TCEQ Docket No. 2024-1918-AIR
Proposed Permit No. 175173

APPLICATION BY	**§**	**BEFORE THE**
WOLF HOLLOW II POWER, LLC	**§**	**TEXAS COMMISSION ON**
GRANBURY, HOOD COUNTY	**§**	**ENVIRONMENTAL QUALITY**

APPLICANT'S RESPONSE TO REQUESTS FOR RECONSIDERATION AND REQUESTS FOR CONTESTED CASE HEARING

January 17, 2025

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In accordance with 30 Tex. Admin. Code ("TAC") § 55.209(d), Wolf Hollow II Power, LLC ("Applicant" or "Wolf Hollow") submits this Response to Requests for Reconsideration and Requests for a Contested Case Hearing.

I. Application Background

On January 25, 2024, Wolf Hollow submitted an application (the "Application") to the Texas Commission on Environmental Quality ("TCEQ" or the "Commission") for the issuance of Permit No. 175173 (the "Permit"), a New Source Review Permit under the Texas Clean Air Act ("TCAA"), Tex. Health & Safety Code § 382.0518. The proposed Permit will authorize the construction of an electric generating facility consisting of eight simple-cycle combustion turbines, located near Granbury, Hood County, Texas (the "Facility"). Wolf Hollow's proposed Facility will provide critical peaking power generation to supply electricity to the Texas grid during times of high electricity demand.

The Executive Director reviewed the Application and, on February 1, 2024, determined it was administratively complete. Wolf Hollow then published the Notice of Receipt and Intent ("NORI") on March 2, 2024, in English and on March 5, 2024, in Spanish. The NORI provided a description of the public participation process, including how to submit public comment or request a public meeting or a contested case hearing. After completing the technical review, the Executive

Director issued its Preliminary Decision, which provides: "The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations."

Wolf Hollow published the Notice of Application and Preliminary Decision ("NAPD") on August 10, 2024, in English and on August 6, 2024, in Spanish. Similar to the NORI, the NAPD described the public participation process and also provided instruction regarding review of the draft permit and submission of public comments, public meeting requests, and contested case hearing requests. A public meeting was held on September 9, 2024, in Granbury, Texas. At the public meeting, TCEQ received oral and written comments. Consistent with applicable regulations, TCEQ received public comments and hearing requests for 30 days after both the NORI and NAPD were published. The public comment period ended on September 11, 2024.

II. Argument Summary

A. Protestants' True Motive Is Misdirected Here

Through this Application Wolf Hollow seeks to expand its existing electric generating facility in Granbury by constructing eight simple-cycle combustion turbines. This expansion effort is in response to the desire to provide critical peaking power generation to the Texas grid during times of high electricity demand. The need to increase Texas' power supply is no secret. Wolf Hollow's Facility would bring up to 350 MW of much needed dispatchable electric power to north Texas. Wolf Hollow's facility is also one of 17 candidates to receive funding under the Texas Energy Fund. As noted by the Public Utility Commission of Texas ("PUCT"), "Each application was closely analyzed, and the projects selected to advance will have the greatest impact in meeting the needs of the ERCOT grid and ensure long-term electric reliability in Texas."[1]

[1] PUCT Press Release, August 29, 2024.

To evaluate the merit of the contested case hearing requests and the requests for reconsideration, it is important that the Commission understand the underlying circumstances that motivated the individuals who submitted those requests and the general concerns from the community. Granbury, Texas is the site of a bitcoin mine, which is operated by Marathon Digital Holdings, Inc. ("Marathon"). The bitcoin operation is located on property that has been leased from Applicant. Marathon's bitcoin operation has caused strong opposition within the community, and residents have objected to the allegedly "constant and unrelenting noise from Marathon's cryptomining operations."[2] These objections to Marathon's crypto or bitcoin mining operations have even escalated to include a purported citizens group, Citizens Concerned About Wolf Hollow ("CCWH"), filing a lawsuit against Marathon stating that the cryptomining operation creates a private nuisance by causing and then failing to mitigate excessive noise pollution. It appears this purported citizens group, which includes several of those who filed hearing requests and requests for reconsideration, is represented and funded by outside, anti-cryptomining interests. The lawsuit currently is ongoing in the United States District Court for the Northern District of Texas, Fort Worth Division and does not make claims against Applicant or the proposed expansion that is the subject of this Application.

