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December 21, 2010

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Via Electronic Filing and U.S. Mail

Re: TCEQ Docket No. 2009-0033-AIR; SOAH Docket No. 582-09-2005; *Application of Las Brisas Energy Center, LLC for State Quality Permit; Nos. 85013, HAP 48, PAL 41 and PSD-TX 1138.*

Dear Ms. Castañuela:

Enclosed for filing in the above-referenced cause, please find Sierra Club's Exceptions to the Proposal for Decision on Remand.

Thank you for your attention to this matter. Please call me at (512) 637-9477 should you have any questions.

Sincerely,



Erin Fonken

Enclosures

cc: Service List (*Via Electronic Mail and U.S. Mail*)

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of Sierra Club's Exceptions to the Proposal for Decision on Remand on this 21st day of December, 2010.



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

**APPLICATION OF LAS BRISAS § BEFORE THE TEXAS COMMISSION
ENERGY CENTER, LLC FOR §
STATE AIR QUALITY PERMIT § ON
NOS. 85013, PSD-TX-1138, HAP 48, §
AND PAL 41 § ENVIRONMENTAL QUALITY**

SIERRA CLUB'S EXCEPTIONS TO THE PROPOSAL FOR DECISION ON REMAND

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	PROCEDURAL IRREGULARITIES	2
III.	MATERIAL-HANDLING OPERATIONS	6
A.	The ALJs Erred in Finding that LBEC and the POCCA Bulk Dock “Options” Do Not Constitute a Single Stationary Source for Purposes of PSD Permitting. ...	8
1.	LBEC and the Bulk Dock Material Handling Operations Will Be Under Common Control.	9
2.	Equitable Considerations Support a Single Source Determination.	14
B.	Binding LBEC to the Bulk Docks Scenarios Does Not Correct the Deficiency. .	14
IV.	AIR QUALITY IMPACTS MODELING	16
V.	BEST AVAILABLE CONTROL TECHNOLOGY.....	18
A.	In General.....	18
B.	Total PM/PM ₁₀	19
C.	Mercury.....	22
VI.	OTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT SHOULD BE REVISED OR DELETED	22
A.	Case-by-Case MACT for the Main Boilers	22
B.	BACT.....	23
1.	Carbon Monoxide	23
2.	H ₂ SO ₄	24
3.	Carbon Dioxide.....	24
4.	The PM _{2.5} Surrogacy Policy.....	25
5.	PM CEMS.....	26
VII.	CONCLUSION.....	26

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

APPLICATION OF LAS BRISAS	§	BEFORE THE TEXAS COMMISSION
ENERGY CENTER, LLC FOR	§	
STATE AIR QUALITY PERMIT	§	ON
NOS. 85013, PSD-TX-1138, HAP 48,	§	
AND PAL 41	§	ENVIRONMENTAL QUALITY

SIERRA CLUB’S EXCEPTIONS TO THE PROPOSAL FOR DECISION ON REMAND

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Protestant Sierra Club and files these Exceptions to the Proposal for Decision on Remand (“PFD on Remand”) submitted by the Administrative Law Judges (“ALJs” or the “Judges”) in the above referenced dockets.

I. INTRODUCTION

On December 1, 2010 the ALJs issued a PFD that for a *second time* declines to recommend that the Texas Commission on Environmental Quality (the “Commission”) grant Las Brisas Energy Center, LLC’s (“LBEC” or “Applicant”) air permit application. The ALJs found that the Applicant failed to meet its burden to demonstrate that LBEC’s proposed facility will not cause or contribute to air pollution in violation of the federal standards, specifically to a violation of the PM₁₀ Prevention of Significant Deterioration (“PSD”) increment. As such, the ALJs could not recommend issuance of the permit.

Sierra Club concurs with the ALJs’ finding that LBEC has not demonstrated compliance with the 24-hour PM₁₀ PSD increment and agrees with the ALJs’ decision not to recommend issuance of the permit. However, Sierra Club does not agree that the Executive Director’s

(“ED”) modeling cures the deficiencies in LBEC’s modeling, because Protestants have demonstrated throughout this proceeding that PM emissions from the entire LBEC facility will repeatedly violate the PM₁₀ PSD increment, whether or not the ED’s modeling corrections are considered. Furthermore, Sierra Club does not agree that Applicant has prevailed on the other key issues on remand, including Best Available Control Technology (“BACT”) for total PM (PM/PM₁₀), mercury, and material handling sources. Sierra Club also excepts to a number of the findings of fact (“FOF”) and conclusions of law (“COL”) in the ALJs’ Proposed Order that relate to issues from both the November 2009 hearing and the October 2010 hearing on remand.

Therefore, based on these fatal flaws and deficiencies, which persist despite LBEC’s more than ample opportunities to satisfy its legal obligations, Sierra Club urges the Commissioners to either deny the permit or, in the alternative, remand the Application and Draft Permit¹ to the ED for further review.²

II. PROCEDURAL IRREGULARITIES

As a preliminary matter, Sierra Club urges the Commission to cure the procedural irregularities that plagued this contested case. After it was determined that LBEC had failed to meet its burden in the November 2009 hearing, the correct course of action for the Commission was to either deny the permit or remand it to the ED for additional technical review. Instead, the

¹ These Exceptions collectively refer to Applicant’s PSD permit application (PSD-TX-1138), its hazardous air pollutant application (HAP 48), its plant-wide applicability limit (PAL 41) and state air quality permit (85013) as the “Application.”

² Sierra Club reserves the right to address all exceptions filed by LBEC and the ED. Sierra Club incorporates by reference herein the arguments set forth in Sierra Club’s Closing Brief on Remand and Brief in Reply to Closing Arguments on Remand previously filed in these dockets. Additionally, Sierra Club incorporates by reference the exceptions filed by other Protestants, to the extent they do not contradict the exceptions below. The exceptions below are not inclusive of all issues that may be raised in a motion for rehearing, should the Commission issue a final permit for the LBEC facility.

Commission remanded directly to the State Office of Administrative Hearings (“SOAH”); this action was a violation of both state and federal law, as well as inappropriate and inefficient.

As Sierra Club has previously explained, after the completion of the original contested case hearing, the Commission by law had two options: (1) deny the Application outright; or (2) remand to the ED for further technical review. First, state law required the Commission to remand to the ED rather than remand to the SOAH, in order for LBEC to plug up the holes in its flawed Application. Specifically, Texas Health and Safety Code §382.0291(d) provides:

An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the commission may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the commission and must again comply with notice requirements and any other requirements of law or commission rule as though the application were originally submitted to the commission on that date.

