

Vinson & Elkins

John A. Riley jriley@velaw.com
Tel 512 542 8520 Fax 512 236 3329

December 3, 2010

By Facsimile

Mr. Les Trobman
General Counsel, MC 101
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: *TCEQ Docket No. 2009-033-AIR, SOAH Docket No. 582-09-2005; Application of Las Brisas Energy Center, LLC for State Air Quality Permit Nos. 85013, HAP48, and PSD-TX-1138*

Dear Mr. Trobman:

This letter is filed in response to the December 2, 2010 letter from Environmental Defense Fund (“*EDF*”) replying to Las Brisas’ request to expedite the exception schedule in this matter.

In its letter, EDF alludes to various reasons why the schedule should not be expedited¹ but, in the end, EDF states, without citation, that “[a]ssisting the Applicant in attempting to avoid the possibility of future regulation is an invalid basis for shortening the period for the parties to file exceptions and replies to exceptions.”² EDF’s baseless legal position is wrong. Applicant’s concerns regarding the potential for greenhouse gas regulations to become applicable to construction permits issued under the PSD program on or after January 2, 2011 present an entirely valid reason to expedite the remainder of this process. In the preamble to its “*Finding of Substantial Inadequacy and SIP Call*,”³ the Environmental Protection Agency (“*EPA*”) itself expresses concern about delays in permit issuance and construction. Specifically, EPA acknowledges “the need for prompt action to

¹ For example, EDF notes that the ALJs have only just proposed Findings of Fact and Conclusions of Law in this case and that its review will require the full 20 days. In reality, EDF simply needs to compare the findings and conclusions it proposed earlier this week to those submitted by the ALJs.

² EDF’s December 2, 2010 letter to Mr. Les Trobman at 2.

³ See 75 Fed. Reg. 53,892 (Sept. 2, 2010) [hereinafter *Inadequacy Rulemaking*].

eliminate or significantly limit any time period during which certain GHG sources are precluded from constructing or modifying” facilities.⁴ Given the status of this issue in Texas, prompt action in this remand matter would address the very same concern and would ensure that Applicant, after being embroiled in this permit dispute for several years and having proved compliance with all applicable statutory and regulatory requirements, is given the right for the Commission to determine *now* whether it may proceed to construct its facility.

Moreover, since Applicant filed its Response to the ALJs’ Order No. 21, EPA has published its PSD and Title V Permitting Guidance for Greenhouse Gases.⁵ In a footnote, EPA makes clear that: “Consistent with its regulations in 40 CFR Part 124, EPA uses the term ‘issued’ to describe the time when a permitting authority issues a PSD permit after public comment on a draft permit or preliminary determination to issue a PSD permit. Depending on the applicable administrative procedures, the date a permit is issued is not necessarily the same as the date the permit becomes effective or final agency action for purposes of judicial review.”⁶ Thus, EPA is apparently and legitimately concerned that permits *it* intends to issue not suffer setbacks as a result of its imposition of greenhouse gas regulations on permit applicants that are at the latter stages of its own permit process. In short, EPA should appreciate the Commission’s interest in hearing this matter before January 2nd because, if the Commission chooses to issue the permit, it will not be potentially set back in the process. The Commission’s concerns in this regard are shared by the Applicant and no less valid than EPA’s very same concerns.

The Las Brisas permit proceedings have been going on for years and the issues have been addressed by the parties. Furthermore, the Commission’s rules explicitly allow the exception process to be modified. Clearly the Commission is justified in placing this matter on the December 14, 2010 Agenda or setting another Agenda date in December to hear the Las Brisas permit application and deciding the matter before January 2, 2011.

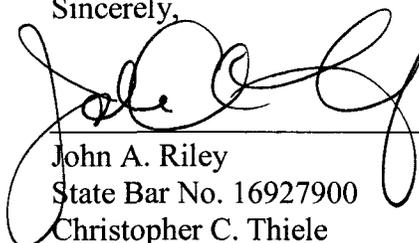
Thank you for your consideration.

⁴ 75 Fed. Reg. 53896 (Sept. 2, 2010).

⁵ See *PSD and Title V Permitting Guidance for Greenhouse Gases*, prepared by the Office of Air Quality Planning and Standards (Nov. 10, 2010) [hereinafter *GHG Permitting Guidance*].

⁶ See *id.* at 3 n.6.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Riley", written over a horizontal line.

John A. Riley

State Bar No. 16927900

Christopher C. Thiele

State Bar No. 24013622

Nikki Adame Winningham

State Bar No. 24045370

Jenifer L. Sutter

State Bar No. 24070707

VINSON & ELKINS L.L.P.

