

SOAH DOCKET NO. 582-23-14975
TCEQ DOCKET NO. 2023-0203-AIR

APPLICATION OF VALERO	§	
REFINING-TEXAS, L.P. FOR	§	BEFORE THE STATE OFFICE
MODIFICATION TO STATE AND	§	
PREVENTION OF SIGNIFICANT	§	OF
DETERIORATION AIR QUALITY	§	
PERMIT NOS. 38754 AND	§	ADMINISTRATIVE HEARINGS
PSDTX324M15	§	

APPLICANT VALERO REFINING-TEXAS, L.P.'S
RESPONSE IN OPPOSITION
TO THE PROTESTANT'S MOTION FOR CONTINUANCE

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant Valero Refining-Texas L.P. ("Valero") respectfully urges the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") to deny Citizens for Environmental Justice's ("CFEJ" or "Protestant") Motion for Continuance ("Motion") for the consideration of the Proposal for Decision ("PFD") and Proposed Order issued on November 20, 2023 by Administrative Law Judges ("ALJs") Amy Davis and Holly Vandrovec.

I. THE REQUEST FOR CONTINUANCE SHOULD BE DENIED

On March 22, 2024, all parties to these proceedings received notice that the Commission would consider the PFD and Proposed Order at its April 12, 2024 agenda meeting. *See Attachment A, Electronic Service Email; Attachment B, Notice of Agenda.* The notice was sent directly to all counsel via electronic mail, including counsel for the Protestant, Ilan Levin. **Attachment A.** The Office of the Chief Clerk requested confirmation of receipt in bolded, red letters. *Id.* Now, almost three weeks after transmission of this notice, and only two days before

the scheduled Commissioners' agenda, the Protestant seeks to continue the agenda setting. The Protestant's unsworn motion offers no explanation as to why, as it asserts, it only became aware of the agenda setting on the morning of April 9, when Mehgan Taack sent out a reminder about the alternative location for the Commissioners' agenda. Nor does the Protestant explain why another Environmental Integrity Project ("EIP") attorney cannot appear in Mr. Levin's place, or why Mr. Levin cannot reschedule his travel arrangements to be available virtually.

Valero submitted its application to amend Air Quality Permit Nos. 38754 and PSDTX324M14 and to issue GHGPSDTX211 (the "Application") on September 30, 2021. The Application and Draft Permit have been subject to thorough public review since that time, culminating in a hearing on the merits on August 22, 2023. The ALJs issued a PFD and Proposed Order on November 20, 2023. This Application has been pending for more than two-and-a-half years and no good cause has been shown in support of this apparently strategically timed, eleventh-hour request for delay.

TCEQ's rules provide that "[t]he general counsel, either by agreement of the parties and the judge, or on the general counsel's own motion, may reschedule the presentation of the proposal for decision." 30 TAC § 80.261. The rules do not contemplate a request by a party to continue an agenda setting by motion, as the Protestant now seeks. The rules do speak to a party's motion for continuance of a contested case hearing, requiring that such motions "shall be in writing or stated on the record, and shall be sworn unless the facts alleged therein to show good cause are part of the record of the proceeding." *Id.* at § 80.119(b); *see also* TEX. R. CIV. P. 251.¹ And even then, SOAH's rules would require that a motion for continuance be submitted "no later than five days before the date of the proceeding." 1 TAC § 155.307(c). The Protestant's Motion is not a proper


¹ "No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law."

procedural mechanism under the Commission’s rules, but even if it were allowed, it fails to comply with the basic requirements that it be (1) sworn, (2) state good cause, and (3) be timely submitted. Furthermore, the Texas Rules of Civil Procedure state that “absence of counsel will not be good cause for a continuance or postponement.” TEX. R. CIV. P. 253. Although Protestant’s Motion is submitted by Lauren Thomson as first named lead counsel for the Protestant, the Motion fails to explain why Ms. Thomson cannot appear in Mr. Levin’s place at the scheduled agenda to give the allotted five minutes of oral argument. Regardless, the Protestant has had every opportunity throughout this contested case hearing to submit written briefs—the Protestants have filed its lengthy reply to the Applicant’s and the Executive Director’s exceptions to the PFD and Proposed Order. The issues are now fully briefed and ready for the Commission’s review. Given the substantial opportunities for public participation made available throughout these proceedings, the Protestant’s unexplained failure to accommodate the Chief Clerk’s March 22, 2024 notice of this agenda setting should not be excused.