Thus, LBEC could not amend its Application within 30 days of the contested case hearing. Second, as a matter of law, denial or remand to the ED for additional technical review were the *only* options available, because TCEQ regulations, which adopt the federal Clean Air Act requirements, clearly require technical review and public notice of a maximum achievable control technology (“MACT”) determination for the LBEC’s main boilers.³

Consistent with the requirements of 40 Code of Federal Regulations §63.43 (concerning maximum achievable control technology determinations for constructed and reconstructed major sources), the owner or operator of a proposed affected source...shall submit a permit application as described in §116.110 of this title (relating to Applicability).⁴

³ Although the Commission did not remand the issue of whether LBEC was required to apply MACT to the main LBEC boilers, Sierra Club has previously argued and continues to assert (see Section VI.A) that the MACT requirement applies.

⁴ 30 TEX. ADMIN. CODE § 116.404.

In adopting these rules,⁵ TCEQ stated that federal MACT requirements are implemented through the preconstruction air permitting program.

40 CFR Part 63, Subpart B, requires the commission to make case-by-case MACT determinations for affected sources (as defined in §116.15(1), concerning Section 112(g) Definitions) that become subject to §112(g) prior to the EPA promulgating a MACT that would apply to the affected source. 40 CFR 63, §63.42, allows states to rely on existing NSR permitting programs to implement the requirements of §112(g) if the NSR program meets the requirements of that subpart. The commission believes that the adopted revisions to Chapter 116 concerning §112(g) will successfully implement the requirements of §112(g) and 40 CFR Part 63, Subpart B.⁶

Because LBEC's main boilers are subject to federal Clean Air Act Section 112 and case-by-case MACT applies, a *new application* subject to *technical review* and *public notice* is required in order for LBEC to begin construction.

Notwithstanding the legal requirements, a remand to the ED for further technical review was necessary for other reasons. First, given the numerous and significant additional deficiencies in the Application noted by the ALJs in their March 29, 2010 PFD (the "Original PFD"), including the failure to include secondary emissions and material handling in air dispersion modeling, the only practical course of action by the Commission at the June 30, 2010 agenda was denial or remand to the ED. These options were the only two pathways that would have allowed the necessary technical review and careful re-drafting of the permit by the ED to take place.

Second, as a matter of equity, by remanding several issues to the ALJs, with instruction to take additional evidence, the Commission gave LBEC an inappropriate second bite at the apple, effectively eviscerating the adversarial part of the hearing process. A party who fails to

⁵ 30 TEX. ADMIN. CODE § 116.400 *et. seq.* was renumbered in 2006 to allow for code reorganization. 31 Tex. Reg. 516, 521. (2006). Prior to the reorganization, these rules were located at 30 TEX. ADMIN. CODE 116.180-183, adopted and effective July 8, 1998. 23 Tex. Reg. 6,973, 6,973 (1998).

⁶ 23 Tex. Reg. 6,973, 6,976 (1998).

meet its burden of proof loses. The party who has the burden but fails to persuade the trier of fact is not entitled to a second trial to present more evidence.⁷

In the PFD on Remand, the ALJs note the irregularity of, in addition to the practical difficulties caused by, remand of LBEC's Application without additional technical review. For example:

It is also consistent with Mr. Jamieson's testimony during the remand hearing that the present case is unique, given the Application remained in a contested case proceeding before SOAH while additional technical review was preformed. This was the *first time* he performed the evaluations he conducted while a case was in hearing.⁸

Furthermore, the ALJs note that “[h]ad this matter been remanded to the ED for proper technical review, as was requested by Protestants, the ED would have been better situated to perform his regulatory duties in the ordinary course of action.”⁹

The remand to SOAH was, therefore, extremely inefficient, confusing for the parties, and to some extent, a waste of the time and efforts of all parties. For example, the failure to remand for additional technical review of LBEC's modeling, which would have allowed LBEC to re-run its modeling and potentially correct any deficiencies, imposed enormous drains on the ED's modeling staff, and thus in turn, costs on the Texas taxpayer. TCEQ modeler Mr. Jamieson spent between 200 and 300 hours on remand correcting deficiencies in LBEC's modeling.¹⁰ This extraordinary effort far exceeds the 8 to 60 hours that a modeler would normally spend reviewing an applicant's modeling.¹¹ And yet, despite the great effort expended by the ED, after a second hearing on the merits, and over two years since LBEC initially filed its Application, the

⁷ *Coalition of Cities for Affordable Utility Rates, et al., v PUC, et al.*, 798 S.W.2d 560 (Tex. 1990).

⁸ PFD on Remand at 27.

⁹ *Id.* at 28.

¹⁰ *Id.* at 18.

¹¹ *Id.*

ALJs are still unable to recommend issuance of LBEC's permit because LBEC's modeling does not demonstrate that the facility will not violate the PSD increments.

Finally, a remand to the ED for additional technical review (or an outright denial which would have allowed LBEC to file a *new* application) would have cured another fatal flaw in the Application—namely, the lack of any demonstration showing LBEC will not violate short-term sulfur dioxide (“SO₂”) and nitrogen oxides (“NO₂”) National Ambient Air Quality Standards (“NAAQS”). These national health-based standards were finalized after LBEC first submitted its Application, but are applicable standards today. Should the Commission choose to issue a Final Permit absent any demonstration that the proposed facility will not cause or contribute to a violation of these national standards, the issuance of the permit will be a clear violation of the federal Clean Air Act Section 165 (PSD).

Given the numerous problems caused by remanding the Application to SOAH, the Commission should take this opportunity now to correct this error, either by ordering the Application re-filed and re-noticed pursuant to Texas Health and Safety Code § 382.0518(e) or denying the Application outright.

III. MATERIAL-HANDLING OPERATIONS

Sierra Club supports the ALJs' findings that LBEC's air modeling failed to properly account for emissions from material handling operations.¹² However, the ALJs incorrectly determine that LBEC and the POCCA material handling operations are not the same “stationary source” for purposes of PSD permitting. As a consequence, the ALJs improperly conclude that LBEC's “off-site” material handling operations should be modeled as secondary emissions. U.S.

¹² See *e.g.*, FOF No. 108.

