006 SEP 22 PM 3:29
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S REPLY TO EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION AND
ORDER**

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) and files this Reply to Exceptions to the Proposal for Decision (PFD) and Order recommended by the Administrative Law Judges (ALJs) in the above styled matter and would respectfully show the following:

OPIC remains supportive of the PFD issued by ALJs Carol Wood and Thomas Walston on August 23, 2006 and continues to recommend that the Application by Oak Grove Management Company (Oak Grove or Applicant) for Air Permit No. 76474 and Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-1056 should further be denied because Oak Grove did not meet its burden in conducting its ozone impact analysis. OPIC will address two issues raised in Exceptions: Oak Grove's criticism of the ALJ's Best Available Control Technology (BACT) analysis, and the Executive Director's

(ED) alternative recommendation¹ in his Supplemental Exceptions filed September 13, 2006.

ALJ's Best Available Control Technology (BACT) Analysis

The ALJ's BACT analysis is the result of specific fact-findings after consideration of evidence presented by parties and elicited during cross examination throughout the course of the hearing on the merits. The ALJ's conclusions regarding BACT are not, as Oak Grove would argue, the result of a "fundamental misinterpretation of the technical practicability standard." In its exceptions, Oak Grove endeavors to recast the ALJ's findings as mere misguided legal interpretations.

Oak Grove tries to persuade the Commission that adoption of the PFD will lead to a collapse in the manner in which BACT analysis occurs and further retard "the advancement of air pollution control technology and the progressive lowering of emissions through the BACT process."² Oak Grove further attempts to re-argue its entire BACT case in the apparent hope that the Commission will overlook the fact that a contested case hearing has already occurred and the ALJ's made the required case-specific findings of fact.

OPIC finds that the PFD is supported by the record developed during the contested case hearing. OPIC has previously argued that as the record currently stands, OPIC cannot find the Applicant met its burden in establishing a factual basis for a NOx emission limit of .08 lb/MMBtu for the proposed OGSES and finds that the BACT emission rate for mercury was only a best estimate. Just like in any other contested case

¹ See Executive Director's Supplemental Exceptions to the Administrative Law Judges Proposal for Decision and Order, September 13, 2006, Page 1.

² See Oak Grove Management Company LLC's Exceptions to the Administrative Law Judges Proposal for Decision, September 12, 2006, Page 8.

hearing, the ALJs heard differing positions and made findings. To further illustrate the divergent BACT positions found in the record, OPIC incorporates its timely filed closing arguments³ in this reply to exceptions.

Executive Director's Alternative Recommendation

The ED requests that the ALJs "recommend appropriate consideration be afforded to Texas Health and Safety Code § 382.0158 (d)." OPIC assumes the ED is referring to Texas Health and Safety Code § 382.0518 (d), which reads:

(d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

The ED further states that this section "requires the Commission to set out specific objections in a report to the applicant, allowing the applicant the opportunity to make any necessary changes to the plans and specifications necessary for permit issuance."⁴ OPIC disagrees with the ED's interpretation of what is required by the above section. In no way does the above language require, or even allow, the Commission to give the Applicant any "opportunity to make any necessary changes to the plans and specifications necessary for permit issuance." Subsection (d) clearly states that the Commission **may not grant the permit** if certain findings are made. Therefore, the permit must be denied. It would be counterintuitive, at best, to read this section in a manner which restricts the Commission's authority in actually denying an air permit application.

³ See Attachment A, unsigned copy of OPIC's Closing Arguments for Air Permit No. 76474 and Prevention of Significant Deterioration (PSD) Permit No. PSD-TX-1056, filed July 3, 2006. The original, signed copy is in the file in the Office of the Chief Clerk, and a copy was timely served upon all parties.

⁴ See Executive Director's Supplemental Exceptions to the Administrative Law Judges Proposal for Decision and Order, September 13, 2006, Page 1.

