



State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

July 13, 2022

Mary Smith
General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin TX 78711-3087

VIA EFILE TEXAS

Re: SOAH Docket No. 582-22-0201; TCEQ Docket No. 2021-0942-AIR;
Application of Port Arthur LNG, LLC for Air Quality Permit Nos. 158420,
PSDTX1572, and GHGPSDTX198

Dear Ms. Smith:

On May 20, 2022, the undersigned Administrative Law Judges (ALJs) issued a Proposal for Decision (PFD) and Proposed Order (PO) in this matter. In the PFD, the ALJs determined that Applicant had not met its burden of proving that the Draft Permit used the best available control technology (BACT) for refrigeration compression turbines and thermal oxidizers, and proposed that the Draft Permit be modified to require the refrigeration compression turbines to achieve nitrogen oxide (NO_x) controls of 5 parts per million by volume, dry (ppmvd) at 15% oxygen (O₂), and carbon monoxide (CO) controls of 15 ppmvd at 15% O₂; and the thermal oxidizers to achieve NO_x controls of 0.053 lb/MMBtu (pounds per metric million British thermal unit).

On June 9, 2022, Port Arthur LNG, LLC (Applicant), the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or

Commission), and Port Arthur Community Action Network (PACAN) filed exceptions. Both Applicant and PACAN timely filed responses to exceptions. The ED filed a response to exceptions stating that he had no additional argument. The Office of Public Interest Counsel filed a letter stating that it would not be filing exceptions or a response, and maintains the positions stated in its closing brief.

Applicant's Exceptions

Applicant excepts to the ALJs' application of BACT to the NO_x and CO emissions from the refrigeration compressor turbines. Applicant states that they do not except to the NO_x emission limit reduction for the thermal oxidizers; however, they disagree with the ALJs' application of the law. In addition, Applicant maintains its objection to the affected person determination made at the preliminary hearing stage of this proceeding.

Concerning the affected person determination, Applicant argues that the ALJs were incorrect in determining that John Beard, and consequently PACAN, are affected persons under the law. The determination was made following a lengthy hearing including the testimony of Mr. Beard and six other witnesses presented by PACAN and Applicant. The ALJ summarized the testimony and her analysis in SOAH Order No. 1. In finding that Mr. Beard has personal justiciable interests unique from members of the general public, the ALJ noted that Mr. Beard had unique health concerns and that Applicant's own data indicates that operation of the Proposed Facility will result in increased levels of NO₂ (1-hour) and PM_{2.5} (24-hour) at Mr. Beard's residence. Whether an individual has standing as an affected person to request a contested-case hearing should not be confused with the ultimate question of whether that person will prevail in a contested-case hearing on the merits. To imply that SB 709 somehow dictates otherwise is mistaken.

Much of Applicant's exceptions to the PFD appear to be that the PFD does not include a recitation of all of the admitted evidence and testimony from the hearing. Indeed, the ALJs acknowledge it does not; to do so would be unwieldy and unhelpful. Rather, the PFD contains a statement of the reasons for the proposal as

well as findings of fact and conclusions of law which support the proposal on the issues referred by the Commission.¹

More specifically, Applicant argues that similar sources have not demonstrated compliance with lower limits, and Applicant's equipment suppliers have not guaranteed a lower performance level for the design that Applicant developed for the Base Project which was permitted in 2016. Applicant asserts that facilities that have not yet been constructed are insufficient to define BACT. As outlined in TCEQ guidance (APDG-6110) and discussed in the PFD, a Tier I review requires an overall emission reduction performance that is at least equivalent to those previously accepted as BACT. If the BACT proposal is less than what was accepted as BACT in recent permit reviews, the Applicant must demonstrate a compelling technical difference between their process and others within the same industry.²

Applicant also asserts that its use of a NO_x baseline emission rate of 9 ppmvd was appropriate because, although the turbines proposed to be used at the Facility will achieve that limit by using Dry-Low NO_x (DLN) control technology, that control technology is inherent in the design of the turbines Applicant is proposing. This argument was raised at the hearing and in closing arguments, and was considered by the ALJs when drafting the PFD.

Applicant's exceptions concerning the CO emissions from the refrigeration compressor turbines appear to be that the Commission cannot consider permits issued during the pendency of its application for purposes of determining BACT. This argument is contrary to the NSR Manual, which provides that "[t]he BACT emission limit in a new source permit is not set until the final permit is issued. The final permit is not issued until a draft permit has gone through public comment and the permitting agency has had an opportunity to consider any new information that may have come to light during the comment period."³

¹ 30 Tex. Admin. Code § 80.252.

