

TCEQ DOCKET NO. 2024-0131-MWD

APPLICATION BY WILCO § BEFORE THE TEXAS COMMISSION
MUNICIPAL UTILITY DISTRICT 45 §
WWTP, LLC § ON
FOR PROPOSED TPDES PERMIT §
NO. WQ0016146001 § ENVIRONMENTAL QUALITY

PRAIRIE CROSSING WASTEWATER, LLC'S
REPLY TO RESPONSES TO HEARING REQUESTS

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

Prairie Crossing Wastewater, LLC (“Prairie Crossing”), pursuant to 30 Texas Administrative Code (“TAC”) § 55.209(g), files this Reply to the Responses to Hearing Requests filed by the Executive Director (“ED”), the Office of Public Interest Counsel (“OPIC”), and Wilco Municipal Utility District 45 WWTP, LLC (“Wilco MUD 45” or “Applicant”), related to Wilco MUD 45’s application for Proposed TPDES Permit No. WQ0016146001 (“Application”) and the draft permit filed by the ED in this matter related to the Application (“Draft Permit”). Prairie Crossing respectfully shows the following:

I. SUMMARY

The Texas Commission on Environmental Quality (“Commission”) should grant Prairie Crossing’s timely-filed request for contested case hearing (“Request”) of the ED’s decision regarding the Application and Draft Permit because it satisfies all criteria warranting that the Commission do so; the Request complies with the form and procedural requirements set forth in 30 TAC § 55.201, and Prairie Crossing is an “affected person” as such term is defined in Texas Water Code (“TWC”) § 5.115 and 30 TAC § 55.203. The ED and OPIC agree with Prairie Crossing’s Request and have recommended that the Commission find that Prairie Crossing is an “affected person” and should be

granted a referral to the State Office of Administrative Hearings (“SOAH”) for a contested case hearing.¹ Prairie Crossing supports such recommendations, despite Applicant’s Response to Requests for Contested Case Hearing (“Applicant’s Response”) contending that Prairie Crossing’s Request should be denied.² This Reply addresses the responses.

II. REPLY

A. Prairie Crossing is an “Affected Person” in this Matter and the Commission should grant Prairie Crossing’s Request for Contested Case Hearing.

Contrary to Applicant’s recommendation, the Commission should grant Prairie Crossing’s Request because it satisfies all of the regulatory prerequisites applicable to a contested case hearing request regarding a TPDES permit application. While the Applicant’s Response contends that Prairie Crossing is not an “affected person,” this Reply provides the factual bases to refute such contention and demonstrates that Prairie Crossing is entitled to a contested case hearing.³

In their Responses, the ED and OPIC correctly found that Prairie Crossing qualifies as affected person in this matter.⁴ Prairie Crossing is the holder of TPDES Permit No. WQ0015850001, which authorizes Prairie Crossing to build a wastewater treatment plant downstream of the proposed facility.⁵ Additionally, Prairie Crossing is currently in the

¹ Executive Director’s Response to Hearing Requests (“ED’s Response”); Docket No. 2024-0131-MWD, pg. 8 (April 1, 2024); Office of Public Interest Counsel’s Response to Hearing Requests (“OPIC’s Response”); Docket No. 2024-0131-MWD, pg. 10 (April 1, 2024).

² Applicant’s Response to Requests for Contested Case Hearing (“Applicant’s Response”); Docket No. 2024-0131-MWD, pg. 9-10 (April 1, 2024).

³ Applicant’s Response accuses the Prairie Crossing entities of “exploiting” Commission processes by filing its Request in this matter. (Applicant’s Response at pg. 2-3 (April 1, 2024).) Such argument is both factually incorrect and also has no bearing on who qualifies as an affected person under TCEQ rules. Applicant’s Response also discusses developer-related negotiations. (Applicant’s Response at pg. 2-3 (April 1, 2024).) This Reply will not address such comments as they have no relevance to affected person status in a TCEQ proceeding.

⁴ ED’s Response at pg. 8 (April 1, 2024); OPIC’s Response at pg. 10 (April 1, 2024).

⁵ TPDES Permit No. WQ0015850001.

process of amending its permit to allow for even greater capacity to serve the regional area. The ED and OPIC correctly found that this downstream proximity from the proposed plant and stated economic interests in the permitted Prairie Crossing facility are personal justiciable interests in the matter as outlined in 30 TAC § 55.203(c).⁶ As such, the Commission should decline to follow the recommendation of the Applicant, and instead follow the recommendation of the ED and OPIC and grant Prairie Crossing's Request.

B. The Applicant is Incorrect in its Assertion that Prairie Crossing Cannot Raise Regionalization Concerns as A Personal Justiciable Issue.

The Applicant is incorrect in stating that Prairie Crossing has no personal justiciable interest based on regionalization and the Commission should find as such. Commission regionalization policy was instituted in response to TWC § 26.0282 that dictates that when considering wastewater permits, the Commission “may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of *existing or proposed* areawide or regional waste collection, treatment, and disposal systems not designed as such by commission order pursuant to provisions of this subchapter.”⁷ Prairie Crossing is the holder of TPDES Permit No. WQ0015850001 that authorizes the construction of a permitted regional wastewater treatment facility. The fact that the facility has not been constructed yet is not relevant under TWC § 26.0282. Therefore, as recommended by the ED and OPIC, regionalization is an appropriate issue to be raised by Prairie Crossing and should be treated as such by the Commission.

⁶ ED's Response at pg. 8 (April 1, 2024); OPIC's Response at pg.10 (April 1, 2024).

⁷ Tex. Water Code § 26.0282 (emphasis added).

C. The ED Has Correctly Identified and Outlined the Relevant and Material Issues for Referral to SOAH and the Commission Should Adopt Their Recommendation, or, in the Alternative, Adopt the Issues Recommended by OPIC.

In determining the issues that are relevant and material to be referred to the State Office of Administrative Hearings (“SOAH”), the Commission should follow the recommendations of the ED, or in the alternative, OPIC. The ED’s Response identifies six issues for referral and OPIC’s Response identifies four issues for referral. Prairie Crossing believes the issue list recommended by the ED is the most comprehensive and supports the Commission’s referral of all six issues to SOAH. In the alternative, Prairie Crossing encourages the Commission’s referral of OPIC’s four identified issues to SOAH as it encompasses the same material.

III. CONCLUSION

For the foregoing reasons, and as recommended by the ED and OPIC, Prairie Crossing requests that the Commission find that Prairie Crossing is an affected person whose Request complies with the procedural prerequisites set forth in 30 TAC § 55.201 and grant it a contested case hearing on the relevant and material issues raised in its Request. In the alternative, Prairie Crossing requests that the Commission deny the Application or remand it for reconsideration by the ED. Further, in the event of a contested case hearing, Prairie Crossing reserves the right to raise and pursue any and all issues that may be relevant to its interests.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading was filed with the Office of the Chief Clerk and served to the Executive Director, OPIC, and the Applicant pursuant to 30 Tex. Admin. Code § 55.209(g) on this 15th of April, 2024.

A handwritten signature in blue ink, appearing to read "Nathan E. Vassar", is written above a horizontal line.

Nathan E. Vassar