II. CONCLUSION

For the reasons described herein, the Protestant has not shown good cause for delaying the Commission’s review of the PFD and Proposed Order and its Motion for Continuance should be denied. Valero respectfully requests that the Commission proceed with the agenda setting on April 12, 2024 as scheduled and noticed on March 22, 2024.

Respectfully submitted,

By: 
Derek R. McDonald
Texas Bar No. 00786101
Shannon Glen
Texas Bar No. 24109927

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***ATTORNEYS FOR APPLICANT
VALERO REFINING-TEXAS, L.P.***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response in Opposition to the Protestant's Motion for Continuance has been served on the following counsel/persons by electronic mail on this 10th day of April, 2024.

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Amy Browning, Staff Attorney
Amanda Kraynok, Staff Attorney
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FOR PUBLIC INTEREST COUNSEL

via electronic mail:

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Texas Commission on Environmental
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**CITIZENS FOR ENVIRONMENTAL
JUSTICE**

via electronic mail:

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Derek R. McDonald

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ATTACHMENT A

Glen, Shannon

From: Marielle Bascon <Marielle.Bascon@tceq.texas.gov>
Sent: Friday, March 22, 2024 9:19 AM
To: McDonald, Derek; Glen, Shannon; ilevin@environmentalintegrity.org; Amanda Kraynok; Jennifer Jamison
Cc: Booker Harrison; Garrett Arthur; Mehgan Taack
Subject: TCEQ Commissioners' Agenda: Valero Refining-Texas, LP
Attachments: 2023-0203-air-set.pdf

[EXTERNAL EMAIL]

PLEASE CONFIRM RECEIPT

The above-referenced matter has been scheduled for the 04-12-2024 Commissioners' Agenda. Please let me know if you have any questions.

Thank You,

Marielle Bascon
TEQ Office of the Chief Clerk

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ATTACHMENT B

Jon Niermann , *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 22, 2024

TO: All Persons on Mailing List

RE: SOAH Docket No. 582-23-14975; TCEQ Docket No. 2023-0203-AIR; Application of Valero Refining-Texas, LP, for Air Quality Permit Nos. 38754 and PSDTX324M15, in Nueces County, Texas.

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality on **Friday, April 12, 2024** at **9:30 A.M.** Due to an ongoing construction project impacting TCEQ's meeting spaces, **the agenda meeting will be held in Room 244 of the Texas Workforce Commission** located at 101 East 15th Street in Austin, Texas, virtually, or both in person and virtually.

To confirm how the meeting will be held, please visit the Commissioners' Agenda webpage at: https://www.tceq.texas.gov/agency/decisions/agendas/comm/comm_agendas.html eight days before the Agenda.

Pursuant to 30 TAC § 80.263, oral presentations before the commission shall be limited to five minutes each, excluding time for answering questions, unless the chairman or general counsel establishes other limitations.

Should you need any additional information, please contact Mehgan Taack at the Texas Commission on Environmental Quality, Office of the Chief Clerk, (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis
Chief Clerk

MAILING LIST
Valero Refining-Texas, LP
SOAH Docket No. 582-23-14975; TCEQ Docket No. 2023-0203-AIR

REPRESENTING VALERO REFINING-
TEXAS, L.P.

via electronic mail:

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REPRESENTING CITIZENS FOR
ENVIRONMENTAL JUSTICE

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REPRESENTING THE OFFICE OF
PUBLIC INTEREST COUNSEL

via electronic mail:

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FOR THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS

via eFile Texas:

The Honorable Amy Davis, Administrative
Law Judge
The Honorable Holly Vandrovec,
Administrative Law Judge
State Office of Administrative Hearings
<http://www.soah.texas.gov/E-Services/eFileTexas.html>