Environmental Protection Agency (“EPA”) regulations and guidance, avoidance of circumvention, and also considerations of equity, dictate that LBEC’s potential material-handling scenarios should be treated as part of the stationary source for PSD permitting. Thus, LBEC was required to account for emissions from material handling operations as part of the stationary source itself in its modeling, and was required to perform a BACT evaluation for such sources.

As represented in the permit application and throughout the hearing, LBEC will “require” more than seven million tons per year of petroleum coke, limestone, and other materials in order to operate the power plant.¹³ The material handling operations necessary to deliver, store, and handle these materials represent the largest sources of low level particulate emissions from the entire LBEC operation. LBEC, without committing to a specific plan for the material handling operations, arbitrarily seeks to sever these sources of emissions from the power plant. Specifically, on remand, the Applicant vaguely relied on two potential material handling scenarios, which it referred to as “Option 1” and “Option 2.”¹⁴ These “scenarios” involve the use of the Port of Corpus Christi Authority’s (“POCCA’s”) Bulk Dock 1 and Bulk Dock 3, respectively, which LBEC claims are authorized under air permits held by POCCA.

Sierra Club contends that the material handling operations are part of the same stationary source as the power plant, and hence LBEC’s application is fatally deficient, both in regard to modeling and with regard to a BACT analysis for the material handling operations. Therefore, the FOF Nos. 19, 104, 105, 107, 199, and 200 and COL Nos. 24 and 40 are in error. Thus, for the reasons explained below, LBEC’s Application is deficient as a matter of law because it fails

¹³ LBEC Ex. 3 at LB000472 (Application) (“Material handling facilities will be required for pet coke, limestone, lime, soda ash, sand, and combustion by-products (fly ash and bottom ash).”)

¹⁴ See e.g., 11 Tr. 2588:3-6. The Option 1 and 2 scenarios were not introduced until the remand hearing. Previously, LBEC relied on alternative material handling plans, as described in Sierra Club’s Closing Brief on Remand at 19-20.

to consider the power plant and material handling facilities a “single source,” and should be denied.

A. The ALJs Erred in Finding that LBEC and the POCCA Bulk Dock “Options”¹⁵ Do Not Constitute a Single Stationary Source for Purposes of PSD Permitting.

LBEC and the POCCA Bulk Docks constitute a single “major stationary source” under the federal Clean Air Act for purposes of PSD review. Two important consequences flow from this determination. First, as Environmental Defense Fund (“EDF”) demonstrated at the remand hearing, exclusion of the material handling operations from the “stationary source” artificially reduces the area of impact for purposes of evaluating emission impacts.¹⁶ Dr. Roberto Gasparini’s modeling and testimony establish that emissions from the entire stationary source—LBEC and the POCCA Bulk Docks—exceed the 24-hour PM₁₀ PSD increment on numerous occasions.¹⁷ Second, if the POCCA Bulk Docks are treated as part of the same stationary source as the power plant, LBEC must apply BACT to the material handling sources. LBEC failed to perform a BACT analysis for material handling operations.

For facilities to constitute a single source of air pollution under the PSD permitting program, the following three criteria must be satisfied: (1) the facilities are located on one or more contiguous or adjacent properties; (2) they share the same two-digit (major group) Standard Industrial Classification (“SIC”) code (or one facility is considered a support facility to the other); and (3) they are under common control.¹⁸ The PFD on Remand notes that there “is no dispute that the POCCA site is contiguous with the LBEC site.”¹⁹ Furthermore, the ALJs found

¹⁵ Sierra Club refers to the POCCA Bulk Dock 1 and Bulk Dock 3 scenarios (also referred to as Option 1 and Option 2, respectively) collectively as the “POCCA Bulk Docks” to describe the material handling operations at issue.

¹⁶ See EDF’s Closing Brief On Remand at 21-22.

¹⁷ See EDF Exs. 405 & 411.

¹⁸ 40 C.F.R. §§ 52.21(b)(5) & (b)(6).

¹⁹ PFD on Remand at 10.

that although the Bulk Docks and LBEC share difference source codes, “the LBEC facility and the POCCA material-handling options arguably could be grouped together and treated as a single source for grouping purposes, because the POCCA material-handling options would be support facilities for the LBEC facility.”²⁰ However, with regard to the third prong of the analysis, the ALJs erroneously conclude that LBEC does not exercise common control over the Bulk Docks, resulting in the ALJs’ ultimate conclusion that the POCCA Bulk Docks are not part of the same stationary source. The ALJs reach this conclusion by failing to apply the case-by-case analysis required by EPA guidance and by improperly removing LBEC’s burden of proof with regard to emissions from its material handling operations.

1. LBEC and the Bulk Dock Material Handling Operations Will Be Under Common Control.

EPA guidance, which the ALJs found instructive,²¹ provides that common control can be established in any number of ways:

First, common control can be established through ownership of multiple sources by the same parent corporation or by a parent and a subsidiary of the parent corporation. Second, common control can be established if an entity such as a corporation has the power to direct the management and policies of a second entity, thus controlling its operations, through a contractual agreement or a voting interest. If common control is not established by the first two mechanisms, then one should consider whether there is a contract for service relationship between the two companies or if a support/dependency relationship exists between the two companies in order to determine whether a common control relationship exists.²²

Whether a control relationship falls into the latter category is a case-by-case determination, resolved by a long list of factors in more ambiguous cases. Key factors to the control analysis, as

²⁰ PFD on Remand at 10.

²¹ *Id.* at 12 (“The ALJs agree that the EPA’s guidance in that letter is instructive.”).

