

**SOAH DOCKET NO. 582-09-6185
TCEQ DOCKET NO. 2009-1093-AIR**

**APPLICATION OF TENASKA § BEFORE THE STATE OFFICE OF
TRAILBLAZER PARTNERS, LLC §
FOR STATE AIR QUALITY PERMIT §
NOS. 84167, HAP13 AND PSD-TX-1123 § ADMINISTRATIVE HEARINGS**

**PROTESTANT MULTI-COUNTY COALITION'S
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS:

COMES NOW Protestant Multi-County Coalition (MCC or Protestant) and files these exceptions to the Proposal for Decision (“PFD”) submitted by the Administrative Law Judges (“ALJ”) in this matter.

I. INTRODUCTION

The PFD includes an analysis of the evidence and parties’ arguments for many but not all of the disputed issues in this matter. Administrative Law Judges Larson and Ramos found that Tenaska Tailblazer Partners, LLC (“Tenaska” or “Applicant”) “failed to meet its burden of proof to demonstrate that the emission limits proposed in its [Tenaska’s] Draft Permit will meet the requirements of Best Available Control Technology (BACT) and Maximum Achievable Control Technology (MACT).”¹ In light of this failure, ALJs recommend that “the Commission adopt more stringent emission limits” and require additional testing of VOC emissions from Applicant’s proposed carbon capture pollution control technology, or in the alternative, that the Commission “deny the Application or remand the matter for further evidence regarding BACT and MACT.”²

¹ PFD at 1 and 81.

² *Id.*

Protestant believes that the ALJs' finding that Tenaska has failed to carry its burden with respect to BACT in MACT is well-supported and correct. However, as argued below, adoption of the more stringent limits recommended by the ALJs is not sufficient to ensure that emissions from the proposed Tenaska facility will comply with all applicable laws and regulations, including BACT and MACT. Therefore, the permit should be denied or remanded.

Protestant will focus on these issues and specific concerns in its Exceptions below. Protestant will not focus upon issues in the PFD to which it does not except, but reserves the right to address all exceptions filed by Applicant and the Executive Director ("ED"). Protestant incorporates by reference herein the arguments set forth in Protestant's Closing Argument and Response to Closing Arguments previously filed in these dockets. Protestant also adopts and incorporates by reference any exceptions submitted by the other protestant in this matter, Sierra Club, that do not contradict the exceptions below. Furthermore, 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 Trailblazer facility.

This briefing shall be divided into two parts. The first part presents legal briefing regarding issues of particular concern. The second part identifies specific findings of facts and conclusions of law in ALJs' Proposed Order to which Protestant excepts.

II. FAILURE TO PROVIDE PROPER PUBLIC NOTICE

Contrary to the ALJ's PFD,³ the administrative record in this matter conclusively proves that:

- 1) TCEQ and the Applicant falsely informed the public that all requisite documents were available at TCEQ's Abilene Regional Office during the published public comment period, and

³ PFD at 2.

- 2) TCEQ and the Applicant falsely informed the public of the deadline to submit public comments in the published notice.

This matter is an actual occurrence of problems under the Clean Air Act with TCEQ's proposed public participation rule revisions as highlighted in EPA's simultaneous limited approval and disapproval of Texas SIP revisions to public participation on new and modified sources. 73 Fed.Reg. 72001, 72011 (Nov. 26, 2008).

On February 1, 2009, Applicant published notice of application and preliminary decision ("NAPD notice"), which informed the public, in bold type, that the public comment period would end "30 days of the date of the newspaper publication of this notice or at the public meeting," which was March 3, 2009. The published NAPD notice also stated that the application and other requisite documents will be available for viewing and copying at the TCEQ Abilene Regional Office beginning the first day of publication of this notice.⁴

However, on March 3, 2009, undersigned counsel went to the TCEQ Abilene Regional Office and was personally informed by the Abilene Regional Office staff that the complete application and other listed documents were not available at all during the time period specified in the published notice—a violation of 30 TEX. ADMIN. CODE §§ 116.131, 116.132 and the Texas State Implementation Plan (SIP).

