

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



Vic McWherter, Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 20, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, TX 78711-3087

Re: Port Arthur LNG, LLC; TCEQ Docket No. 2021-0942-AIR; SOAH Docket No. 582-22-0201

Dear Ms. Gharis:

The Office of Public Interest Counsel did not file Exceptions and will not be filing a Reply to Exceptions in the above-referenced matter. OPIC maintains the positions previously stated in our Closing Brief. Please find attached a copy of OPIC's Closing Brief to be included in future Agenda backup materials.

Sincerely,

A handwritten signature in blue ink, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur
OPIC Senior Attorney

cc: Service List

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2022, the foregoing document was filed with SOAH and the TCEQ Chief Clerk, and all parties listed below were served via email.



Garrett Arthur

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Vic McWherter, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 16, 2022

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **PORT ARTHUR LNG, LLC**
SOAH DOCKET NO. 582-22-0201
TCEQ DOCKET NO. 2021-0942-AIR

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Closing Brief in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur", written in a cursive style.

Garrett Arthur
OPIC Senior Attorney

cc: Mailing List

SOAH DOCKET NO. 582-22-0201
TCEQ DOCKET NO. 2021-0942-AIR

APPLICATION BY PORT ARTHUR	§	BEFORE THE STATE OFFICE
LNG, LLC FOR AIR QUALITY	§	
PERMIT NOS. 158420, PSDTX1572,	§	OF
AND GHGPSDTX198	§	
	§	ADMINISTRATIVE HEARINGS

OFFICE OF PUBLIC INTEREST COUNSEL'S
CLOSING BRIEF

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this closing brief and would respectfully show as follows:

I. Introduction

OPIC finds that Port Arthur LNG, LLC's (PALNG or Applicant) application fails to propose emission rates at best available control technology (BACT) levels for certain emission sources, and for those sources, the Executive Director's (ED) draft permit fails to limit emissions to BACT levels. On referred Issues A-E and G-J, OPIC finds that Applicant met its burden of proof, and this brief is therefore limited to a discussion of BACT under Issue F.

II. Procedural Background

On August 25, 2021, the TCEQ Commissioners considered Port Arthur Community Action Network's (PA-CAN) hearing request in this matter, and by

Interim Order dated September 2, 2021, the Commission referred PA-CAN's request to the State Office of Administrative Hearings (SOAH) to determine whether PA-CAN member John Beard is affected. The Commission further ordered that if PA-CAN demonstrates affectedness, then the following issues are referred for hearing:

- A) Whether the proposed permit will be protective of the health and safety of the requestors.
- B) Whether the proposed emissions will cause or contribute to exceedances of the National Ambient Air Quality Standards.
- C) Whether the proposed emissions will cause nuisance conditions violating 30 TAC § 101.4.
- D) Whether the Air Quality Analysis complies with TCEQ rules and guidance.
- E) Whether the proposed plant will be protective of welfare, including wildlife and the environment in the surrounding area.
- F) Whether the controls proposed in the draft permit constitute Best Available Control Technology.
- G) Whether the emissions rates in the draft permit were accurately calculated using the appropriate methodology.
- H) Whether the quantity of emissions from the project will exceed allowable Prevention of Significant Deterioration Increments.
- I) Whether the proposed permit contains adequate monitoring and reporting requirements.
- J) Whether cumulative impacts were appropriately evaluated for the project pursuant to applicable TCEQ rules and guidance.

Administrative Law Judge (ALJ) Meitra Farhadi convened a preliminary hearing on November 16, 2021, and John Beard's affectedness and PA-CAN's standing were considered. The ALJ found that John Beard is affected, and PA-

CAN was admitted as a party. Applicant attempted to relitigate Mr. Beard's affectedness by certifying a question to the Commission, but that motion was denied. On February 22-24, 2022, ALJs Meitra Farhadi and Heather Hunziker conducted the hearing on the merits.

III. Applicable Law

A. Standard of Review

By rule, the burden of proof is on the moving party by a preponderance of the evidence.¹ In a permit hearing, the applicant is the moving party. Therefore, PALNG bears the burden of proof on each of the referred issues.

Regarding the burden of proof in an SB 709 case, 30 TAC § 80.117(b) states that an applicant's presentation of evidence to meet its burden of proof may consist solely of the filing with SOAH, and admittance by the ALJ, of the administrative record. Section 80.17(c)(1) states that the filing of the administrative record establishes a prima facie demonstration that the ED's draft permit meets all state and federal legal and technical requirements, and if issued consistent with the ED's draft permit, would protect human health and safety, the environment, and physical property. Section 80.17(c)(2) further states that a party may rebut this presumption by presenting evidence demonstrating that the draft permit violates a specifically applicable state or federal legal or technical requirement. If a rebuttal case is presented, section

¹ 30 TAC § 80.17(a).

80.17(c)(3) states that the applicant and the ED may present additional evidence to support the ED's draft permit.

B. Clean Air Act

Chapter 382 of the Texas Health and Safety Code is known as the Texas Clean Air Act (TCAA). Section 382.0518(a) states that before work is begun on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain a permit from the TCEQ.

Section 382.0518(b) states that TCEQ must grant within a reasonable time a permit to construct a facility if, from the information available, including information presented at any hearing, TCEQ finds: (1) the proposed facility for which a permit is sought will use at least the best available control technology (BACT), considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and (2) no indication that the emissions from the facility will contravene the intent of the TCAA, including protection of the public's health and physical property.

IV. Referred Issues

A. Issue F: Whether the controls proposed in the draft permit constitute Best Available Control Technology

Under 30 TAC § 116.10, best available control technology (BACT) is defined as follows:

An air pollution control method for a new or modified facility that through experience and research, has proven to be operational, obtainable, and capable of reducing or eliminating emissions from the facility, and is considered technically practical and economically reasonable for the facility. The emissions reduction

can be achieved through technology such as the use of add-on control equipment or by enforceable changes in production processes, systems, methods, or work practice.

