

**LAW OFFICE OF WENDI HAMMOND**

7325 Augusta Circle

Plano, TX 75025

PH: (972) 746-8540

Wendi@TexasEnvironmentalLaw.net

FX: (469) 241-0430

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December 1, 2009

VIA FAX: (512) 239-3311 & USPS Mail

LaDonna Castanuela

TCEQ Office of the Chief Clerk; MC 105

P.O. Box 13087

Austin, TX 78711-3087

RE: SOAH Docket No. 582-08-0861 & 582-08-4013;  
TCEQ Docket No. 2007-1820-AIR & 2008-1210-AIR  
Application of NRG Texas Power LLC for Proposed  
Air Permit Nos. 76474 and PSD-TX-1056 & HAP-14

Dear Ms. Castanuela:

Please file this letter in the above named and numbered matter. This letter serves as Protestant Robertson County: Our Land, Our Lives' Response to the Revised Proposed Order for the Commissioner's consideration. In addition to the response below, Protestant hereby adopts and incorporates by reference any response filed by other protestant parties.

Protestant appreciates the commissioners allowing parties to respond to the revised proposed order; however, any response (or lack thereof) should not be interpreted as waiving any potential claim that may be raised in a future motion for rehearing, especially since parties are allowed thirty days to review the order and file that motion while this opportunity was limited to about three working days during a major national holiday.

Furthermore, the archived videotape of the commission proceeding was not available over the internet for viewing so as to determine whether or not Applicant's proposed "Explanation of Changes" correctly reflect the commissioners' explanations provided at the bench during the November 18, 2009 commission agenda. Both undersigned counsel and counsel for Sierra Club were unable to view the recording. Although the first clip for the agenda item for the above named and numbered matter would properly load and play, the second clip would not.

With the above comments in mind, it appears as though the Executive Director's revised draft permit and Applicant's proposed revised order do reflect the changes to findings of fact and conclusions of law that were contained within the documents circulated at agenda and provided to the parties by General Counsel (see attachments A & B).

Applicant, however, provided unsolicited comments concerning Special Condition No. 43 in the cover letter accompanying its revised proposed order. As previously argued by Protestant and reflected by the Proposed Order, the Applicant's "netting demonstration is inadequate"<sup>1</sup>. Furthermore, Applicant's commitment for "no net increase" of annual and 30-day rolling average site-wide emissions of NOx still fail to protect downwind areas from increased ozone. Therefore, Protestant must reiterate its prior response to Applicant's exception to Ordering Provision 1.b. of the Proposed Order and Special Condition No. 43 of Draft Permit Nos. 79188 and PSD-TX-1072.

The current ozone NAAQS is based upon an 8-hour average; therefore, an annual or 30-day rolling average does not provide assurance that the source will not cause or contribute to an exceedance of the NAAQS. The averaging time of permit emissions must be sufficient to protect the applicable ambient standard. Longer-term limits do not account for the variability of significant yet isolated emissions that could have health and environmental impacts.

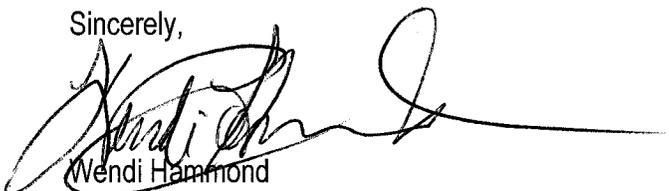
For example, Limestone Unit 3 may operate at the same time as Limestone Units 1 and 2 on any given day during the ozone season for any given time period as long as the permit's annual or 30-day limit is not exceeded. Thus, regardless of permit's annual or 30-day rolling "no net" commitments, the draft permit still allows significant increases in NOx emissions that can cause and/or contribute to downwind 8-hour ozone nonattainment problems that would not otherwise occur but for the construction and operation of Limestone Unit 3.

Although the Administrative Law Judges' (ALJs') proposed Special Condition 43 does not completely solve all of the ozone problems resulting from the application and draft permit, the ALJs' proposal will prevent some of the problems to a greater degree than adoption of Applicant's exception. As such, Applicant's request should be denied.