OPIC recognizes that Subsection (e) requires the Commission to grant the permit if the applicant addresses all of the Commission's objections, and further prohibits the Commission from granting the permit if the applicant does not. OPIC finds that report contemplated in Subsection (d) *is* the findings of fact and conclusions of law adopted by the Commission. Additionally, OPIC finds that the extensive contested case hearing process, the record created by such a process, the resulting PFD and then the subsequent Commission order with findings of fact and conclusions of law supersedes the need for an additional Commission "report to the applicant [spelling out] its specific objections to the submitted plans of the proposed facility."

The ED appears to be misconstruing this statute to include the requirements similar to those found in Texas Health and Safety Code § 382.055(f). These are two distinct sections with distinct "report requirements." If both subsections (d) and (e) are to be complied with, the Commission has two options in how it can potentially interpret the requirements of these two subsections: (1) first deny the permit, issue the denial order with findings of fact and conclusions of law (the report), and allow the applicant to submit a **new** permit application which corrects the Commission's objections; or (2) choose not to grant or deny the permit, issue a report (the findings of fact and conclusions of law), and allow the applicant to attempt overcome the Commission's objections through an application amendment. In either case, if the objections are not overcome, the Commission must deny the permit application. OPIC finds that Option 1 is the more defensible interpretation. An applicant should not be afforded the opportunity to make any necessary changes to the plans and specifications necessary for permit issuance *outside of the opportunity to re-apply for the permit*, just like in any other circumstance

when the Commission denies a permit application. Particularly considering the nature of the objections outlined by the ALJs in this case, OPIC recommends Oak Grove be required to submit a new permit application which would address the findings of fact and conclusions of law. OPIC notes that in the case where the Commission would allow a permit amendment, rather than requiring a new application, any such amendment could require re-notice.

Finally, although OPIC believes it to be unnecessary, OPIC can support a recommendation that the findings of fact and conclusions of law be drafted with a specific section stating that any findings and conclusions are to be understood to represent the Commission's "specific objections to the submitted plans of the proposed facility" and should be construed in a manner to demonstrate compliance with the reporting requirement found in Texas Health and Safety Code § 382.0518 (d).

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 
Christina Mann
Assistant Public Interest Counsel
State Bar No. 24041388
(512)239.6363 PHONE
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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2006 eleven true and correct copies of the Office of the Public Interest Counsel's Exceptions to the Proposal for Decision (PFD) and Order were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Christina Mann

The first of these is the fact that the world is not a uniform whole.

It is divided into many different parts, each with its own characteristics.

These parts are not only different from each other, but they are also different from the whole.

For example, the world is not a uniform whole because it is not a uniform whole.

It is divided into many different parts, each with its own characteristics.

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These parts are not only different from each other, but they are also different from the whole.

For example, the world is not a uniform whole because it is not a uniform whole.

ATTACHMENT A

XXXXXXXXXXXX

SOAH DOCKET NO. 582-06-1502
TCEQ DOCKET NO. 2006-0195-AIR

IN THE MATTER OF
THE APPLICATION OF
OAK GROVE
MANAGEMENT
COMPANY FOR AIR
QUALITY PERMIT NO.
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1056

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BEFORE THE STATE
OFFICE OF
ADMINISTRATIVE
HEARINGS

THE OFFICE OF PUBLIC INTEREST COUNSEL'S CLOSING ARGUMENTS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES CAROL WOOD AND
THOMAS WALSTON:

COMES NOW, the Office of Public Interest Counsel (OPIC) of the Texas
Commission on Environmental Quality (the Commission or TCEQ) and files this Closing
Argument in the above-referenced matter.

I. Introduction

Oak Grove Management Company (Oak Grove or Applicant) applied to TCEQ
for Air Permit No. 76474 and Prevention of Significant Deterioration (PSD) Permit No.
PSD-TX-1056. The proposed Oak Grove Steam Electric Station (OGSES) will be a new
1600 MW pulverized coal boiler steam electric generating facility located approximately
12 miles north of Franklin, Robertson County, Texas. The fuel feeding the two
supercritical cycle steam boilers will be Texas lignite, and low sulfur fuel oil will be used
for boiler startup.¹

¹ See Page 3 of Review Analysis and Technical Review, Oak Grove Exhibit 6, page 33 of 75.