²² EDF Ex. 327 (Letter from Richard R. Long, Director, Air Programs, EPA Region 8, to Julie Wrend, Colorado Department of Public Health and Environment, Re: Single Source Determination for Coors/TriGen (Nov. 12, 1998)).

reflected in EPA guidance, include: interrelatedness/operational support;²³ sharing of equipment, including pollution control equipment;²⁴ general contractual arrangements;²⁵ and financial arrangements.²⁶

Evidence in the record demonstrates that a number of EPA's key control factors are met, supporting a case-by-case determination of common control:

- *Interrelatedness*: LBEC and the POCCA Bulk Docks will operate interdependently.²⁷ LBEC could not operate without the pet coke, limestone, and other bulk materials currently envisioned to be supplied from the POCCA Bulk Docks. Likewise, without the POCCA Bulk Docks to serve LBEC's material handling needs, LBEC would have to find an alternate source for storage and handling of these materials.
- *Control Over Design of the Bulk Docks' Material Handling Facilities*: LBEC will control the design of the material handling facilities that will potentially be constructed at the POCCA Bulk Docks.²⁸ LBEC fact witness Mr. Brogan testified that "LBEC and some of its consultants *have provided* the [POCCA] with two design scenarios, both of which would meet LBEC's storage and material handling needs."²⁹

²³ Letter from EPA Region 5 to Bureau of Air, Illinois EPA, Re: Air Products and Chemicals Incorporated (Sept. 20, 2007) (finding that the Tuscola, Illinois facilities of two different companies, Air Products and Chemicals Incorporated and Cabot Corporation should be considered a single source); Letter from John Seitz, U.S. EPA Office of Air Quality Planning and Standards to Kentucky Division of Air Quality, Re: Gallatin Steel (Mar. 29, 2001).

²⁴ Letter from William A. Spratlin, Director, Air, RCRA, and Toxics Division, EPA Region VII, to Peter R. Hamlin, Chief, Air Quality Bureau, Iowa Department of Natural Resources (Sept. 18, 1995); Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, regarding Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act, at 10 (Aug. 2, 1996).

²⁵ Letter from William A. Spratlin, *supra* note 24.

²⁶ *Id.*

²⁷ 11 Tr. 2668:8-15 (Gasparini) ("[a]nd, ultimately, since [the Bulk Docks] would be serving the Las Brisas plant, the rates at which those facilities would be operating at and, hence, emitting at would ultimately be controlled by the rates at which the Las Brisas plant is being operated.")

²⁸ 11 Tr. 2668:8-15 ("[T]he planning stages of those two scenarios are basically dictated by Las Brisas.")

²⁹ LBEC Ex. 800 at 9:11-12 (emphasis added).

- *Control Over Pollution Control Equipment:* Evidence from the hearing strongly suggests that LBEC will be responsible for design, implementation and operation of pollution control equipment and emissions generated by the material handling facilities.³⁰ LBEC will dictate design of the entire facility, which includes pollution control such as the enclosed conveyor originating on POCCA property.
- *Financial Control:* Mr. Brogan testified that LBEC may pay for the necessary capital improvements at the POCCA Bulk Docks.³¹
- *Operational Control:* An email from TCEQ modeler and witness Dan Jamieson to Mr. Cabe, Mr. Ellis, and other TCEQ staff persons summarizing a phone call between Mr. Jamieson, Mr. Cabe, and Mr. Ellis, notes that: “[t]hey also confirmed that no other Dock 2 sources would be operating at the same time as the sources included in the scenarios presented.”³² Mr. Jamieson testified that they refers to Mr. Cabe and Mr. Ellis—“representatives of the Applicant”—who were conducting the modeling on behalf of LBEC.³³ LBEC’s ability to confirm that no other sources will be operating at Bulk Dock 2 suggests that LBEC will maintain significant operational control over the day-to-day activities at the POCCA Bulk Docks.

³⁰ 11 Tr. 2668:4-7 (Gasparini) (“all of the emissions that would be generated from those sources are based on whatever control equipment or however those two scenarios are configured”). Mr. Cabe also testified that LBEC “petroleum and limestone will be transported on-site via an enclosed conveyor that will originate off-site.” LBEC Ex. 600 at 28:16:17 (Cabe). Finally, in Applicant’s Remand Closing Arguments, LBEC again confirms that the conveyor system bringing pet coke and limestone to the LBEC power plant will be designed by LBEC and originate off-site. LBEC’s Remand Closing Argument at 18.

³¹ 13 Tr. 3141:14-23 (agreeing that LBEC paying for improvements of the Bulk Docks constitutes “one possible scenario”).

³² ED Ex. 49 at 2.

³³ 12 Tr. 2897:21-2899:3 (Jamieson).

Taken together, these factors support a finding that LBEC will control the Bulk Docks. In addition, equitable considerations further bolster a determination of common control, as discussed in more detail below.

The ALJs agree that EPA has delineated four mechanisms that may be used to show common control (common ownership right of operational control; a more limited contractual right of control; or a support/dependency relationship that would give effective control) and that any of these mechanisms could establish control.³⁴ However, the ALJs find that the LBEC and the POCCA Bulk Docks do not satisfy any of these mechanisms. The ALJs' analysis is deficient in two respects.

First, the ALJs ignore the case-by-case element of the latter two control mechanisms. For both, EPA has specified that the individual control factors listed above are key to the common control determination, particularly where the case is not clear cut. In the PFD on Remand, the ALJs entirely disregard the individual control factors, discussed in Protestants' closing briefs, and completely unaddressed by LBEC. Instead of analyzing the individual control factors relied on by EPA, the ALJs instead focus exclusively on the Coors Brewery decision³⁵ by EPA. In that case, EPA found that Coors Brewery and an on-site power plant were under common control. The ALJs compare the Coors scenario to LBEC's facts and find it inapplicable.³⁶ However, the ALJs comparison is superficial at best—the Judges analogize the power plant with the entire POCCA organization, rather than specifically with the POCCA Bulk Docks at issue. This comparison is apples to oranges, for the owner of the power plant in the Coors example, Tri-Gen, could very well own other plants and properties that EPA did not consider in its

³⁴ PFD on Remand at 12.

³⁵ EDF Ex. 227.

³⁶ PFD on Remand at 12.

common control determination. This mistake alone renders the ALJs' analysis of the Coors Brewery decision deficient. In addition, the Coors decision represents but one example of EPA's longstanding common control policy. As such, the ALJs err in dismissing all of the factors weighing in support of common control solely on the basis that LBEC's situation is not a mirror image of the Coors Brewery example.

Second, the ALJs fixate on the fact that "Protestants' arguments . . . depend on certain assumptions that are not *currently true*."³⁷ However, the burden of proof in this case does not lie with Protestants—it is the Applicant's job to demonstrate the nature of its material handling operations. Under TCEQ's rules, the Applicant must provide in its Application information which demonstrates that emissions from the facility will meet all of the enumerated requirements, including all applicable requirements concerning PSD review.³⁸ The TCEQ's PSD requirements in turn require compliance with 40 CFR § 52.21(k), which requires that the Applicant "shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increase or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of" any NAAQS or PSD increment.³⁹ LBEC has not offered a shred of evidence to rebut Protestants' arguments that LBEC and the POCCA Bulk Docks will be under common control and hence a single source for PSD permitting purposes. Rather, the little evidence that LBEC has provided suggests that LBEC will exercise control over the design, construction, financing, and operation of the Bulk Docks.