Protestants repeatedly raised this problem during the public meeting and in subsequent written comments.⁵ As a result, TCEQ extended the public comment period until April 16, 2009. However, **the public was never properly informed of this extension** because the

⁴ Tenaska Exhibit 1F.

⁵ See, oral and written public comments submitted on March 3, 2009, written comments submitted on March 19, 2009 and April 16, 2009, by the Law Office of Wendi Hammond on behalf of the Multi-County Coalition, SEED Coalition, and Public Citizen.

Executive Director's legal team decided, without explanation, that notice did not need to be republished even though an additional 30 days was warranted.⁶

An extended public comment period without proper notice of the extension continues to deprive the public of its opportunity for meaningful public participation in accordance with the Clean Air Act and violates 30 TEX. ADMIN. CODE §§ 116.131 and 116.132 and the Texas SIP. Specifically, TCEQ rules state that the executive director shall require the applicant to conduct public notice of the proposed construction. 30 TEX. ADMIN. CODE § 116.131(a). Furthermore, the executive director *shall* make the completed application and preliminary analyses of the application completed *prior* to publication of the public notice available for public inspection at the appropriate commission regional office in the region where construction is proposed *throughout the comment period **established in the notice published*** under § 116.132 of this title. 30 TEX. ADMIN. CODE § 116.131(b) (emphasis added). None of this occurred.

Furthermore, the public meeting and the SOAH administrative contested case hearing fail to rectify this ongoing public participation problem. The Notice of Hearing published September 10, 2009 (“Hearing Notice”) fails to inform the public that it has a right to provide public comments and what the public comment period actually is. Rather the NAPD and Hearing Notice only inform the public that a person may request to be a party in a contested case hearing—a legal proceeding that will be limited to disputed issues of fact and only *affected persons* will be allowed to participate. The Hearing Notice and SOAH contested case hearing process fails to inform or provide the public with a published public comment period or an opportunity for *any interested person* to appear and submit written or oral comment on the air quality impact of the source after the completed application has properly been made available at the TCEQ Regional Office.

⁶ See, 5 TR 637:11 – 24. Ex. ED-13, p. 479, Comment 6.

Also, the ALJs' PFD refers to the Texas Administrative Code, Chapter 39, sections 39.601 *et seq.*; however, these provisions have not yet been adopted by EPA as part of the Texas SIP for PSD permitting review. The only SIP approved public notice requirements for PSD permit applications are 30 TEX. ADMIN. CODE §§ 116.130 *et seq.*. See, 40 C.F.R. § 52.2270, Identification of Texas SIP (stating that 30 TAC § 116.11(b), which incorporates the requirements of Chapter 39 and 55, is NOT included in the Texas SIP). Therefore, the ALJs' PFD fails to address the relevant and material PSD public notice requirements.

Therefore, any issuance of a permit without complying with ALL applicable public notice and comment requirements would be in violation of state and federal laws and regulations including the Texas SIP. TCEQ or the Applicant must republish notice to notify the public of an accurate public comment period that allows an opportunity to review the complete application and other documents and to provide meaningful and informed comments.

The ALJs' proposed findings of fact ("FOF") and conclusions of law ("COL") should be revised or deleted as follows:

- Revise FOF 17: Tenaska published the "Notice of Application and Preliminary Decision and Notice of Public Meeting [DELETE: and Notice of Hearing for an Air Quality Permit]" in the *Sweetwater reporter* on February 1, 2009, but the notice contained in accurate information.
- Add FOF: Contrary to the NAPD language, the complete permit application, TCEQ Executive Director's preliminary decision and draft permit was not made available to the public at the TCEQ Abilene Regional Office during the published comment period.