² ED Ex. 5 (APDG-6110) at 0119; PFD at 11-12.

³ ED Ex. 6 (NSR Manual) at B.54.

As explained in the PFD, the ALJs recommend that the Draft Permit be revised to require Applicant's gas-fired refrigeration compressor turbines to match the NO_x emission limit of 5 ppmvd at 15% O₂ and CO emission limit of 15 ppmvd at 15% O₂ permitted at Rio Grande LNG; and the NO_x limit of 0.053 lb/MMBtu for thermal oxidizers permitted for Lake Charles LNG, both of which are reasonably comparable facilities. The ALJs' recommendations are both technically practicable and economically reasonable.

The ED's Exceptions

The ED excepted to the ALJs' recommendations that the Draft Permit be revised at all. The ED asserted that BACT should be lowered when technology has been successfully demonstrated; and that the changes recommended by the ALJs in the PFD have not.

In addition, the ED maintains his position that the cost analysis was properly reviewed by Staff and that the numbers provided by Applicant in both cost analyses are acceptable. The ED argues that 15 ppmvd was used by the Applicant as the baseline emissions value in its first cost analysis, and that it led to the same conclusion—that the cost of installing SCR exceeded \$20,000 per ton NO_x removed. However, as discussed in the PFD, Applicant supplemented the cost analysis in 2020 to use the updated version of EPA's SCR cost effectiveness calculation methodology. In the updated cost analysis, Applicant no longer used 15 ppmvd as the baseline emissions value—it used 9 ppmvd. As discussed in the PFD, had Applicant used its original baseline emissions rate of 15 ppmvd, the cost to reduce NO_x emissions with use of SCR ranges from \$7,381 to \$10,265 per ton.

The arguments in both the Applicant's and the ED's exceptions do not change the ALJs' evaluation of the evidence. These arguments were raised at the hearing and in closing arguments, and were considered by the ALJs when drafting the PFD. The ALJs recommend no changes to the PFD or PO in response to the Applicant's or the ED's exceptions.

PACAN's Exceptions

PACAN takes exception to the ALJs' recommendation that the Draft Permit be issued after specific revisions, and instead requests that the permit be denied for "failure to comply with BACT." As indicated by the PFD's Findings of Fact and Conclusions of Law, the emissions authorized by the Draft Permit will be protective of health and safety and will not cause or contribute to exceedances of the National Ambient Air Quality Standards; and the air quality analysis in the Application complies with TCEQ rules and guidance. Because the Draft Permit as revised will comply with all relevant rules and guidelines, permit denial is not appropriate.

In its exceptions, PACAN contends that because the ALJs determined that SCR is a cost-effective NO_x control for the refrigeration compression turbines, and because PACAN presented evidence that the lowest permitted limits using SCR are in the range of 2 ppmvd to 3.1 ppmvd, BACT for NO_x should be set in the range of 2 ppmvd to 3.1 ppmvd. As reflected in the PFD, the ALJs determined that the use of SCR control technology is cost effective. The ALJs however, recommended a BACT emission limit of 5.0 ppmvd. This limit reflects a reasonable BACT limit for NO_x using either SCR or the DLN control technology already proposed by Applicant.

PACAN further argues that the ALJs erred in not requiring the use of SCR with an oxidation catalyst as BACT for CO on the refrigeration compression turbines. Stating that a CO oxidation catalyst can be installed in conjunction with the SCR, PACAN asserts that it is cost-effective because it would occupy the same housing necessary for the SCR, and therefore the limit should be in the range of 4 ppmvd at 15% O₂. Because the ALJs did not recommend SCR be required, the cost of an oxidation catalyst was not demonstrated as cost-effective.

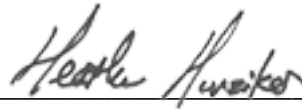
PACAN additionally points out that, for the power generation turbines, the ALJs found that Applicant was able to satisfy TCEQ's three-tiered analysis but not EPA's top-down methodology. The ALJs acknowledge that the three-tiered analysis should result in the same outcome; however, as identified by PACAN and

discussed in the PFD, the ALJs found that Applicant failed to satisfy EPA's top-down approach, while still meeting TCEQ's three-tiered approach.⁴

For these reasons, the ALJs recommend that the Commission overrule all exceptions. The PFD is ready for your consideration.



Meitra Farhadi,
Presiding Administrative Law Judge



Heather Hunziker,
Co-Presiding Administrative Law Judge

MF/lc

CC: Mailing List

⁴ PFD at 43-44.