Protestant asserts that Applicant has not proposed, and the permit does not require, BACT-level emission limits for refrigeration compression turbines, power generation turbines, flares, thermal oxidizers, and fugitives. OPIC finds that by a preponderance of the evidence, Applicant has met its burden of proof for all emission sources except the refrigeration compression turbines. Therefore, the following discussion is limited to whether the controls proposed in the draft permit constitute BACT for the refrigeration compression turbines.

i. Refrigeration Compression Turbines

Applicant has proposed a nitrogen oxides (NO_x) emission limit for the refrigeration compression turbines of 9.0 ppmvd (parts per million by volume, dry) at 15% oxygen (O₂), and that limit is currently in the Executive Director's (ED) draft permit.² OPIC finds that NO_x emissions from the refrigeration compression turbines should be limited to no more than 5 ppmvd at 15% O₂.

PALNG proposes to build and operate within two miles of the Golden Pass LNG site. The Golden Pass LNG project was permitted by TCEQ in 2015 and is required to limit refrigeration compression turbine NO_x emissions to 5 ppmvd at 15% O₂.³ In other words, PALNG will have a substantially similar next-door neighbor with significantly lower emissions. OPIC acknowledges that different LNG projects may use different turbine types, but when comparing

² ED-1 at 19:12.

³ PA-CAN Ex. A at 8:14.

PALNG to Golden Pass, that difference does not exist. Both projects use GE Frame 7EA turbines to drive refrigeration compressors.⁴ The inconsistency in their permit limits is contrary to public interest and not justified.

Golden Pass LNG will use selective catalytic reduction (SCR) with an oxidation catalyst to control NO_x emissions from its refrigeration compression turbines. While SCR is clearly technically practical, Applicant and ED both concluded that SCR would not be economically reasonable for the PALNG project. Economic reasonableness or cost effectiveness is based on the cost per ton of emissions removed. The Parties disagree on what dollar amount per ton of NO_x removed should be considered economically reasonable. Applicant and ED rely on industry practice and agency experience to determine economic reasonableness, and the ED confirmed that a cost per ton number is not specified in any TCEQ document.⁵ It is therefore difficult to assess the Parties' claims that certain dollar amounts are or are not economically reasonable, and the record does not support a conclusion that SCR would be economically unreasonable for PALNG.

Though its next-door neighbor will use SCR to control NO_x from the same GE Frame 7EA turbines, PALNG attempted to distinguish its project by pointing at financing. Applicant states that Golden Pass LNG is self-financed, but PALNG needs external financing and must comply with restrictions imposed by lenders.⁶ However, when asked whether a lender would say 'no' to financing

⁴ *Id.*

⁵ ED-1 at 21:28.

⁶ App-300 at 19:4.

PALNG if SCR was proposed, Applicant declined to speculate.⁷ Further, the ED testified that when considering economic reasonableness, any distinction between self-financed versus investor-financed does not enter into the evaluation.⁸ When PALNG and Golden Pass LNG are compared, the record indicates that the source of financing does not justify PALNG's rejection of SCR.

B. Other Referred Issues

Though Applicant bears the burden of proof on each referred issue, the issues other than Issue F were only lightly litigated with some cross examination. OPIC also notes that PA-CAN does not intend to brief issues that may have been initially referred but were not litigated.⁹ By a combination of the administrative record and Applicant's additional submitted evidence, OPIC finds that Applicant met its burden of proof, by a preponderance of the evidence, for referred Issues A-E and G-J.

V. Transcript Costs

Under 30 TAC § 80.23(d)(2), OPIC, as a statutory party, cannot be assessed reporting or transcription costs. Therefore, OPIC takes no position on this issue and defers to those parties who have incurred or may be responsible for transcript costs.

⁷ Tr. at 372:25.

⁸ Tr. at 642:13.

⁹ See PA-CAN's Proposed Briefing Outline filed March 2, 2022.

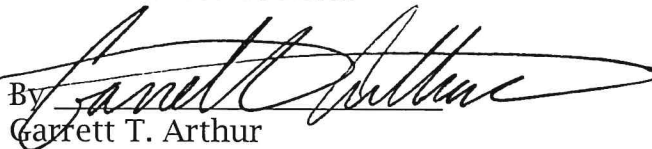
VI. Conclusion

OPIC finds the controls proposed in the draft permit do not constitute BACT for the refrigeration compression turbines. To grant PALNG a permit, the TCEQ must find the proposed facility will use at least the best available control technology.¹⁰ Therefore, PALNG's failure to propose a refrigeration compression turbine NO_x emissions limit which qualifies as BACT is a basis to deny the application.

If the ALJs recommend granting PALNG's application, OPIC respectfully requests the ALJs also recommend lowering the Applicant's refrigeration compression turbine NO_x emissions limit to at least match Golden Pass LNG's limit—a limit which has already been approved and issued by TCEQ.

Respectfully submitted,

Vic McWherter
Public Interest Counsel

By 
Garrett T. Arthur

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P.O. Box 13087, MC 103
Austin, TX 78711
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¹⁰ See TEX. HEALTH & SAFETY CODE § 382.0518(b).

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2022, the foregoing document was filed with SOAH, the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.


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via efilng:

Laurie Gharis, Chief Clerk

Texas Commission on Environmental Quality, Office of the Chief Clerk

FOR THE ADMINISTRATIVE LAW JUDGES

via efilng:

The Honorable Meitra Farhadi Administrative Law Judge

The Honorable Heather Hunziker Administrative Law Judge