- Revise FOF 18: The 30-day public comment period commencing February 1, 2009, was extended until April 16, 2009, but this public comment period deadline was never published.
- Revise FOF 24: Tenaska posted signs and published notice in accordance with ED staff instructions, but not in accordance with TCEQ rules.
- Revise COL 4: Notice of Tenaska’s Application was not provided pursuant to 30 Tex. Admin. Code §§ 116.131 and 116.132.
- Revise COL 43: In accordance with 30 Tex. Admin. Code §116.11(a)(2)(I), the Plant does not comply with all applicable requirements of Chapter 116 regarding PSD review.
- Revise COL 52: In accordance with the Tex. Health & Safety Code § 382.0518(b)(2) and the Texas State Implementation Plan, the Application for State Air Quality Permit No. 84167, Prevention of Significant Deterioration Air Quality Permit PSD-TX-1123, and Hazardous Air Pollutant Major Source Permit No. HAP-13 cannot be approved and Air Quality Permit No. 84167/PSD Permit No. PSD-TX-1123/HAP-13 cannot be issued.

III. IGCC IN BACT REVIEW

The ALJs’ PFD incorrectly concludes, without reference, that the ALJs find that Tenaska is not required to analyze IGCC as part of its BACT analysis; that the preponderance of the evidence in the record establishes that the use of IGCC would be contrary to the fundamental business purpose and design of Trailblazer; and that the evidence in the record supports the finding that IGCC is not BACT for Trailblazer.

A. Tenaska Is Required to Analyze IGCC as Part of Its BACT Analysis Because IGCC Does Not “Redefine” the Source.

ALJ's proposed FOF133 incorrectly states that "An applicant that proposes to construct a pulverized coal-fired boiler is not required to include other fuel combustion technologies, such as IGCC technology in its BACT analysis, because that would require the source as proposed by the applicant to be impermissibly redefined. *Blue Skies Alliance v. Tex. Comm'n on Ent'l Quality*, 283 S.W.3d 525, 537 (Tex. App. – Amarillo, 2009, not pet.)."

The question of whether an air permit applicant is required to consider generation technologies other than the one it has proposed remains an issue to be decided. Unlike the circular state BACT definition, the federal BACT definition specifically requires consideration of "production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of" pollutants. The evidence demonstrates that Tenaska's application fails to comply with these dictates and, as discussed in greater length below, specifically failed to consider alternative "production processes" and "innovative fuel combustion techniques" such as IGCC technology.

The record reflects that the Applicant failed to perform, and the ED failed to require, any analysis or consideration of IGCC technology in performing the BACT analysis in this case. The ALJs' PFD relies upon the Applicant and ED arguments concerning a "redefining the source" argument advanced in the TCEQ's December 15, 2005 response to the certified question in the Sandy Creek Energy Station proceeding ("*Sandy Creek*").⁷ The decision to exclude IGCC evidence in *Sandy Creek* was ultimately upheld by the Amarillo Court of Appeals in *Blue Skies Alliance v. TCEQ*, 283 S.W.2d 525 (Tex. App. – Amarillo 2009, no pet.). *Blue Skies* concerned an evidentiary challenge to TCEQ's exclusion of BACT evidence regarding IGCC technology. The protestant in that matter, Environmental Defense, never argued that IGCC would not

⁷ See, ED Exhibit-13, pp. 489-499.

necessitate a redesign of the proposed facility. Rather, the court concluded that because EDI offered no evidence that IGCC is a process that could be applied to Sandy Creek's proposed plant that EDI failed to meet its burden.⁸