Although this application is subject to the requirements of Texas Health and Safety Code §382.056 and Texas Water Code §5.556 added by Acts 1999, 76th Leg., ch. 1350 (commonly known as "House Bill 801"), this permitting action also became subject to Executive Order RP 49, which effectively requires the application to be directly referred to the State Office of Administrative Hearings (SOAH) concurrent with the publication of the Notice of Application and Preliminary Decision (NAPD). Therefore, Oak Grove requested the application be directly referred to SOAH on February 23, 2006. The NAPD was published on February 24, 2006.

In cases which are directly referred to SOAH, the Applicant has the burden to establish that *all* requirements related to the air quality application are met. To that end, SOAH issued a standing order dated October 28, 2005, requiring each applicant in contested cases which must comply with Executive Order RP 49 to pre-file its entire direct case by the date of the preliminary hearing. During the preliminary hearing held on April 3, 2006 in Franklin, Texas the following were named as parties: Oak Grove; the Executive Director (ED) of the TCEQ, OPIC; and Robertson County: Our Land, Our Lives. Additionally, in accordance with SOAH's standing order, Oak Grove pre-filed its direct case via electronic copies of its supporting testimony and exhibits, including limited expert disclosures.

During the hearing on the merits held on June 13-16 and June 19-20, parties presented evidence related to whether the Applicant met its burden in establishing that its application complies with all statutory and regulatory requirements. Although the ALJs requested parties to submit an agreed upon briefing outline, parties could not come to an

agreement. Although a multitude of issues were presented throughout the hearing, OPIC will present arguments on the most contested of the issues, and will make every effort to be as clear as possible in corresponding to the outlines submitted by the parties.

II. Best Available Control Technology (BACT) Determination

A source such as OGSES, which triggers PSD evaluation², must be subject to emission limitations which qualify as BACT. PSD review was triggered for CO, NO_x, SO₂, PM/PM₁₀, VOC, Pb, H₂SO₄, and HF. Protestants strongly challenged Oak Grove's proposed BACT emission limits and the Executive Director's evaluation of proposed BACT emission limitations for NO_x and mercury. Therefore, OPIC will initially focus on these two pollutants in its BACT analysis. In addition, the Protestants raise concerns over whether the proposed emission rates are even feasible due to a lack of any actual emission rates demonstration specifically for lignite for some of the proposed control technologies.

A. BACT Emission Limitations for NO_x

As stated in the Technical Review, prepared by Randy Hamilton, Oak Grove initially proposed higher NO_x emission rates than are proposed for both the main and auxiliary boilers.³ However, through the permit review process, the ED and Applicant eventually agreed upon lower emission rates.⁴

The Applicant's engineering expert, Larry Moon, testified regarding the Applicant's BACT determinations. He stated that in order to determine emission rates,

² The source is to be located in an area classified as "unclassified/attainment" for NAAQS criteria air pollutants. It is a "major" source, exceeding the 100 tons per year threshold for all criteria pollutants, with the exception of lead. See "PSD and Nonattainment Applicability," Page 2 of the Preliminary Determination Summary, Oak Grove Exhibit 6, Page 18 of 75

³ See Page 1 of Review Analysis and Technical Review, Oak Grove Exhibit 6, page 31 of 75.

⁴ *Id.*

he relied upon rates previously determined by TXU environmental staff, which are then simply compared to other applications' rates.⁵ Initially, Oak Grove's BACT determination for NOx rates was .10 lb/MMBtu for the 30 day rolling average and annual averaging periods.⁶ Therefore, Mr. Moon conducted his BACT review, which was basically to compare this rate provided by TXU staff to other proposed rates in current application.⁷ He found the .10 rate to be acceptable as BACT, even when comparing to lower proposed rates for the same process (PC Boilers) because of the "concerns about...the ability of the SCR to achieve those levels over a long period of time."⁸

The witness testifies that the emission rates are determined by what the vendors of the actual devices can guarantee⁹, but also states that he has never reviewed the vendor guarantees.¹⁰ The record does not demonstrate how Mr. Moon would be familiar with potential uncertainties related to rates guaranteed by vendors, which he has not personally reviewed, for specific control technologies. Similarly, the record does not reflect how those concerns regarding performance were sufficiently alleviated to allow TXU to be comfortable with an emission rate of .08lb/MMBtu, rather than .10lb/MMBtu for NOx.

