

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 24, 2023

TO: All interested persons.

RE: Southwestern Electric Power Company
TPDES Permit No. WQ0001331000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** This decision will be considered by the commissioners at a regularly scheduled public meeting before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.

Enclosed with this letter are instructions to view the Executive Director's Response to Public Comment (RTC) on the Internet. Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov. A complete copy of the RTC (including the mailing list), complete application, draft permit and related documents, including public comments, are available for review at the TCEQ Central Office. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Jefferson Carnegie Library, 301 West Lafayette Street, Jefferson, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. The procedures for the commission's evaluation of hearing requests/requests for reconsideration are located in 30 Texas Administrative Code Chapter 55, Subchapter F. A brief description of the procedures for these two requests follows.

How to Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. Your hearing request must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.

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- (2) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (3) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."
- (4) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group;
 - (B) the comments on the application submitted by the group that are the basis of the hearing request; and
 - (C) by name and physical address one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

Additionally, your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application that were raised **by you** during the public comment period. The request cannot be based solely on issues raised in comments that you have withdrawn.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to **your** comments that you dispute; 2) the factual basis of the dispute; and 3) list any disputed issues of law.

How to Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date

of this letter. You may submit your request electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html or by mail to the following address:

Laurie Gharis, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the TCEQ's Alternative Dispute Resolution Program and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive, flowing style.

Laurie Gharis
Chief Clerk

LG/erg

Enclosure

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT
for
Southwestern Electric Power Company
TPDES Permit No. WQ0001331000

The Executive Director has made the Response to Public Comment (RTC) for the application by Southwestern Electric Power Company for TPDES Permit No. WQ0001331000 available for viewing on the Internet. You may view and print the document by visiting the TCEQ Commissioners' Integrated Database at the following link:

<https://www.tceq.texas.gov/goto/cid>

In order to view the RTC at the link above, enter the TCEQ ID Number for this application (WQ0001331000) and click the "Search" button. The search results will display a link to the RTC.

Individuals who would prefer a mailed copy of the RTC or are having trouble accessing the RTC on the website, should contact the Office of the Chief Clerk, by phone at (512) 239-3300 or by email at chiefclk@tceq.texas.gov.

Additional Information

For more information on the public participation process, you may contact the Office of the Public Interest Counsel at (512) 239-6363 or call the Public Education Program, toll free, at (800) 687-4040.

A complete copy of the RTC (including the mailing list), the complete application, the draft permit, and related documents, including comments, are available for review at the TCEQ Central Office in Austin, Texas. Additionally, a copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Jefferson Carnegie Library, 301 West Lafayette Street, Jefferson, Texas.

MAILING LIST
for
Southwestern Electric Power Company
TPDES Permit No. WQ0001331000

FOR THE APPLICANT:

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INTERESTED PERSONS:

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FOR THE EXECUTIVE DIRECTOR
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Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT NO. WQ0001331000

APPLICATION BY	§	BEFORE THE
SOUTHWESTERN ELECTRIC POWER	§	
COMPANY FOR	§	TEXAS COMMISSION ON
MAJOR AMENDMENT OF	§	
TPDES PERMIT NO. WQ0001331000	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (RTC) on the application by Southwestern Electric Power Company for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001331000. As required by Title 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comments from Charles Neiman. This response addresses all timely public comments received in writing and at the public meeting, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.texas.gov.

I. BACKGROUND

A. Description of Facility

Southwestern Electric Power Company submitted an application to the TCEQ for a major amendment to TPDES Permit No. WQ0001331000 to remove Other Requirement No. 10, related to performing long-term influent monitoring for total copper associated with Outfall 002. The draft permit authorizes the discharge of previously monitored effluents (once-through cooling water and low-volume waste via Outfall 002, and metal cleaning waste via Outfall 003) and cooling pond water on an intermittent and flow-variable basis via Outfall 001; previously monitored wastes (low-volume waste via internal Outfall 101) and once-through cooling water at a daily

average volume not to exceed 580,000,000 gallons per day via Outfall 002; and metal cleaning waste on a flow-variable basis via Outfall 003.

The Applicant operates Wilkes Power Plant, a natural gas and fuel oil-fired steam electric power facility. The wastewater system of this facility consists of two once-through cooling water (circulating and service water) systems, which both draw water from Johnson Creek Reservoir. Chlorine is added during the warmer months to control biological growth. Circulation water is pumped to the main condensers to cool and condense exhaust steam from the turbines. Service water is pumped to the generating units to cool miscellaneous equipment. Both cooling systems are non-contact cooling water systems.