Continued reliance on *Sandy Creek* is misplaced. At the time the *Sandy Creek* decision was made, the EPA had issued a memo in which the EPA took the position that review of IGCC was not required. Since that time, the EPA has stipulated that this memo is not binding. Moreover, since that time, the policy Applicant and the ED attempt to continue foisting upon the review process has been directly rejected by the EPA in two Title V Orders issued by Administrator Lisa Jackson. Specifically in *In the Matter of American Power Service Corporation, Southwest Electric Power Company* (SWEPC), EPA effectively rejects WSEC's argument that Integrated Gasification Combined Cycle (IGCC) technology is de facto a redefinition of the source, concluding that the reviewing agency in that case "failed to provide an adequate justification to support its conclusion that the IGCC technology should be eliminated from consideration on the grounds that it would "redefine" the proposed source."⁹ EPA further notes, "[a]lthough EPA and some permitting authorities have previously attempted to categorically conclude that some options may be excluded in all cases from a BACT analysis on 'redefining the source' grounds, recent EAB decisions emphasize that EPA's interpretation is that 'an analysis of the record is an essential component of a supportable BACT decision that a proposed control technology redefines the source.'"¹⁰

In *Desert Rock*, the Environmental Appeals Board specifically criticized the Amarillo Court of Appeals' decision upholding the TCEQ's actions in *Sandy Creek*:

⁸ *Blue Skies Alliance v. TCEQ*, 283 S.W.2d at 536-537.

⁹ *In the Matter of American Power Service Corporation, Southwest Electric Power Company*, Petition Number VI-2008-01, slip op. at 8. (Dec. 15, 2009).

¹⁰ *Id.* at 10 (citing *In re: Desert Rock Energy Company*, PSD Appeal Nox. 08-03, 08-04, 08-05 and 08-06, slip op. at 76 (EAB Sep. 24, 2009).

According to the [Amarillo Court of Appeals], “the only control technologies that must be considered in a BACT analysis are those control technologies that can be incorporated into or added to the facility as proposed by the applicant,” In so concluding, the court relied on an extremely narrow definition of the terms “applied” and “application” [citation omitted]. In fact, under the Texas Court of Appeal’s reading of the statute, only add-on controls – because, according to the court, only these could be applied to the proposed source – could be considered BACT. **This reading is inconsistent with the language, purpose and legislative history of the CAA as well as EPA’s longstanding interpretation and practice.**

2007 WL 3126170 at 33-32 (emphasis added).¹¹

In another matter, EPA states that “...EPA interprets the [Clean Air Act] to require a reasoned justification, based on an analysis of the underlying administrative record *for each permit*, to support a conclusion that an option is not "available" in a given case on the grounds that would fundamentally "redefine the source."¹²

These Orders are both from Lisa Jackson, Administrator of the EPA. SWEPCO notably addresses a proposed Arkansas facility, which, like the proposed Tenaska power plant, lies within Region 6.

In a letter issued by the Texas Air Control Board (TACB), a predecessor agency to the TCEQ, to the EPA dated September 5, 1989, the TACB agreed to “implement EPA program requirements . . . as effectively as possible,” and expressed a commitment “to the implementation of the EPA decisions regarding PSD program requirements.”¹³ The commitments expressed in TCEQ’s letter have been incorporated as part of Texas’ SIP, and EPA interpreted this letter as allowing Texas the freedom to follow their own course, provided Texas’ actions are consistent with the letter and spirit of the SIP, when read in conjunction with the

¹¹ Other recent decisions concur. In *Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, ____ P.2d ____, 2009 WL 4406150 at *12 (Utah 2009), the Utah Supreme Court held that considering IGCC was not redefining the source where the “basic design of the . . . proposed facility is an electric generating plant fueled by coal.”