³⁷ PFD on Remand at 13.

³⁸ 30 TEX. ADMIN. CODE § 116.111(a)(2)(I).

³⁹ See 30 TEX. ADMIN. CODE § 116.160; 40 C.F.R. § 52.21(k).

2. Equitable Considerations Support a Single Source Determination.

Furthermore, equitable considerations bolster a finding that LBEC and the POCCA Bulk Docks will be under common control. To find otherwise would reward LBEC for obscuring the facts and allow circumvention of PSD permitting requirement, including BACT, potentially resulting in violations of both state and federal law. Furthermore, a finding that LBEC and the POCCA Bulk Docks are not a single source would relieve Applicant of its burden of proof to demonstrate that the facility may be constructed and fully operated without causing or contributing to air pollution.⁴⁰ The only roadblock in defining the “stationary source” to be permitted is the Applicant, who has spent the last two years hiding the ball and switching course on its material handling operations story. If LBEC’s unsupported claim that LBEC and the POCCA Bulk Docks constitute separate sources for permitting purposes is allowed to stand, and LBEC is awarded its air permits, absolutely nothing prevents LBEC from exercising complete control over material handling operations at the POCCA Bulk Docks.

B. Binding LBEC to the Bulk Docks Scenarios Does Not Correct the Deficiency.

The ALJs agreed with Protestants that LBEC must commit to a material handling scenario in order to meet its burden of proof:

If an application can merely offer options for how it is possible to meet the requirements—without any commitment by the applicant to actually use the proposed options—then the applicant has not shown that it ‘will meet’ the requirements; it has merely shown that it is theoretically possible to meet the requirements.

However, rather than recommending outright denial or remand, which Sierra Club contends is required in order to cure this defect alone, the ALJs find that this concern would be resolved if the Commission includes an ordering provision binding LBEC to the material-handling options

⁴⁰ The Judges noted this failure in the Original PFD at 41.

that it has modeled, or options that have emissions impacts that are no worse than the modeled options. The ALJs propose specific language providing that “LBEC is responsible for either building material handling operations in accordance with one of the two proposals” or for obtaining the usual Commission approval for any changes.⁴¹

Unfortunately, such a condition would not prevent LBEC from exercising control over the POCCA Bulk Docks. If LBEC “builds” material handling operations at the POCCA Bulk Docks as proposed, then by definition it exercises control over the operations, and hence the power plant and the material handling operations at the POCCA Bulk Docks constitute a single source. Yet, LBEC would have avoided appropriate consideration of material handling emissions in modeling (that according to Protestant EDF’s modeling would have necessitated permit denial for PM₁₀ PSD increment violations), *and* avoided applying BACT to these sources. Furthermore, even with such a condition in place, absolutely nothing precludes LBEC from exercising common control over the POCCA Bulk Docks via ownership of the POCCA Bulk Docks property, a contractual agreement granting LBEC operational control, or simply through additional control factors that would provide an even more overwhelming showing of control in the case-by-case common control analysis. Therefore, Sierra Club respectfully disagrees that such a condition can remedy LBEC’s failure to commit to a material handling operations scenario and to account for emissions generated by the more than seven million tons per year of petroleum coke, limestone, and other materials that will move through the POCCA Bulk Docks each year in order for the power plant to operate. Instead the Commission must deny the Application.

⁴¹ PFD on Remand at 37, n.75.

IV. AIR QUALITY IMPACTS MODELING

EPA recently promulgated new NAAQS for two criteria pollutants: NO₂ and SO₂. On February 9, 2010, EPA revised the primary NAAQS for NO₂, effective April 12, 2010.⁴² Specifically, EPA established a new one-hour standard for NO₂ at a level of 100 parts per billion (“ppb”) to supplement the existing annual standard of 53 ppb. Then, on June 22, 2010, EPA promulgated a new one-hour primary NAAQS for SO₂, effective August 23, 2010.⁴³ Specifically, EPA established a new 1-hour SO₂ standard at a level of 75 ppb, which replaces the previous 24-hour and annual primary SO₂ standards.

The ALJs declined to address Sierra Club’s argument that LBEC was required to model and demonstrate compliance with the newly-promulgated NAAQS for SO₂ and NO₂. However, the PFD on Remand calls the issue to the Commission’s attention, noting that “[i]f the Commission believes that the law requires an applicant to demonstrate compliance with all applicable NAAQS standards at the time the permit issues, the LBEC has not done this, because it has not addressed these new NO₂ and SO₂ standards, nor demonstrated compliance with them.”⁴⁴

Revisions to a NAAQS take effect immediately. Thereafter, any PSD permit applicant must demonstrate compliance with the new NAAQS prior to permit issuance. Section 165 of the federal Clean Air Act explicitly provides that “no major facility may be constructed unless the owner or operator of such facility demonstrates . . . that emissions from construction or operation of such facilities will not cause, or contribute to, air pollution in excess of any . . . (B)

⁴² 75 Fed. Reg. 6,474 (Feb. 9, 2010).

⁴³ 75 Fed. Reg. 35,520 (June 22, 2010).

⁴⁴ PFD on Remand at 39.

national ambient air quality standard in any air quality control region. . .”⁴⁵ EPA has repeatedly expressed this Clean Air Act requirement in various guidance documents, including the preamble to the new NO₂ NAAQS: “major new and modified sources applying for NSR/PSD permits will initially be required to demonstrate that their proposed emissions increases of NO₂ will not cause or contribute to a violation of either the annual or 1-hour NO₂ NAAQS and the annual PSD increment.”⁴⁶ Likewise, TCEQ rules specify that “[t]he commission may not issue a permit to any major new stationary source or major modification located in an area designated attainment or unclassifiable, for any National Ambient Air Quality Standard (NAAQS) under [federal Clean Air Act], § 107, if ambient air impacts from the proposed source would cause or contribute to a violation of any NAAQS.”⁴⁷ As recently as November 1, 2010, the ED expressly confirmed that air permit applicants must comply with the new NAAQS:

The ED’s position has been that for purposes of judicial efficiency, the BACT analysis ends at the conclusion of the technical review; however, an analysis of achievable control technologies is distinguishable from a newly issued NAAQS. All owners and operators of new and modified facilities, including Tenaska, will be required to demonstrate that their emissions will not cause or contribute to a violation of the new [SO₂ one-hour] NAAQS.⁴⁸

As the ALJs correctly note, LBEC has not yet received a final permit and has not made the required demonstration under 40 CFR § 52.21(k). Therefore, the FOF Nos. 43, 48, 56, and 85 are in error and the Application should be denied or, in the alternative, remanded to the ED for technical review so that the required demonstration is made.

