

Bryan W. Shaw, Ph.D., *Chairman*  
Buddy Garcia, *Commissioner*  
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
*Protecting Texas by Reducing and Preventing Pollution*

April 29, 2010

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

**RE: LAS BRISAS ENERGY CENTER LLC**  
**SOAH DOCKET NO. 582-09-2005**  
**TCEQ DOCKET NO. 2009-0033-AIR**

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Reply to Exceptions in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Humphrey".

Scott Humphrey, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 P.O. BOX 13087 AUSTIN, TEXAS 78711-3087 512-239-6363

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SOAH DOCKET NO. 582-09-2005  
TCEQ DOCKET NO. 2009-0033-AIR

APPLICATION OF LAS	§	BEFORE THE STATE
BRISAS ENERGY	§	
CENTER, LLC FOR	§	OFFICE OF
STATE AIR QUALITY	§	
PERMIT NOS. 80513,	§	ADMINISTRATIVE
PSD-TX-1138, HAP 48	§	
AND PAL 41	§	HEARINGS

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S**  
**REPLY TO EXCEPTIONS**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES (ALJs):

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Reply to Exceptions in the above-referenced matter.

**I. Introduction**

OPIC agrees with the Administrative Law Judges (ALJs) that Las Brisas Energy Center (Las Brisas or Applicant) has failed to meet its burden of proof on several issues, including: Maximum Achievable Control Technology (MACT) for the Applicant's circulating fluidized bed (CFB) boilers; emissions from material handling; and air dispersion modeling. In light of the multitude of errors contained in these applications, the Commission should deny all of the applications sought by Las Brisas. OPIC supports all of the exceptions filed by the protesting parties in this matter.

## **II. Remand or Amended Application**

OPIC notes that Texas Health and Safety Code § 382.0518(d) states that if the proposed facility will contravene the intent of this chapter, the commission may not grant the permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility. If the applicant makes the alterations to the plans and specifications to meet the commission's specific objections, the commission shall grant the permit.<sup>1</sup>

OPIC agrees with the Environmental Defense Fund that these provisions do not apply to this matter. The fundamental flaws in the applications as set out by the ALJs transcend any matters that could possibly be addressed by altering plans and specifications. Such alterations cannot change the fact that the Applicant failed to carry its burden of proof in this case.

The appropriate decision for the commission is to deny the permit applications. If Las Brisas wishes to continue pursuing the construction of this facility, it should file an amended application that addresses the numerous errors identified in the Proposal for Decision (PFD). The amended application should be subject to the notice provisions and other requirements set out in Tex. Health & Safety Code § 382.0291(d).

## **III. Conclusion**

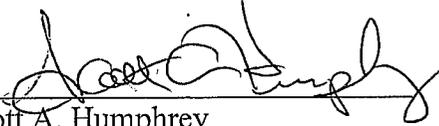
OPIC recommends the Commission deny the permit applications filed by Las Brisas in this matter.

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<sup>1</sup> Tex. Health & Safety Code § 282.0518(e)

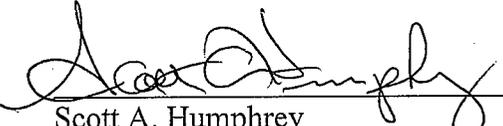
Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 29, 2010 the original and seven true and correct copies of the foregoing 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, other electronic transmission, inter-agency mail or by deposit in the U.S. Mail.

  
Scott A. Humphrey

**MAILING LIST**  
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**SOAH DOCKET NO. 582-09-2005**  
**TCEQ DOCKET NO. 2009-0033-AIR**

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