Mr. Hamilton, in his review of the permit application, recommended to TXU a proposed NOx emission rate of .07lb/MMBtu.¹¹ Although he testifies clearly that the ED has determined .08lb/MMBtu for NOx to be BACT for this proposed source,¹² the record does not reflect any strong scientific, economic, or environmental basis for establishment of the .08lb/MMBtu NOx rather than .07lb/MMBtu limit during technical review process.

⁵ See generally Transcript (Tr) at page 74, lines 10-16.

⁶ Tr at page 74, lines 22-23.

⁷ Tr at page 75, lines 6-7.

⁸ Tr at page 75, lines 15-17.

⁹ Tr at page 73, lines 22-25.

¹⁰ Tr at page 74, line 3-4.

¹¹ Tr at Page 528, line 24

¹² Tr at page 528 lines 23-24

OPIC appreciates the need to include a reasonable, actually achievable permit limit. Nevertheless, the record simply does not demonstrate why the value currently proposed and included in the draft permit changed from that initially proposed or why this rate is different from the rate initially recommended by the ED's permit engineer. OPIC notes that the record reflects that the most recent permits and permit applications for PC boilers include limits significantly lower than those proposed by Oak Grove for both NOx and mercury because the coal to be burned is a cleaner burning coal (Powder River Basin sub-bituminous coal), as compared to Applicant's choice of lignite.¹³

Oak Grove's expert, Mr. Cichanowicz, testified that he provided Oak Grove his opinion on what the realistically achievable limits for NOx should be: .08lb/MMBtu. He testified that he made this recommendation to Oak Grove in December 2005¹⁴, yet Oak Grove continued to propose .10lb/MMBtu until around February 9, 2006: shortly after the date of the meeting between the ED and TXU representatives to discuss the BACT for NOx.¹⁵ OPIC can discern no specific reason why .08lb/MMBtu was finally agreed upon. No information about the ED's final decision to consider .08lb/MMBtu as BACT for NOx is provided in the record.

OPIC recognizes that consideration of the "technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility"¹⁶ is not necessarily a simple balancing test. Nevertheless, OPIC finds that the record should provide a basis for distinguishing between the several BACT emission limits which have been considered. As the record currently stands, OPIC cannot find the Applicant met its

¹³ Tr at page 456, line 1

¹⁴ Tr at page 454, line 19 and line 25.

¹⁵ See Tr at Page 570, line 1-19.

¹⁶ See TCEQ Draft RG-383, Evaluating BACT in Air Permit Applications, Page 2

burden in establishing a factual basis for a NO_x emission limit of .081b/MMBtu for the proposed OGSES.

B. BACT Emission Limitations for Mercury

Again, Oak Grove initially proposed a higher mercury emission rate than is currently proposed.¹⁷ And even after the ED's permit engineer recommended a lower mercury emission rate, the mercury emission limits found Oak Grove's draft permit are much higher than those most recently approved by the ED in the technical review process of Sandy Creek's coal EGU permit.¹⁸ The record reflects that this permit would be the first to use activated carbon injection as a control device for mercury in lignite-fired pulverized coal boilers. With such a limited amount of historical data for removal efficiencies of mercury from lignite using activated carbon injection technology, the proposed mercury limit may indeed reflect the best estimate at achievable limits for a facility that chooses to burn lignite.

C. BACT Not Achievable with Lignite?

ED staff reiterated that BACT is an emission limit to be determined on a proposed process and that the applicant may choose the fuel to be utilized in that process. Neither the record nor the law, however, establishes that an applicant such as Oak Grove cannot be regulated at all with respect to its choice of dirtier fuels. When comparing this facility's proposed emissions to that of other recently proposed and permitted coal fired steam generating units (burning PRB coal), this facility is appreciably dirtier.¹⁹

¹⁷ See Page 1 of Review Analysis and Technical Review, Oak Grove Exhibit 6, page 31 of 75.