⁴⁵ 42 U.S.C. § 7475(a).

⁴⁶ 75 Fed. Reg. 6,474, 6,525. Similarly, in the final SO₂ NAAQS rule, EPA noted that “the owner or operator of any major stationary source or major modification obtaining a final PSD permit on or after the effective date of the new 1-hour SO₂ NAAQS will be required, as a prerequisite for the PSD permit, to demonstrate that the emissions increases from the new or modified source will not cause or contribute to a violation of that new NAAQS.” 75 Fed. Reg. 35,520, 35,578.

⁴⁷ 30 TEX. ADMIN. CODE § 116.161.

⁴⁸ *Application of Tenaska Trailblazer Partners, LLC for State Air Quality Permit Nos. 84167, HAP 13, and PSD-TX-1123*, Executive Director’s Replies to Exceptions to the Administrative Law Judges’ Proposal for Decision at 2 (Nov. 1, 2010).

V. BEST AVAILABLE CONTROL TECHNOLOGY

A. In General

The federal definition of BACT requires consideration of alternative production processes or innovative fuel combustion techniques, such as clean fuels, in the BACT review of a preconstruction air permit application. Specifically, BACT is defined as:

[A]n emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, *clean fuels*, or treatment or innovative fuel combustion techniques for control of each such pollutant.⁴⁹

TCEQ's currently approved State Implementation Plan ("SIP") requires that TCEQ apply the federal definition of BACT in its BACT review of a PSD permit application. And in fact, Texas has committed, through its SIP, to make consideration of clean fuels a part of the BACT analysis. The Texas SIP contains an April 14, 1992 letter from Steve Spaw, Executive Director, Texas Air Control Board to the U.S. EPA Region 6, explicitly committing that Texas "will consider in our evaluation of PSD applications clean fuels as an available means of reducing emissions, along with other approaches in our BACT analyses." This letter is an enforceable commitment by the State.⁵⁰

The record is devoid of any evidence demonstrating that either LBEC or the ED considered any fuels, other than petroleum coke, as part of the BACT analysis. Furthermore, testimony regarding the average mercury content of pet coke relied upon in the Application and

⁴⁹ 42 U.S.C. § 7479(3) (emphasis added).

⁵⁰ See Approval and Promulgation of Implementation Plan, State of Texas, Prevention of Significant Deterioration, Final Rulemaking, 57 Fed. Reg. 28,093, 28,096 (June 24, 1992) ("EPA is today taking final action to approve the following as part of the Texas PSD SIP: ... (4) the TACB commitment letters submitted by the Executive Director on September 5, 1989 and April 17, 1992.").

Draft Permit does not even represent “clean” petroleum coke. Rather, LBEC assumed an extraordinarily “dirty” pet coke in calculating its emission limits.

Emission levels from two identically controlled pet coke-fueled circulating fluidized-bed (“CFB”) boilers could be quite different if the pet coke each burns is acquired from different sources.⁵¹ Armed with the knowledge that emissions vary widely with different pet cokes, LBEC and the Executive Director still failed to make any demonstration whatsoever that the proposed BACT emission levels satisfy the requirement to consider cleaner, lower mercury content pet coke. Therefore, LBEC has failed to satisfy its burden that BACT limits will represent the maximum degree of reduction of emissions. This is true for all pollutants subject to BACT, and certainly for total PM and mercury at issue on remand. The ALJs’ PFD on Remand and Proposed Order read out of the definition of BACT the requirement to consider alternative production processes or innovative fuel combustion techniques, such as clean fuels. Therefore, FOF Nos. 196, 197, 199, and 200 and COL Nos. 23, 24, and 40 are in error and/or are deficient.

B. Total PM/PM₁₀

The ALJs find that 0.025 lb/MMBtu represents BACT for total PM/PM₁₀ based upon the Commission’s decision in the White Stallion case. However, the ALJs’ recommendation in the White Stallion case, in addition to other recently issued permits with lower PM BACT limits, constitute persuasive evidence that BACT for PM is actually significantly lower than 0.025 lb/MMBtu.

At a bare minimum, BACT should be set in the range of 0.016 to 0.018 lb/MMBtu. The January 2008 permit for Santee Cooper Pee Dee Generating Station’s two 660 MW super-critical pulverized coal (“PC”) boilers contains a total PM limit of 0.018 lb/MMBtu on a three-hour

⁵¹ LBEC Ex. 600 (Cabe Direct) at 19:16-18.

average.⁵² While the Santee Cooper units use coal and a PC boiler, the record evidence does not address the Santee Cooper permit limit of 0.018 lb lb/MMBtu total PM or explain why this limit does not represent BACT for LBEC's PM emissions, as previously noted by the ALJs in the Original PFD. Likewise, in the PFD on Remand, the ALJs fail to address the Santee Cooper total PM limit or provide a reasoned analysis as to why this limit was not recommended as BACT.

Furthermore, the total PM limit recommended by the ALJs in the White Stallion Energy Center contested case hearing for that plant's CFB boilers, in addition to testimony of LBEC expert witness, Mr. Shanon DiSorbo, support a slightly lower limit of 0.016 lb/MMBtu total PM. Specifically, in the White Stallion contested case hearing, the ALJs recommended a total PM limit of 0.016 lb/MMBtu for pet coke, based on a vendor guarantee.⁵³ As the Judges noted in the Original PFD, "[i]f one set of design engineers or contractors are willing to guarantee a certain level of performance, then that level of performance should be able to be achieved by others who are using the same control technologies, same boiler types, and same fuel types."⁵⁴ Yet, LBEC has offered no reason why its facility could not achieve this same level of performance. Second, the testimony of LBEC's own expert witness, Mr. DiSorbo, supports a limit of 0.016 lb/MMBtu, based on the sum of the limits for filterable PM and H₂SO₄. In the November 2009 hearing on the merits, when asked how the total PM rate is calculated, Mr. DiSorbo explained:

⁵² EDF Ex. 1 at 36:10-15 (Sahu); EDF Exhibit 18 at 3 (Santee Cooper Pee Dee Permit). In the November 2009 hearing, the Judges gave significant weight to this emission limit: "The proposed total PM limit of 0.033 lb/MMBtu is 83% higher than the limit for the Santee Cooper unit, and 32% higher than the limit in the permit recently issued to NRG. While the ALJs acknowledge that those two units use coal and/or a PC boiler, the record evidence does not demonstrate that those differences alone would justify as significant a difference in the permitted limit." Original PFD at 89.

