

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 21, 2013

Ms. Bridget C. Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk – MC 105
P. O. Box 13087
Austin, Texas 78711-3087

Re: Executive Director's Exceptions to the Proposal for Decision regarding
Application by El Paso Electric Company; Air Permit Nos. 102294, and PSD-TX-
1290; SOAH Docket No. 582-13-1520; TCEQ Docket No. 2012-2608-AIR.

Dear Ms. Bohac:

Enclosed please find the original and seven copies of the Executive Director's Exceptions to the Proposal for Decision for the above-referenced matter.

If you have any questions, please call me at 512-239-1088.

Sincerely,

A handwritten signature in black ink that reads "Becky Petty".

Becky Petty
Staff Attorney
Environmental Law Division

Enclosures

**SOAH DOCKET NO. 582-13-1520
TCEQ DOCKET NO. 2012-2608-AIR**

| | | |
|------------------------------------|----------|--------------------------------|
| APPLICATION OF | § | BEFORE THE STATE OFFICE |
| EL PASO ELECTRIC COMPANY | § | OF |
| FOR AIR QUALITY PERMIT | § | |
| NOS. 102294 AND PSD-TX-1290 | § | ADMINISTRATIVE HEARINGS |

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S PROPOSAL FOR DECISION AND ORDER**

TO HONORABLE ADMINISTRATIVE LAW JUDGE RICHARD R. WILFONG:

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) and files the Executive Director's Exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision (PFD) and Order and in support thereof shows the following:

INTRODUCTION/BACKGROUND

El Paso Electric Company's permit application was received on April 20, 2012, and declared administratively complete on April 26, 2012. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on May 7, 2012, in the *El Paso Times* and in Spanish on May 7, 2012, in *El Diario*. On July 5, 2012, the Modeling Report in support of the Application was submitted to TCEQ. A revised Appendix C to the Modeling Report was submitted to the TCEQ on September 24, 2012. On October 9, 2012, the ED concluded that the Application was technically complete, issued a draft permit, and recommended that the Application be approved. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on October 15, 2012, in English in the *El Paso Times* and in Spanish on October 15, 2012, in *El Diario*.

On December 10, 2012, the applicant requested this case be directly referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing on whether the application complies with all applicable statutory and regulatory requirements. A public meeting was held in El Paso on December 13, 2012. The public comment period ended on December 13, 2012. On January 22, 2013, a preliminary hearing was held in El Paso by ALJ Richard R. Wilfong. On March 29, 2013, the ED issued his Response to Public Comment. SOAH conducted the hearing from June 4 through June 6, 2013. The evidentiary hearing record closed on August 2, 2013.

In the PFD and in the Findings of Facts and Conclusions of Law, issued on September 30, 2013, the ALJ found that the Applicant proved by a preponderance of the evidence that its Application meets the requirements of all applicable statutes and regulations for air permits and should be issued an air quality permit. The ALJ also

found that the emissions from the Montana Power Plant do not contravene the intent of the TCAA and will be protective of public health and the environment. The ALJ recommends that, in accordance with Tex. Health & Safety Code § 382.0518(b), the Application for Air Quality Permit Nos. 102294 and PSD-TX 1290 should be granted with the terms expressed in the Draft Permit. The ED agrees with the ALJ's Proposal for Decision, and Findings of Fact and Conclusions of Law.

PROPOSAL FOR DECISION

The ALJ found that EPE's Application addresses all of TCEQ's requirements for an air permit application. The ALJ also found that the Application complies with TCEQ's rules and policies for sources of air emissions from the plant. EPE has made all demonstrations required under applicable statutes and regulations regarding air permit applications. Emissions from the Montana Power Station will not contravene the intent of the TCAA and will be protective of public health and the environment.

For this reasoning, the ALJ concluded that the Applicant by the preponderance of the evidence proved that the Draft Permit meets all provisions of the law and is protective of health and the environment. The ED agrees with and supports the ALJ's Proposal for Decision.

EXCEPTIONS TO PROPOSAL FOR DECISION

CORRECTION

On page 19 of the PFD, the ALJ states that ED witness Sean O'Brien testified that, "he had not reviewed the emission calculations in the Application, leaving him unaware that the pound-per-hour limits in the Draft Permit are actually based on an NH₃ concentration of 5 ppm." The testimony is actually from Protestant expert witness Bill Powers. See the trial transcript at 371-372. The ED respectfully requests that the ALJ correct the PFD accordingly.

REQUESTED CLARIFICATION

On page 36 of the PFD, the ALJ requests that the ED submit proposed language clarifying the consistency of the permit's Special Conditions Numbers 5D and 5E. The ED suggests combining these Special Conditions into one and respectfully proposes the following language:

No more than one of the four simple cycle turbines will undergo a startup and or shutdown in any 30 minute period, except that infrequent simultaneous startups of multiple turbines within a 30 minute period is allowed for no more than 52

events per year. Startups and shutdowns are limited to no more than 30 minutes per event.

This language would become Special Condition 5D, and Special Condition 5E would be deleted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Executive Director agrees with the ALJ's Findings of Fact and Conclusions of Law.

CONCLUSION AND PRAYER

The Executive Director respectfully requests that the Commissioners approve the Proposal for Decision and Findings of Fact and Conclusions of Law, and issue the draft permit.

Respectfully Submitted,

Texas Commission on Environmental Quality

Zak Covar, Executive Director

Caroline M. Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
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Becky Petty, Staff Attorney
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CERTIFICATE OF SERVICE

I certify that on this the 21st Day of October, 2013, a true and correct copy of the foregoing document has been served upon all parties, via electronic filing and e-mail transmission to the addresses listed below:

**THE HONORABLE ADMINISTRATIVE
LAW JUDGE:**

Richard Wilfong,
State Office of Administrative Hearings
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Ms. Lisa Serrano
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