¹² *In the Matter of Cash Creek Generation, LLC*, Petition Nos. IV-2008-1 & IV-2008-2, slip op. 7-8 (Dec. 15, 2009)(Citing *Desert Rock*, slip op. at 63-72, 76). (emphasis added)

¹³ *See*, 57 Fed. Reg. 28093, 28096 (June 24, 1992).

applicable federal statutory and regulatory provisions.¹⁴ EPA further explained that its action to approve the Texas SIP had the effect of requiring Texas to follow EPA's current and future interpretations of the Federal Clean Air Act's (FCAA) prevention of significant deterioration (PSD) provisions and EPA regulations, as well as EPA's operating policies and guidance (to the extent those policies are intended to guide the implementation of the approved PSD program). Likewise, EPA's approval also had the effect of negating any interpretations or policies that Texas might otherwise follow to the extent they are at variance with EPA's interpretation and applicable policies.¹⁵

A blanket contention that alternative generation technologies need not be considered by applicants in Texas is contrary to EPA decisions regarding PSD program requirements; and therefore, contrary to the Texas SIP. Furthermore, EPA's recent actions undercut arguments that the 7th Court of Appeals found that IGCC evidence in that case was not relevant under Tex. R. Evid. 401.¹⁶ The *Blue Skies* decision occurred prior to EPA's recent Title V decisions clarifying IGCC relevancy to BACT reviews, and therefore, prior to further specific illumination of long-standing federal interpretation that has always been imposed upon TCEQ by the Texas SIP.

The PFD's improperly relies on a upon statutory interpretation that has been expressly rejected by the EPA and which are inconsistent with the federal definition of BACT.

B. The Preponderance of the Evidence in the Record Establishes that the Use of IGCC Would NOT be Contrary to the Fundamental Business Purpose and Design of Trailblazer, and therefore, Possible IGCC Emission Rates Should Be Considered as Part of the BACT Analysis.

IGCC would meet Tenaska's business purpose. Both an IGCC plant and SCPC boiler are capable of 1) producing baseload electricity from PRB coal and 2) capturing carbon for enhance

¹⁴ 57 Fed.Reg. 28093, 28095.

¹⁵ 54 Fed.Reg. 52823, 5264 (December 22, 1989).

¹⁶ See, Applicant Objection at 4 referring to *Blue Skies Alliance v. Texas Commission on Environmental Quality*, 283 S.W.3d 525 (Tex. App.—Amarillo, 2009).

oil recover; however, and IGCC plant can achieve these business purposes with significantly lower emissions.¹⁷ Moreover, it is simply disingenuous to justify a restricted BACT review that excludes IGCC's lower emission limits simply due to Tenaska's self-serving business purpose that only hopes to capture 90% of CO₂ for EOR, and meanwhile, the draft permit to be issued and enforced would allow Tenaska to never capture a single molecule of CO₂. This is especially true considering Applicant's own expert testified that the "carbon capture side of the business model presented a challenge for both IGCC and pulverized coal ("PC") technology. *Neither IGCC nor PC technology has demonstrated carbon capture at the scale of this project. . . .* Neither IGCC nor PC plants of this scale have successfully used carbon capture for EOR."¹⁸ In fact, Protestant provided evidence that an existing IGCC plant is *already* capturing CO₂ and transmitting it 205 miles to an old Canadian oilfield for enhanced oil recovery ("EOR").¹⁹

Mr. Furman's testimony demonstrates that second generation IGCC plants have between 90% and 94% availability and can be operated as a baseload plant without a spare gasifier.²⁰ Also, one of the advantages of IGCC is that if the gasification portion of the plant is out of operation or is due for maintenance, it is still possible to generate electricity using an alternative fuel such as natural gas.²¹ As a result, a complete IGCC plant is capable of 90% availability. In fact, the success of an existing IGCC facility has led to plans to build a 630-megawatt unit with the ability achieve up to 95% availability.²² Tenaska already proposes to use natural gas at its facility for an auxiliary boiler that will provide steam during the startup of the proposed PC main boiler, yet the BACT analysis fails to establish that it is not economically reasonable to use this

¹⁷ TR 6/7/10 at 749.

¹⁸ Tenaska Exhibit-9, p.3, lines 2-5 & 20-21. (emphasis added).

¹⁹ TR 6/7/10 at 474-475.

²⁰ TR 6/7/10 at 453-454 and 460-461, MCC Ex-23A.