⁵³ 10 Tr. 2461:10-21 (Sahu); *Proposal for Decision In the Matter of WSEC Energy Center, L.L.C., Application for Air Quality Permit Nos. 86088, HAP28, PAL26, and PSD_TX-1160*; TCEQ Docket No. 2009-0283-AIR; SOAH Docket No. 582-09-3008, at 74.

⁵⁴ Original PFD at 94.

A: Correct. I guess the – there’s two components to the particulate matter. So there would be the filterable portion, plus the condensable portion, with the total being the sum of both of those numbers.

...

A: It’s just the H₂SO₄ component is what ends up being the condensable part of the particulate matter that we use for the calculation.⁵⁵

The sum of the current Draft Permit filterable PM limit (0.011 lb/MMBtu) and the ALJs’ recommended H₂SO₄ emission limit (0.0045 lb/MMBtu) equals 0.0155 lb/MMBtu. Thus, Mr. DiSorbo’s instructions for arriving at total PM emissions support a BACT limit for total PM emission from LBEC of approximately 0.016 lb/MMBtu.

Although the record contains evidence supporting a BACT limit in the range of 0.016-0.018 lb/MMBtu, Sierra Club contends that an even lower limit of 0.012 lb/MMBtu would be reasonable, appropriate, and achievable. Two recently-issued permits for CFB boilers support a total PM limit of 0.012 lb/MMBtu. On June 30, 2008, the Commonwealth of Virginia issued a permit to Virginia Electric and Power Company for two CFB boilers permitted to emit up to 0.012 lb/MMBtu Total PM (three-hour average).⁵⁶ In addition, EDF’s witness, Dr. Sahu, testified that he reviewed a permit for a the Spurlock CFB power plant in Kentucky with a total PM limit of 0.012 lb/MMBtu.⁵⁷

LBEC has not demonstrated that a total PM limit lower than 0.025 lb/MMBtu, such as a limit in the range of 0.012 through 0.018 lb/MMBtu recommended by both Dr. Fox and Dr. Sahu, as well as the ALJs in the White Stallion hearing, cannot be achieved. Therefore, FOF Nos. 220 and 236 and COL Nos. 24 and 40 are in error. Accordingly, the Commission should

⁵⁵ 1 Tr. 117:9-13 & 118:6-8.

⁵⁶ Sierra Club Ex. 366 (Virginia Department of Environmental Quality Permit for Dominion Wise County (June 30, 2008)); 13 Tr. 3118: 5-9 (Hamilton).

⁵⁷ 10 Tr. 2416:14-23 (Sahu).

revise the total PM BACT limits in the Proposed Order to a value in the range of 0.012 to 0.018 lb/MMBtu, which is consistent with other recently issued permits and is demonstrated to be BACT based on the testimony of LBEC's own expert.

C. Mercury

Sierra Club supports the ALJs' finding that the limit proposed by the Applicant and ED is not BACT for mercury and that at the very least, 5.7×10^{-7} over a 12-month rolling average represents BACT for mercury emission from the CFB boilers. However, as described below, the bigger issue for mercury and all other hazardous air pollutants ("HAPs"), or air toxics, that will be emitted from the LBEC's main boilers, remains the lack of a case-by-case MACT determination.

VI. OTHER FINDINGS OF FACT AND CONCLUSIONS OF LAW THAT SHOULD BE REVISED OR DELETED:

A. Case-by-Case MACT for the Main Boilers

The Applicant has stipulated to the fact, and it is undisputed, that the LBEC's main boilers will be major sources of toxic HAPs as defined by the federal Clean Air Act.⁵⁸ LBEC has steadfastly argued throughout this proceeding that the federal Clean Air Act exempts pet coke-fired electric utility steam generating units ("EGUs") from the federal Clean Air Act's stringent Section 112 MACT standards. Yet, LBEC presents not a shred of legal authority for this preposterous argument. The entirety of LBEC's argument that a pet coke-fired EGU is exempt from the CAA's HAP standards rests on federal rules that were either vacated by the courts or abandoned by EPA. Notably, the ED has remained largely silent on the issue throughout this proceeding.

⁵⁸ Proposed Order at 42 (COL No. 33).

After weighing all the evidence presented in the original hearing on the merits, and after significant briefing by the Applicant and Protestants, the ALJs concluded in their Original PFD that LBEC's main pet coke-fired boilers are subject to the federal Clean Air Act's HAP standards and therefore must undergo the stringent case-by-case MACT analysis.⁵⁹ The Commission disagreed with the ALJs' recommendation, and in the Commission's July 1, 2010 Interim Order, found that the main boilers are not subject to case-by-case MACT. Further, the Interim Order directs the ALJs to issue a Revised PFD and Proposed Order that incorporates that finding. Thus, as directed by the Commission, the ALJs included COL No. 35 ("The LBEC pet coke-fired CFB boilers are exempt from case-by-case MACT review pursuant to 30 TAC 116.402(a).").

Sierra Club excepts to COL Nos. 35 and 36 because they are legally and factually erroneous, and because they are an abuse of the Commission's discretion and not reasonably supported by substantial evidence.