¹⁸ Compare Sandy Creek's proposed mercury limits to those proposed by OGSES

¹⁹ See generally Deposition upon Written Questions of Randy Hamilton, Oak Grove Exhibit 40, pages 21-30.

OPIC recognizes the value of utilizing Texas' abundant natural resources. However, if the emission rates (here just looking at NOx and mercury) for a lignite fired boiler are significantly higher than that for other forms of coal, use of lignite may very well thwart the very purpose of conducting a BACT analysis.

Is it truly BACT for a brand new source to have the potential to emit pollutants such as mercury at rates over 4 times as high as recently proposed for another PC boiler? This is a different question than the Commission considered in Sandy Creek where the Commission rejected a comparison of different types of units- here the units are the same, but the fuel choice results in very different emissions. BACT in this case is problematic because few applicants choose to propose coal forms such as lignite, and therefore the technologies have not been demonstrated on the scale that Oak Grove is planning to operate. Protestant's witness, Richard Furman, expresses concerns over the realistic performance of the proposed suite of controls when burning lignite, based upon years of experience in the field.²⁰ His opinion is that these technologies will likely fail to achieve even the proposed limits.

All agree that there are uncertainties related to emission control due to lignite's combustion characteristics that are reduced with other, more efficient, forms of coal. The testimony of Applicant's experts represents an optimistic outlook on the technologies' ability to effectively control emissions. Therefore, the record reflects a situation, where at best, the emission rates in the draft permit are achieved (or even bettered), but the controls remain unable to control lignite emission at rates achievable when burning other forms of coal.

²⁰ See Exhibit P-7, Page 17, lines 6-40.

III. Ozone Modeling Requirements (See ED's Issue III (a) and (b))

Another major contested issue relates to whether Oak Grove's predicted air quality impacts are acceptable. OPIC will initially focus on the discussion of whether Oak Grove met its burden in conducting its ozone impact analysis.

Dr. Ramon Alvarez testifies that the ozone screening tool utilized by the Applicant and approved by the ED staff is inappropriate to address the potential ozone impacts for NOx dominated sources such as the OGSES.²¹ The ED accepted the Applicant's use of the ozone screening technique to evaluate the impact on local ozone levels from OGSES emissions. No further modeling was required by ED staff. Although OPIC notes that the same issue was raised recently by Protestants and OPIC in Sandy Creek's permit hearing, OPIC maintains its position that regional modeling should be required of Applicant. The applicable regulation, 40 CFR 52.21 (k), plainly states:

The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region.

OPIC cannot find that a demonstration for a local area is sufficient to satisfy the mandate imposed on applicants as found above. The rule requires analysis *from the "owner or operator of the proposed source"* that accounts for impacts in *"any air quality control region."*²²

OPIC finds that proper modeling should have been required to be submitted by Applicant during the application process in order to make a demonstration that proposed

²¹ See Exhibit P-25, Page 3, Lines 12-16.

²² 40 CFR 52.21 (k) emphasis added.

emissions would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region²³ or to determine whether the impacts from the proposed source would cause or contribute to a violation of *any* NAAQS.²⁴

In contrast to the Sandy Creek matter, Protestants offer their own analysis based upon specific, photochemical modeling performed for the Capital Area Council of Governments by the Center for Energy and Environmental Resources (CEER) at the University of Texas.²⁵ Dr. David Allen describes the use of photochemical modeling to assess the potential impacts of emissions from OGSES and other facilities on areas beyond the local area addressed by the ozone screening technique.²⁶ OPIC notes that even if one finds that the ED properly accepted the ozone screening technique for the local impacts analysis, without requiring further modeling, Protestants have now provided expert testimony regarding the modeled potential impacts and this evidence should be evaluated to determine whether or not there is an indication that the emissions from the facility will contravene the intent of the Health and Safety Code, including whether or not the emissions will measurably influence ambient ozone concentrations in an area outside the local area.