²¹ TR 6/7/10 at 442.

²² *Id.* at 444-445.

same natural gas to ensure baseload capability of IGCC in case of reasonably anticipated percent availability shortfall due to an IGCC gasifier not operating.

In contrast, despite Tenaska's claim it can achieve 90% availability at the proposed supercritical pulverized coal ("SCPC") plant, other SCPC plants that are actual operating have only achieved between 84-88 percent availability.²³

Therefore, the ALJs proposed FOF 5 improperly relies upon the conclusory statement that "Tenaska's business purpose for proposed in the Trailblazer project is (1) to construct and operate a full-scale, baseload, coal-fired electric power generating facility, and (2) to use CO₂ capture technology so that a maximum amount of CO₂ can be captured and produced for utilization in EOR operations." Also, proposed FOF 134 incorrectly states that "[p]ulverized coal boiler technology, unlike IGCC technology, is consistent with Tenaska's business purpose for Trailblazer. Likewise, ALJs' proposed FOF 6 incorrectly states that "SCPC technology with CO₂ capture reaches close to 90% CO₂ capture rates; whereas CO₂ capture rates for integrated gasification combined cycle (IGCC) technology are typically only 65%. SCPC technology maximizes the amount of CO₂ that can be captured during facility operations." Likewise, the ALJ's proposed FOF 8 unjustifiably states that "IGCC technology has not been proven to achieve at least 90% availability for purposes of baseload electric power generating operations since there are many components to an IGCC plant, each of which contribute to potential reliability problems, making baseload operation difficult to achieve."

Additionally, the ALJs' proposed FOF 7 incorrectly states that "ICGG is not a technology that has been demonstrated in practice for use with low sulfur, subbituminous PRB coal, since such coal has high moisture and ash content that can adversely affect IGCC operations; whereas, use of subbituminous PRB coals are well demonstrated in operation of SCPC facilities." In fact,

²³ TR 6/7/10 at 464-465 and 471.

operating IGCC plants utilizes sub-bituminous PRB coal and achieve lower emission rates than Tenaska's proposed SCPC plant.²⁴

Furthermore, it appears as though the PFD may improperly relying upon Applicant's evidence attempting to discredit IGCC based on the alleged prohibitive costs of IGCC versus PC boilers; however, the Applicant's experts mostly discussed cost comparisons between an IGCC plant and a normal PC plant *without* a carbon capture facility. The record is replete with Protestant provided evidence of the cost effectiveness of IGCC technology. A true BACT cost analysis should require Applicant to justify its prohibited cost claims based upon the claimed "business purpose" to capture 90% of CO₂. The only evidence provided on this cost comparison is testimony provided by Mr. Kunkel that that Tenaska needs additional funding through tax incentives, Department of Energy programs, or the like to make the proposed facility "financially viable and cover the cost of investing in carbon capture."²⁵

Based upon the foregoing, the Application should be denied, or in the alternative remanded and the TCEQ required to perform a proper BACT analysis – including consideration of IGCC – in accordance with the proper BACT interpretation.

IV. CARBON CAPTURE POLLUTION CONTROL TECHNOLOGY & AMINES

Protestant supports the ALJs' conclusion that the greater weight of evidence proves that amine scrubbing as part of the CO₂ capture should be accounted for in stack testing. Protestant, however, takes issue with the reliance on post-construction determination of whether or not carbon capture amines will significantly impact emissions from EPN 54, especially in light of the ED's lack of due diligence in pursuing information concerning potential emission increases due to

²⁴ See, TR 6/7/10 at 449:4-8 and 469-473.

²⁵ TR 06/02/10 at 56:11-17; 113:1-22.

carbon capture amines. The public is entitled to a thorough agency review prior to the issuance and construction of a proposed novel pollution control technology.