B. BACT

1. Carbon Monoxide

Utilization of good combustion practices with an emission rate of 0.11 lb/MMBtu on a 12-month rolling average basis does not represent BACT for CO emissions from the CFB boilers. The Judges previously found that LBEC failed to show that 0.11 lb/MMBtu is BACT for CO emissions, and noted that the RACT/BACT/LAER Clearinghouse ("RBLC") database shows that facilities using pet coke all have the "lowest CO limits" with values of 0.10

⁵⁹ The ALJs devoted no less than 17 pages in their Original PFD to their factual and legal analysis, ultimately concluding that "there is no justification for not requiring a MACT analysis for the pet coke-fired CFB boilers in issue." Original PFD at 23. It is also very important that the ALJs reached their ultimate conclusion based not solely on legal analysis, but rather largely on "a technical understanding (*i.e.*, a 'common sense' understanding as ED expert Randy Hamilton phrased it)..." that it would be "absurd" to exempt large pet coke-fired boilers from the stringent MACT protections. *Id.* Thus, the Commissioners should not substitute their judgment for the ALJs' on that crucial fact.

lb/MMBtu for the two most recently-permitted CFB boilers.⁶⁰ At the very least, 0.10 lb/MMBtu (30-day average), the limit recommended by the ALJs in the Original PFD, represents BACT for CO. Thus, FOF No. 216 is in error.

2. H₂SO₄

Application of limestone injection and polishing scrubbers with an emission rate of 0.022 lb/MMBtu over a 3-hour average does not represent BACT for H₂SO₄ emissions from LBEC's CFB boilers. In the Original PFD, the Judges found the Applicant's proposed limit "troubling."⁶¹ The Judges also found "no justification for the disregard by the ED and LBEC of the lower H₂SO₄ limits shown in the RBLC database for other pet coke-fired CFBs. Using the TCEQ's own Tier I analysis, these other permitted limits should compel LBEC's limits to be similar, barring a sufficient justification of explanation as to any differences."⁶² Thus, instead of LBEC's proposed limit of 0.022 lb/MMBtu, the ALJs recommended that the limit of 0.0045 lb/MMBtu be adopted as BACT for H₂SO₄. The Sierra Club agrees that at the very least, 0.0045 lb/MMBtu represents BACT. Thus, FOF No. 222 is in error.

3. Carbon Dioxide

Under Texas law, carbon dioxide ("CO₂") is (1) an emission, (2) an air contaminant,⁶³ and (3) an air pollutant.⁶⁴ Likewise, CO₂ is either already subject to regulation under federal law or alternatively, will become subject to regulation under the federal Clean Air Act on January 2,

⁶⁰ Original PFD at 96.

⁶¹ Original PFD at 100.

⁶² *Id.*

⁶³ TEX. HEALTH AND SAFETY CODE § 382.003(2) ("Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural."). CO₂ emitted by a power plant is a gas that, in these circumstances, does not arise from a natural process. It thus is an "air contaminant" under the Texas Clean Air Act's plain language.

⁶⁴ TEX. HEALTH AND SAFETY CODE § 382.003(3) ("Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property.")

2011.⁶⁵ Thus even if CO₂ is not currently subject to regulation under federal law, all findings of fact and conclusions of law that reflect this point will no longer be accurate as of January 2, 2011, less than two weeks from the date of these Exceptions, and two days from the due date of the replies to exceptions to the PFD on Remand. Thus, FOF Nos. 187, 188, and 189 and COL Nos. 20 and 21 are in error.

4. The PM_{2.5} Surrogacy Policy

EPA promulgated NAAQS for PM_{2.5} in 1997.⁶⁶ 40 CFR §52.21(k), which has been adopted into the Texas SIP, required the Applicant to demonstrate that LBEC's PM_{2.5} emissions will not "cause or contribute" to a violation of any NAAQS, including the PM_{2.5} NAAQS, which LBEC failed to do. Neither LBEC nor the ED made any effort to assess the air quality impacts of PM_{2.5} emissions, to assess the control technologies and emission limits for PM_{2.5}, or to perform any inquiry into PM_{2.5} emissions whatsoever. Furthermore, the record contains no evidence demonstrating that the PM_{2.5} surrogacy policy is appropriate for LBEC, as required under EPA's clear policy as reflected in Petition No. IV-2008-3, In Re: Louisville Gas and Electric Company, Trimble County, Kentucky Title V/PSD Air Quality Permit# V-02-043 Revisions 2 and 3 (August 12, 2009). By failing to consider PM_{2.5} emissions or to establish that the PM_{2.5} surrogacy policy is appropriate for LBEC, the Application falls short of PM_{2.5} NAAQS requirements prescribed by EPA. Thus, FOF Nos. 43, 77, 79, and 85 and COL No. 7 are in error. Accordingly, LBEC's Application is defective and should be denied.

⁶⁵ Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs, 75 Fed. Reg. 17,004 (Apr. 2, 2010).

⁶⁶ 62 Fed. Reg. 38,652 (July 18, 2009).

5. PM CEMS

The Application and Draft Permit erroneously fail to require a PM continuous emissions monitoring system (“CEMS”), which the evidence in the record demonstrates is feasible and economical. In its comments on the Draft Permit, EPA recommended that TCEQ consider PM CEMS, observing that PM CEMS is a proven technology.⁶⁷ Likewise, the TCEQ ED agrees that PM CEMS is a proven technology and that there are no technical concerns with PM CEMS.⁶⁸ Further, the only way to enforce the Draft Permit’s hourly PM limit established in the MAERT would be through the use of PM CEMS.⁶⁹ LBEC has provided no evidence demonstrating that PM CEMS is infeasible for LBEC. Thus, FOF Nos. 194, 195, 243, 244, and 271 and COL No. 28 are in error.

VII. CONCLUSION

As the ALJs recommended in both the Original PFD and yet again in the PFD on Remand, LBEC has failed to meet its burden of proof and the Application and Permit should not be granted. In accordance with the PFD on Remand, the Original PFD, and for each of the additional reasons described above and in Sierra Club’s Closing Brief and Brief in Reply to Closing Arguments on Remand, and in Sierra Club’s closing briefs previously filed in the original hearing, Sierra Club respectfully requests that the Application be denied. In the alternative, if the Commission determines that remand is appropriate, then Sierra Club (again) requests that the Applicant be required to re-file and re-notice its Application, in order to cure the deficiencies in the Application and to remedy the procedural irregularities that resulted from a remand to SOAH. In addition, Sierra Club respectfully requests that the Commission grant such

⁶⁷ EDF Ex. 16 at 2, Paragraph 1A.

⁶⁸ 7 Tr. 1792:20-1794:2 (Hamilton).

⁶⁹ 8 Tr. 1920:2-1921:8 (Hamilton).

other and further relief for which Sierra Club and other Protestants show themselves justly entitled.

Respectfully submitted,

ENVIRONMENTAL INTEGRITY PROJECT

A handwritten signature in cursive script, appearing to read "Erin Fonken", followed by a horizontal line extending to the right.

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