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December 1, 2010

Honorable Tommy L. Broyles
Honorable Craig R. Bennett
Administrative Law Judges
State Office of Administrative Hearings
300 West 14th Street
Austin, Texas 78701

Re: SOAH DOCKET NO. 582-09-2005; TCEQ DOCKET NO. 2009-0033-AIR
Application of Las Brisas Energy Center, LLC for State Air Quality
Permit Nos. 85013, HAP48, PAL41 and PSD-TX-1139

Dear Judges Bennett and Broyles:

This letter is written in response to Applicant's letter to you of yesterday, November 30, 2010, wherein Applicant indicates its intention to request that the General Counsel of the Texas Commission on Environmental Quality ("TCEQ") shorten the period for filing exceptions and replies to exceptions. EDF opposes any such shortening of the schedule for filing exceptions and replies.

The Applicant proposes to shorten the period for filing exceptions from 20 days to possibly as little as 4 days (or only 2 business days), and the period for filing replies to exceptions from 10 days to 2 days. 30 TAC § 80.257(a). The purpose of Applicant's request is so that its application can be considered at TCEQ's December 14th Agenda Meeting—the TCEQ's last scheduled meeting of the year. The Applicant's extraordinarily desperate attempts to have this matter placed on the December 14th Agenda is a predicament of its own making. As you will recall, the parties participated in a nine-day contested case hearing on Las Brisas' Application back in November 2009. Following that hearing, the ALJs, and later the Commissioners, found that the Applicant had failed to meet its burden of proof on multiple grounds. At that point, Las Brisas' Application either should have been denied or remanded to staff with new notice issued as required by law under Tex. Health & Safety Code § 382.0291(d). Instead, however, the Commission gave the Applicant another "bite at the apple" by remanding to SOAH for a second hearing which was held in October 2010. As the ALJs are aware, the remanded hearing involved a number of hotly contested issues and

substantial post-hearing briefing by the parties. We do not yet know the results of that proceeding as the ALJs have not yet issued a Proposal for Decision (“PFD”). However, one thing we do know is that there is simply no valid basis for the General Counsel to shorten the subject time periods as requested by the Applicant.

First off, reducing the filing deadlines as proposed by Applicant would substantially impair EDF’s and the other Protestants’ due process rights. Given the importance of this case (the power plant would be located within 1/2 mile of nearby schools and churches located in downtown Corpus Christi), the technical and legal complexity of the issues, and the substantial record developed before SOAH, the parties must be afforded a full and adequate opportunity to address the PFD and the parties’ exceptions to that PFD. Furthermore, constraining the parties’ abilities to effectively respond to the PFD deprives the ALJs and Commission of the intended benefit of the parties’ exceptions and replies in making the ultimate decision in this case.

More importantly, as Applicant has made clear in several prior pleadings, Applicant’s sole basis for requesting an expedited schedule is so that it can avoid the possibility of having to demonstrate compliance with federal regulations regarding greenhouse gases (the so-called “tailoring rule”) that may or may not become effective in January 2011. Assisting the Applicant in attempting to avoid the possibility of future regulation is not a valid basis for arbitrarily shortening the period for the parties to file exceptions and replies to exceptions. If Applicant wanted its permit issued this year, it should have met its burden of proof in the original proceeding and avoided remand. It did not do so. It is not the role of the TCEQ to expedite any applicant’s permit application especially when doing so is at the expense of EDF’s and the other parties’ due process rights. The General Counsel should reject Applicant’s invitation to engage in such naked favoritism.

The Applicant’s proposal would in effect fundamentally and radically short-circuit the exceptions process for no reason other than to serve the Applicant’s unilateral wish to be granted a permit before January 2011. Accordingly, EDF objects to any shortening of the time period for filing exceptions or replies to exceptions in a case of this magnitude and importance. Given the lack of any valid justification for the Applicant’s proposed schedule, EDF respectfully requests that the ALJs likewise object to shortening the subject deadlines.

Sincerely,



Thomas M. Weber

TMW/jam

- cc: Attached Service List (via facsimile or U.S. Mail)
- Mr. Les Trobman, TCEQ General Counsel (via facsimile)
- Mr. Larry Starfield, Deputy Regional Administrator, USEPA Region 6 (via facsimile)

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AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE: APPLICATION OF LAS BRISAS ENERGY CENTER, LLC FOR STATE AIR QUALITY PERMIT; NOS. 85013, HAP48, PAL41, AND PSD-TX-1138

SOAH DOCKET NUMBER: 582-09-2005

TCEQ DOCKET NUMBER: 2009-0033-AIR

STATE OFFICE OF ADMINISTRATIVE HEARINGS	CRAIG R. BENNETT TOMMY L. BROYLES ADMINISTRATIVE LAW JUDGES
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xc: Docket Clerk, State Office of Administrative Hearings
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