Low-volume waste is routed to the ecology pit where it is treated by pH neutralization, oil separation, and clarification prior to discharge via internal Outfall 101. Domestic wastewater is routed to an aerobic sewage treatment system and land applied by spray irrigation. Metal cleaning waste is treated by pH neutralization, settling of solids, chemical precipitation/flocculation, and use of best management practices prior to discharge via Outfall 003.

The facility site is located at 1707 Wilkes Power Plant Road, adjacent to Johnson Creek Reservoir, approximately three miles northwest of the intersection of State Highway 49 and State Highway 1969, approximately five miles south of the City of Avinger, in Marion County, Texas 75630. If the draft permit is issued, the effluent will be discharged via Outfalls 002 and 003 to Johnson Creek Reservoir, thence to Johnson Creek, thence to Lake O' the Pines, and via Outfall 001 to Johnson Creek, thence to Lake O' the Pines in Segment No. 0403 of the Cypress Creek Basin. The unclassified receiving water uses are high aquatic life use for the Johnson Creek Reservoir and Johnson Creek. The designated uses for Segment No. 0403 are primary contact recreation, public water supply, and high aquatic life use. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and revisions.

The draft permit includes the following proposed effluent limitations and monitoring requirements. Flows are expressed in million gallons per day (MGD). All pH values are expressed in standard units (SU). Concentration values are expressed in milligrams per liter (mg/L). Mass-based values are expressed as pounds per day

(lbs/day). Bacteria values are expressed in colony-forming units (cfu) or most probable number (MPN) per 100 milliliters (cfu or MPN/100 mL). Temperature is expressed in degrees Fahrenheit (°F).

Outfall	Pollutant	Daily Average, mg/L	Daily Maximum, mg/L
001	Flow, MGD	Report, MGD	Report, MGD
	Temperature	N/A	105 °F
101	Flow	Report, MGD	Report, MGD
	TSS	30	100
	Oil and Grease	15	20
	pH, SU	6.0 SU, minimum	9.0 SU

Outfall	Pollutant	Daily Average		Daily Maximum	
		lbs/day	mg/L	lbs/day	mg/L
002	Flow, MGD	580 MGD		580 MGD	
	Total Residual Chlorine	N/A	N/A	216	0.2

Outfall	Pollutant	Daily Average, mg/L	Daily Maximum, mg/L
003	Flow, MGD	Report, MGD	Report, MGD
	TSS	30	100
	Oil and Grease	15	20
	Total Iron	1.0	1.0
	Total Copper	0.053	0.112
	pH, SU	6.0 SU, minimum	9.0 SU

B. Procedural Background

The permit application was received on September 19, 2022, and declared administratively complete on December 6, 2022. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on December 16, 2022, in the *Jefferson Jimplecute*. The Notice of Application and Preliminary Decision (NAPD) was published on April 21, 2023, in the *Jefferson Jimplecute*. The public comment period ended on May 22, 2023.

This application was filed on or after September 1, 2015; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill (HB) 801, 76th Legislature (1999), and Senate Bill (SB) 709, 84th Legislature (2015), both implemented by the Commission in its rules in 30 TAC Chapter 39, 50, and 55. The Texas Legislature enacted Senate Bill 709, effective September 1, 2015, amending the

requirements for comments and contested case hearings. This application is subject to those changes in the law.

C. Access to Rules, Laws and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- the Secretary of State website: <http://www.sos.state.tx.us>;
- TCEQ rules in Title 30 of the Texas Administrative Code (TAC): www.sos.state.tx.us/tac/ (select “View the current Texas Administrative Code” on the right, then “Title 30 Environmental Quality”);
- Texas statutes: <http://www.statutes.legis.state.tx.us/>;
- the TCEQ website: www.tceq.texas.gov (for downloadable rules in Adobe PDF format, select “Rules” then “Current Rules and Regulations,” then “Download TCEQ Rules”);
- Federal rules in Title 40 of the Code of Federal Regulations: www.ecfr.gov; and
- Federal environmental laws: <http://www.epa.gov/laws-regulations>.

Commission records for this application and draft permit are available for viewing and copying at the TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk), until final action is taken. The permit application for this facility, Statement of Basis/Technical Summary and Executive Director’s Preliminary Decision (Statement of Basis), and proposed draft permit are available for viewing and copying at the Jefferson Carnegie Library, 301 West Lafayette Street, Jefferson, Texas.