Dr. Allen testifies that if Oak Grove were to begin operation in 2007, emitting 20.64 tons of NO_x per day, ozone concentrations in the Austin area would increase by up to 2 parts per billion (ppb).²⁷ (OPIC notes that annual limit in the current permit results in an average daily emission rate of 17.22 tons of NO_x per day). Dr. Allen explains that

²³ CFR 52.21 (k)

²⁴ See 30 TAC § 116.161

²⁵ See generally Exhibits P-1 through P-3.

²⁶ See generally P-1. Austin is beyond the local area surround the proposed OGSES.

²⁷ Exhibit P-1, Page 7, lines 19-20, and 27-28.

these incremental changes to ozone concentrations resulting from the proposed emissions “could more than offset the reduction in ozone impacts associated with the recommended set of emission control strategies on some days.”²⁸

Dr. Allen then refers to a modeling run conducted by ENVIRON, in which 28.8 tons of NOx emissions from Robertson County would result in an increase of up to .12 ppb in the Dallas- Fort Worth area.²⁹ Dr. Allen suggests that every little bit counts (even .12 ppb) because of the enormity of the task confronting air quality planners in attempting to bring the DFW area into NAAQS compliance for ozone.³⁰

As rebuttal, Oak Grove offers the testimony of Ralph Morris, a principal with the ENVIRON group, who also conducted specific modeling for the OGSES emissions. He did not dispute the modeling results offered and discussed by Dr. Allen. Mr. Morris did dispute Dr. Allen’s “claims regarding OGSES’ potential ozone-related impact on the DFW non-attainment and Austin Early Action Compact areas.”³¹ Mr. Morris testifies that a potential maximum impact of .07 ppb from OGSES emissions in the DFW area is not significant.³² And when considering the Austin EAC area, Mr. Morris notes that although the increase could be as high as 2 ppb, the ozone increases due to OGSES do not increase the ozone in the ambient air to beyond the NAAQS for ozone.³³

OPIC finds that, at a minimum, these numbers require further consideration. Whether or not the modeling was required, it is available for review. OPIC notes, with concern, that CEER’s summary in its report to CAPCOG states that “although emissions

²⁸ Id at Page 8, line 17-18.

²⁹ Id at page 9, lines 21-23.

³⁰ Id at page 10, lines 20-33.

³¹ Oak Grove Exhibit 43, Page 7, Lines 12-15.

³² Id at Page 18, line 1, lines 8-9.

³³ Oak Grove Exhibit 46, Page 14.

from the proposed power plants do not significantly impact the design values at the Austin monitoring stations, there is a significant reduction in air quality within the five-county Austin area.”³⁴ Mr. Morris does not actually dispute this particular analysis. Instead, he focuses on whether or not predicted exceedances at specific monitors will actually change as a result of the emissions from OGSES. Nevertheless, OPIC finds that the increases, even those as small .07 ppb will measurably influence ambient ozone concentrations in an area outside the local area, such as Austin or Dallas-Forth Worth.

³⁴ Exhibit P-3, Page 9

V. Conclusion

For these reasons, OPIC respectfully recommends that the Administrative Law Judges make the following findings:

1. The record does not contain a factual basis for a NOx emission limit of .081b/MMBtu as BACT for the proposed OGSES. Therefore, Oak Grove has not demonstrated by a preponderance of the evidence that .081b/MMBtu is BACT for NOx.
2. There is high degree of uncertainty regarding whether the mercury emission limits are actually achievable.
3. Emissions from OGSES will measurably influence ambient ozone concentrations in an area outside the local area, such as Austin and Dallas-Forth Worth..

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By _____
Christina Mann
Assistant Public Interest Counsel
State Bar No. 24041388
(512)239.6363 PHONE
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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2006 the original of the Office of the Public Counsel's Closing Argument was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

Christina Mann

MAILING LIST
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TCEQ DOCKET NO. 2006-0195-AIR

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THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
RESEARCH REPORT

RESEARCH REPORT
NO. 1000
1955

BY
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AND
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DEPARTMENT OF CHEMISTRY
UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS

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