



**June 16, 2014**

*Via Online eFiling Portal*

Ms. Bridget C. Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**Re: TCEQ Docket No. 2013-1191-AIR; SOAH Docket No. 582-13-5205; *Application of Corpus Christi Liquefaction, LLC for Air Quality Permit Nos. 105710 and PSD-TX-1306 for the Construction of a New Natural Gas Liquefaction and Export Terminal with Regasification Capabilities***

Dear Ms. Bohac:

Enclosed for filing in the above-referenced and numbered proceeding is Replies to Exceptions of Protestant Sierra Club.

If you have any questions concerning this filing, please do not hesitate to contact me at the number below.

Respectfully Submitted,

**Sierra Club**

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By:



Nathan D. Matthews

Enclosures

cc: Honorable Tommy Broyles  
Honorable Kerrie Qualtrough  
Derek R. McDonald  
Booker Harrison  
Garrett Arthur

**SOAH DOCKET NO. 582-13-5205  
TCEQ DOCKET NO. 2013-1191-AIR**

<b>APPLICATION OF CORPUS</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>CHRISTI LIQUEFACION, L.L.C.,</b>	<b>§</b>	
<b>FOR AIR QUALITY PERMIT</b>	<b>§</b>	
<b>NOS. 105710 AND PSD-TX-1306</b>	<b>§</b>	
<b>FOR THE CONSTRUCTION OF</b>	<b>§</b>	<b>OF</b>
<b>A NEW NATURAL GAS</b>	<b>§</b>	
<b>LIQUEFACTION AND EXPORT</b>	<b>§</b>	
<b>TERMINAL WITH</b>	<b>§</b>	
<b>REGASIFICATION</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>CAPABILITIES</b>	<b>§</b>	

**PROTESTANT SIERRA CLUB’S REPLY TO EXECUTIVE DIRECT AND  
APPLICANT’S EXCEPTIONS TO PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS:

Comes, now, Sierra Club, and offers the following Reply to Exceptions to the Proposal for Decision in this docket. In these arguments, “CCL” is “Corpus Christi Liquefaction, LLC” and “TCEQ” is “Texas Commission on Environmental Quality.” Sierra Club would respectfully show the following.

**I. REPLY**

**A. Mr. Davidson and Role of the Preliminary Hearing**

Both CCL and the Executive Director take exception to the ALJs’ discussion CCL and ED understood as stipulating to facts regarding Mr. Davidson at the preliminary hearing. The ALJs’ proposal is well reasoned on these issues, and should be affirmed.

As summarized by the ALJs, Mr. Davidson was present at the preliminary hearing and was prepared to offer testimony. The only reason that he did not provide testimony was that the Executive Director and CCL agreed, based on counsel for Sierra Club’s

summary of what that testimony would entail, that Sierra Club had standing to participate. As the ALJs explain in conclusion of law 10, the failure to object at the preliminary hearing must be recognized. If the Commission were to accept the Executive Director and CCL's arguments on this point, in future proceedings, prudence and caution would direct protestants to prolong preliminary hearings by providing witness testimony on undisputed facts, increasing the time and resources spent by SOAH, TCEQ, applicants and protestants, in order to guard against possible future unavailability of witnesses.

The Executive Director and CCL are incorrect when they argue that the proposed findings regarding Mr. Davidson are "based *solely* upon representations of counsel made at the preliminary hearing and not on evidence in the record." CCL's Exceptions at 3. These findings also rest on the fact that all other parties and the ALJ presiding over the preliminary hearing accepted these representations. They further rest upon Mr. Davidson's signed Dec. 13, 2013, affidavit.

**B. Standing Based on Mr. Baker**

Even if the Commission rejects the ALJs' proposal as regard Mr. Davidson and the effect of the preliminary hearing, Sierra Club nonetheless has standing to participate on the basis of testimony regarding Mr. Baker and the ALJs' conclusions based on this testimony.

As correctly explained in the proposal for decision, the *Heat* case provides the appropriate standard for standing. PFD at 14-15. "[The TCEQ standing] standard does not require parties to show they will ultimately prevail in their lawsuits; it requires them to show only that they will potentially suffer harm or have a 'justiciable interest' related

to the proceedings.” *Heat Energy Advanced Tech., Inc. v. W. Dallas Coal. for Envtl. Justice*, 962 S.W.2d 288, 295 (Tex. App.—Austin 1998, pet. denied).

The Executive Director and CCL do not dispute that Mr. Baker lives and works within the Radius of Impact (ROI), nor do they dispute that the project will expose him to increases in pollution in excess of the Significant Impact Levels (SILs). The Executive Director and CCL merely argue that the ROI and SIL are not themselves based on health effects, and that the facts regarding the ROI and SIL do not themselves definitively establish that Mr. Baker will suffer adverse health effects as a result of the project’s air pollutant emissions. But as the ALJs’ proposal correctly explains, a definitive showing of adverse health effects is not required. Instead, the fact that Mr. Baker lives and works within the ROI and will experience pollution increases exceeding the SILs distinguishes him from the general public and provides the basis for reasonable concerns regarding air pollution impacts. Proposal for Decision at 16-17. Sierra Club has further shown that concerns regarding health impacts are reasonable, notwithstanding the fact that the project modeling does not show a violation of NO<sub>2</sub> National Ambient Air Quality Standard (NAAQS), because documents from the Federal Environmental Protection Agency recognize the possibility of adverse health impacts at pollution levels below the NAAQS.

## **II. CONCLUSION**

For the reasons stated above, Sierra Club respectfully requests that the Commissioners accept and adopt the Proposed Order and Proposal for Decision submitted by the ALJs insofar as it pertains to Sierra Club’s standing and affected person

status. For the reasons given in Sierra Club's previously filed exceptions to the Proposed Order and Proposal for Decision and prior briefing in this case, Sierra Club requests requests that the Commission reject the ALJs' findings regarding Best Available Control Technology.

Dated: June 16, 2014

Respectfully Submitted,



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## **CERTIFICATE OF SERVICE**

By my signature, above, I, Nathan Matthews, certify a true and correct copy of the foregoing document was today, June 16, 2014, served on all parties, below, by email delivery.

### **CORPUS CHRISTI LIQUEFACTION L.L.C.**

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