II. Comments and Responses

Comment 1:

Charles Neiman expresses concern regarding the discharges effect on wildlife who drink from the creek and lake and people who eat fish from these waters.

Response 1:

In accordance with 30 TAC Section 307.5 and TCEQ’s *Procedures for the Implementation of the Texas Surface Water Quality Standards* (IPs; June 2010), an antidegradation review of the receiving waters was performed by the Standards Implementation reviewer. The reviewer performed a Tier 1 antidegradation review and

preliminarily determined that existing water quality uses will not be impaired by this permit action and that numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review was also performed and preliminarily determined that no significant degradation of water quality is expected in Johnson Creek Reservoir and Johnson Creek, which has been identified as having high aquatic life use, and that existing uses will be maintained and protected, including recreational and commercial fishing. This preliminary determination can be reexamined and may be modified if new relevant information is received.

The Texas Surface Water Quality Standards (TSWQS) provide that surface waters cannot be toxic to aquatic or terrestrial organisms.¹ While the TSWQS and the IPs do not specifically designate criteria for the protection of cattle or livestock, they do designate criteria for the protection of aquatic life that should preclude negative impacts to the health of cattle or wildlife.

The Executive Director has determined that the draft permit for the facility meets the requirements of the TSWQS, which are established to protect human health, terrestrial wildlife, livestock, domestic animals, and aquatic life.

The draft permit was prepared by the Executive Director and reviewed and approved by the EPA on September 12, 2022. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

Comment 2:

Charles Neiman states that the Applicant should have outside compliance agencies check toxic wastewater levels on a regular basis. Mr. Neiman states that Applicant should not be granted this permit to lessen the number of times the water is checked for copper. Mr. Neiman does not believe any company should be doing wastewater monitoring themselves, rather it's the job of TCEQ. Mr. Neiman states that water samples are taken every 5 years, and he believes they should be more frequent.

Response 2:

The data from the long-term study demonstrates that over the last three years, the majority of the total copper levels monitored in the effluent discharged via Outfall

¹ 30 Texas Administrative Code § 307.4.

002 were the same and/or below the total copper levels of the influent. In other words, the facility processes did not add or contribute to any increased copper levels. In addition, the analytical data reported in the application was screened against calculated water quality-based effluent limitations for the protection of aquatic life. The reported analytical data does not exceed 70 percent of the calculated daily average water quality-based effluent limitation for aquatic life protection; therefore, no monitoring or limitation for total copper is required. The sampling for the application is a separate sampling requirement which is required with the application which is normally done every five years. The sampling requirement with the application is much broader than the monitoring requirement in the draft permit.

All monitoring required by this permit is by the Southwestern Electric Power Company. Testing of the effluent samples must be done by a certified laboratory. These samples and monitoring frequency are done based on the page 2 through page 2c of the draft permit which ranges from once per day to once per 2 weeks. The results of the sampling are reported monthly to TCEQ via their discharge monitoring report.

The permittee requested removal of Other Requirement No. 10, related to performing long-term monitoring for total copper, that the Executive Director recommends granting. Other Requirement No. 10 was included in the existing permit requiring the permittee to collect data to determine whether the discharge of the once-through cooling water waste stream contributes to the copper levels in the receiving stream. The permittee submitted three years of data with their amendment application, as shown in Appendix D.

Comment 3:

Charles Neiman expressed concern regarding the type of cleaning chemicals being used in the metal cleaning wastewater (Outfall 003), specifically the use of arsenic.

Response 3:

Attachment C of the application contains the Safety Data Sheets (SDS) and provides a list of chemicals used as additives in the cooling towers and boilers at the facility. There are twenty-two SDS in the application and arsenic is not listed on the SDS as a chemical of reportable quantities in any of the solutions used.

III. Changes Made to the Draft Permit in Response to Comments

No changes were made to the draft permit in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Kelly Keel
Interim Executive Director

Charmaine Backens, Deputy Director
Environmental Law Division



Aubrey Pawelka, Staff Attorney
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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on July 18, 2023, the “Executive Director’s Response to Public Comment” for Permit No. WQ0001331000 was filed with the Texas Commission on Environmental Quality’s Office of the Chief Clerk.



Aubrey Pawelka, Staff Attorney
Environmental Law Division