Furthermore, the data to which the Applicant would like to insert (and the calculation method it used) have not been provided to the parties or to the public for review and comment. Furthermore, no evidence was provided during the hearing about the lb/hr NOx emission limits for Units 1 and 2 utilized by Applicant in its ozone demonstration. Thus, it is impossible to determine whether the limits now proposed by Applicant's exception even comply with Applicant's previous ozone demonstration.

Thank you for your attention to this matter. A copy of this letter is being sent by facsimile as well as the original and seven copies being mailed. Likewise, copies have been served on the parties as indicated on the enclosed certificate of service. If you have any questions, feel free to contact me.

Sincerely,



Wendi Hammond

Encl.

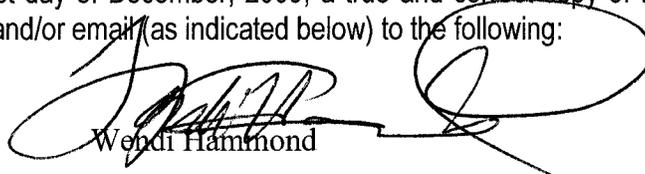
CC: Certificate of Service List (w/ encl.)

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<sup>1</sup> FOF 40.

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 1st day of December, 2009, a true and correct copy of the foregoing has been sent by U.S. mail, facsimile and/or email (as indicated below) to the following:



Wendi Hammond

**VIA: Email**

Administrative Law Judge Bennett  
Administrative Law Judge Broyles  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> St.  
Austin, TX 78701  
PH: 512/475-4993 / FAX: 512/475-4994  
craig.bennett@soah.state.tx.us  
Tommy.broyles@soah.state.tx.us

**VIA: N/A**

State Office of Administrative Hearings  
Attn: SOAH Docket Clerk  
P.O. Box 13025  
Austin, TX 78711-3025  
PH: 512/475-4993 / FAX: 512/475-4994

**VIA: E-file**

LaDonna Castanuela  
TCEQ Office of the Chief Clerk; MC 105  
P.O. Box 13087  
Austin, TX 78711-3087  
PH: 512/239-3300 / FAX: 512/239-3311

**VIA: Email**

Garrett Arthur  
Texas Commission on Environmental Quality  
Office of Public Interest Counsel; MC-175  
P.O. Box 13087  
Austin, TX 78711-3087  
PH: 512/239-5757 / FAX: 512/239-6377  
garthur@tceq.state.tx.us

**VIA: Mail & Email**

Booker Harrison  
Executive Director  
Texas Commission on Environmental Quality  
MC-173  
P.O. Box 13087  
Austin, TX 78711-3087  
PH: 512/239-4113 / FAX: 512/239-0606  
booharri@tceq.state.tx.us

**VIA: Fax & Email**

Derek McDonald  
Pamela Giblin  
Baker & Botts  
1500 San Jacinto Center  
98 San Jacinto Blvd.  
Austin, TX 78701-4078  
PH: 512/322-2667 / FAX: 512/322-8342 (Derek's)  
PH: 512/322-2509 / FAX: 512/322-8308 (Pam's)  
derek.mcdonald@bakerbotts.com  
pam.giblin@bakerbotts.com

**VIA: Email**

Ilan Levin  
Layla Mansuri  
Christina Mann  
Environmental Integrity Project  
1002 West Ave., Ste. 300  
Austin, TX 78701  
PH: (512) 619-7287 (Ilan's) / (512) 786-9026 (Layla's)  
FAX: (512) 479-8302  
ilevin@environmentalintegrity.org  
lmansuri@environmentalintegrity.org

**VIA: Email**

Thomas Weber  
Clark Jobe  
McEroy, Sullivan & Miller, LLP  
P.O. Box 12127  
Austin, TX 78711  
PH: (512) 327-8111  
FAX: (512) 327-6566  
tweber@msmtx.com  
cjobe@msmtx.com

**VIA: Email**

Charles Morgan  
Rt.2 Box 92A  
Buffalo, TX 75831  
PH: (903) 389-5616  
cemorgan75831@yahoo.com