2801 Via Fortuna, Suite 100

Austin, Texas 78746

Telephone: (512) 542-8520

Facsimile: (512) 236-3329

COUNSEL FOR LAS BRISAS ENERGY
CENTER, LLC

cc: Administrative Law Judges Broyles and Bennett
Service List

CERTIFICATE OF SERVICE

I hereby certify that, on this the 3rd day of December 2010, a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. Mail, and/or Certified Mail, Return Receipt Requested, on the parties on the following service list.

FOR SOAH:

The Honorable Tommy Broyles
Administrative Law Judge
The Honorable Craig R. Bennett
Administrative Law Judge
State Office Of Administrative Hearings
300 West 15th Street
Austin, Texas 78701
Tel. (512) 475-4993
Fax: (512) 475-4994
tommy.broyles@soah.state.tx.us
craig.bennett@soah.state.tx.us

State Office of Administrative Hearings
Attn: SOAH Docket Clerk
P.O. Box 13025
Austin, TX 78711-3025
Tel: (512) 475-4993
Fax: (512) 475-4994

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela, Chief Clerk
TCEQ Office of Chief Clerk MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

FOR CLEAN ECONOMY COALITION

Gerald Sansing, Chairperson
Clean Economy Coalition
5426 Chevy Chase Dr.
PO Box 537
Corpus Christi, TX 78412
Tel: (361) 855-7051
Fax: (361) 854-5859
gsansing@gmail.com

FOR THE EXECUTIVE DIRECTOR:

Erin Selvera
Ben Rhem
TCEQ Environmental Law Division MC-173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0633 (Selvera)
Tel: (512) 239-6501 (Rhem)
Fax: (512) 239-0606
brhem@tceq.state.tx.us
eselvera@tceq.state.tx.us

**FOR THE PUBLIC INTEREST
COUNSEL**

Mr. Scott A. Humphrey
TCEQ Office of the Public Interest Counsel
MC-103
PO Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0574
Fax: (512) 239-6377
shumphre@tceq.state.tx.us

FOR SIERRA CLUB

Ilan Levin
Gabriel Clark-Leach
Environmental Integrity Project – Texas
Office
1303 San Antonio, Ste 200
Austin, TX 78701
Direct: (512) 637-9479
Fax: (512) 584-8019
ilevin@environmentalintegrity.org
gclark-leach@environmentalintegrity.org

FOR MEDICAL GROUPS

Richard Lowerre, Counsel
David Frederick, Counsel
Lowerre, Frederick, Perales, Allmon &
Rockwell
707 Rio Grande, Suite 200
Austin, TX 78701
Tel: (512) 469-6000
Fax: (512) 482-9346
rl@LF-LawFirm.com
dof@LF-LawFirm.com
and

Jeffery Wigington
Wigington Rumley, LLP
800 N. Shoreline, Suite 1400 S.
Corpus Christi, TX 78401
Fax: (361) 855-0487
jwigington@wigrum.com

**FOR LEAGUE OF UNITED LATIN
AMERICAN CITIZENS (LULAC)**

Susie Luna-Saldana, Education Chair
League of United Latin American Citizens,
Council No. 1
4710 Hakel Dr
Corpus Christi, TX 78415
Tel: (361) 779-0939

**FOR ENVIRONMENTAL DEFENSE
FUND**

Tom Weber
Matt Baab
Clark Jobe
McElroy Sullivan & Miller LLP
PO Box 12127
Austin, TX 78711
Tel: (512) 327-8111
Fax: (512) 327-6566
tweber@msmtx.com
mbaab@msmtx.com
cjobe@msmtx.com

FOR ROGER LANDRESS

Michael J. Westergren Esq.
PO Box 3371
Corpus Christi, TX 78404
Tel: (361) 765-6828
Fax: (361) 882-3928
mikewest@trip.net

**FOR TEXAS CLEAN AIR CITIES
COALITION**

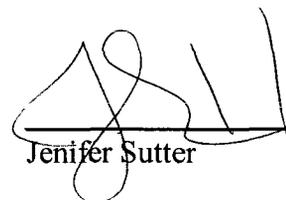
Terrell W. Oxford
Susman Godfrey LLP
901 Main, Ste 5100
Dallas, TX 75202
Tel: (214) 754-1902
Fax: (214) 665-0847
toxford@susmangodfrey.com

FOR INDIVIDUALS:

Manuel Cavazos, III
3409 Fairmont Drive
Corpus Christi, TX 78408
Tel: (361) 779-4266

and

Mr. Pat Morris
1002 Cairo Drive
Corpus Christi, TX 78412
Tel: (361) 991-0894
patrumo@juno.com


Jenifer Sutter