Despite the novelty of utilizing an amine scrubber on a commercial scale PB boiler, TCEQ conducted a very limited review of the technology prior to issuing the draft permit. TCEQ staff typically learns about new technology in three ways: 1) annual training courses and trade shows, 2) weekly literature research (such as internet searches of other environmental agencies including international agencies); or 3) word of mouth (from peers and supervisors). 5 TR 661:13 – 663:11. In this matter, TCEQ staff conducted a limited internet search to only determine whether amine scrubbing will remove CO₂. The permit engineer then merely spoke to a few other TCEQ staff members, who had dealt with standard permit amine scrubbers in the natural gas industry; but those staff members have never worked on an amine scrubber for a power plant nor have they published anything regarding amine scrubbers.²⁶

Only after the draft permit was issued and the TCEQ permit engineer had been deposed, did he conduct additional internet research of mostly supplier websites promoting this use of amine scrubbers. Yet, none of the vendor reports reviewed specifically stated that there would be only trace emissions, rather the permit engineer only assumed the lack of information on the subject meant there would only be trace emissions.²⁷

V. TRANSCRIPT COSTS

Protestant takes exception to the ALJs' proposal to assess two-thirds of the non-expedited transcript costs to the protestants. The ALJs' PFD determined that Applicant "failed to meet its burden of proof to demonstrate that the emission limits proposed in its [Tenaska's] Draft Permit will meet the requirements of Best Available Control Technology (BACT) and Maximum

²⁶ TR 6/8/10 at 667 – 669 and TR 6/9/10 at 807 & 853.

²⁷ TR 6/8/10 at 669:5-14, 671, 720:3-723.

Achievable Control Technology (MACT).”²⁸ In light of this failure, ALJs recommend that “the Commission adopt more stringent emission limits” and require additional testing of VOC emissions from Applicant’s proposed carbon capture pollution control technology, or in the alternative, that the Commission “deny the Application or remand the matter for further evidence regarding BACT and MACT.”²⁹

Obviously the arguments raised by both protestants were legitimate and established concerns that the ALJs did find as founded. Therefore, it is not appropriate to penalize protestants for challenging the permit applications when the protestants identified legitimate inadequacies in those applications and draft permit. Thus, all transcript costs should be assessed to Applicant which has been the agency practice in past contested case proceedings on similar permits with even fewer ALJ recommended changes.³⁰ At the very least, half of the non-expedited transcript costs should be assessed to the Applicant and half to the protestants jointly.

²⁸ PFD at 1 and 81.

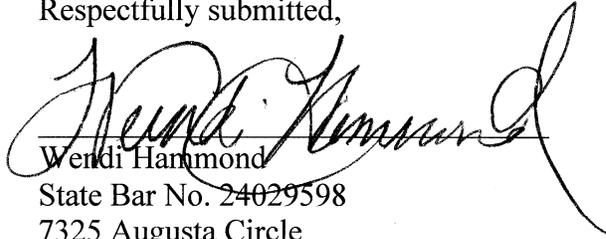
²⁹ *Id.*

³⁰ *See, e.g.*, OPIC Cross Exhibit 2, p. 48-49.

II. PRAYER

WHEREFORE, based upon the foregoing, Protestant respectfully prays that the Commissioners recommend denial of applicant's permit and assess all transcript costs to the Applicant.

Respectfully submitted,



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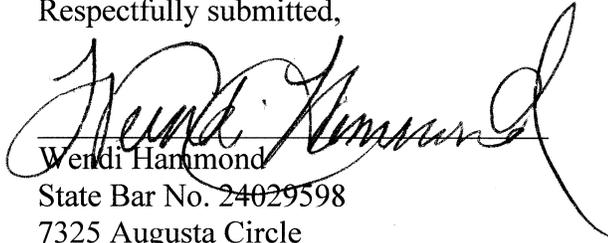
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ATTORNEY FOR MULTI-COUNTY COALITION

CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of October, 2010, 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:

Respectfully submitted,



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