**VIA: Email**

James Blackburn, Jr.  
Charles Irvine  
Blackburn & Carter, P.C.  
4709 Austin St.  
Houston, TX 77004  
PH: (713) 524-1012 / FAX: (713) 524-5165  
jbb@blackburncarter.com  
charles@blackburncarter.com

Amend Finding of Fact No. 304 on page 39 by substituting "0.12" for "0.15" as the CO MACT emission level; adopt NRG's exceptions with regard to Finding of Fact Nos. 32, 291, 292, 293 and 294; Conclusion of Law No. 43 and Ordering Provision No. 3; adopt the revisions the ALJs recommended to their order in their 9/9/09 letter, except for their recommendation to include Sierra Club's Findings of Fact and amended Conclusion of Law No. 228 with regard to required use of a PM CEMS; amend ALJs' Finding of Fact No. 13 on page 3 to refer to "Order No. 9" rather than to "Order No. 8"; and rather than substitute "metal" for "non-metal" in Finding of Fact No. 308 as the ALJs recommended in their 9/9/09 letter, substitute instead "non-mercury" as requested and agreed to by the ALJs during agenda; amend Ordering Provision No. 9 to read as follows: "The Executive Director's Responses to Comment concerning NRG's Hazardous Air Pollutant Major Source Permit HAP-14 and its Air Quality Permit No. 79188 and PSD Permit No. PSD-TX-1072 are adopted and approved. If there is any conflict between the Commission's Order and the Executive Director's two Responses to Comments, the Commission's Order prevails"; direct the Executive Director to file revised permits in the Office of Chief Clerk and serve copies on the parties concurrent with the filing; direct Office of General Counsel to attach copies of the revised permits to the Order; and direct the Office of General Counsel to include an additional Ordering Provision stating that the permits take effect on the date of issuance of the Order. BS/CR; all agree.

Continue this item until the December 9<sup>th</sup> meeting. Direct the Applicant, NRG in this case, to bring back a revised order explaining the changes by noon on Wednesday, November 25, and direct that the other parties are allowed to submit response letters by 5 o'clock on Tuesday, December 1<sup>st</sup> and the continued item will be considered by the Commission on December 9<sup>th</sup> during the Agenda scheduled for that date. BS/CR; all agree.

Attachment A

**Attorney Client Confidential Communication**

**For issuance of both the MACT and NSR/PSD permits and correct FOF No. 304:**

1. **Amend FOF No. 304 on page 39** by substituting “0.12” for “0.15” as the CO MACT emission level.
2. **Adopt** NRG’s exceptions with regard to FOF Nos. 32, 291, 292, 293, and 294; COL No. 43, and Ordering Provision No. 3;

In addition, if you wish to adopt NRG’s changes to Special Condition No. 43, you would need to pick up the changes to Ordering Provision No. 1. b. in Attachment A to NRG’s exceptions.

3. **Adopt the ALJs’ order** with the revisions the ALJs recommend to their order in their 9/9/09 letter except for their recommendation to include Sierra Club’s FOFs and amended COL No. 228 with regard to required use of a PM CEMS (*ask the ALJs first about the change they propose to FOF No. 308—that would appear to add the word “metal” a second time to the finding—perhaps, it should be non-mercury*);
4. **Amend** ALJs’ FOF No. 13 on page 3 to refer to “Order No. 9” rather than to “Order No. 8”—*ALJs’ Order No. 9 abated the hearing and not their Order No. 8.*
5. **Amend** Ordering Provision 9 to read as follows (this would provide for adoption of the ED’s RTC on the MACT application as well): The Executive Director’s Responses to Comment concerning NRG’s Hazardous Air Pollutant Major Source Permit HAP-14 and its Air Quality Permit No. 79188 and PSD Permit No. PSD-TX-1072 are adopted and approved. If there is any conflict between the Commission’s Order and the Executive Director’s two Responses to Comments, the Commission’s Order prevails.
6. **Direct** the ED to file a revised NSR/PSD Permit in the OCC and serve copies on the parties concurrent with the filing, and **direct** OGC to attach a copy of the revised permit to your Order; *and in your discretion,*
7. **Direct the OGC** to include an additional Ordering Provision stating that the NSR/PSD permit takes effect on the date of issuance of your Order.

Attachment B