CCWH's petition against Marathon strongly suggests local residents do not actually have complaints about Applicant's power plant operations at the Wolf Hollow site or the proposed expansion but instead are focused on the bitcoin mining operation and misdirecting their complaints here via the hearing requests and requests for reconsideration. For example, CCWH's petition states:

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[2] Dustin Renaud, *Granbury Residents Sue Local Bitcoin Mine Over Health-Threatening Noise Pollution*, EARTHJUSTICE (Oct. 7, 2024), https://earthjustice.org/press/2024/granbury-residents-sue-local-bitcoin-mine-over-health-threatening-noise-pollution.

> "Before the MARA Cryptomine came online, the surrounding area was generally peaceful, calm, and free from any major noise and/or sound disturbances of a commercial or industrial nature…Members of the Plaintiff group previously enjoyed their right to the quiet use and enjoyment of their properties, unabated, living in their rural-country homes free from any major industrial and commercial noise."[3]

The petition also provides that, "Although [Ms. Shadden] heard occasional noise from passing traffic and the Wolf Hollow gas plant, it was not disruptive, and the area was generally quiet."[4] Similarly, "Although the Wolf Hollow gas plant and nearby traffic on the road made occasional noise, [Mr. Weeks'] home was quiet." Finally, the petition states, "Prior to the operation of the MARA Cryptomine, Mr. Lakey could enjoy cool, quiet evenings in his backyard around the firepit. Noise around his property was minimal and life for Mr. and Mrs. Lakey was peaceful."[5]

Since the filing of this Application, the vast majority of the public comments and other submissions to the TCEQ have focused on concerns regarding noise from Marathon's bitcoin facility. In fact, many of the commentors explicitly refer to the ongoing nuisance lawsuit against Marathon. Every request for reconsideration states: "There is an ongoing nuisance lawsuit from damaged citizens against [Marathon], located on Constellation's Wolf Hollow property. Constellation should deal with resolving this lawsuit before building a new natural gas plant on the Wolf Hollow site." Upon realizing that noise concerns are outside of the jurisdiction of the TCEQ, some individuals submitted new comments citing mostly generalized and unsubstantiated environmental concerns, often only using broad, generic terms such as "air pollution" or "health concerns," while failing to demonstrate – or even attempting to demonstrate – that a reasonable relationship exists between the interest claimed and the proposed Facility. These generalized

[3] *Citizens Concerned About Wolf Hollow v. Marathon Digital Holdings, Inc.*, Original Petition at 5.
[4] *Id.*
[5] *Id.* at 5-6.

environmental complaints, as well as the complaints about noise, fail to establish a personal justiciable interest entitling an individual to a contested case hearing.

Noise from the bitcoin mine is the actual issue that concerns residents; the public comments (and litigation) are focused on noise and complaints about bitcoin mining, not environmental issues concerning Applicant. In addition to filing suit via CCWH, some of the residents even have put up signs protesting the bitcoin noise, including Ms. Cheryl Shadden, who has a prominent sign on her property stating "No Bitcoin Noise"[6]:

Similarly, Mr. Daniel Lakey also put up a sign on his property protesting the bitcoin noise[7]:

[6] Andrew R. Chow, *A Texas Town's Misery Underscores the Impact of Bitcoin Mines Across the U.S.*, TIME (February 5, 2024, 10:59 AM), https://time.com/6590155/bitcoin-mining-noise-texas/.
[7] Alex Boyer, *Residents near Granbury file lawsuit against Bitcoin mining company*, FOX 4 NEWS (Oct. 10, 2024, 3:52 PM), https://www.fox4news.com/news/granbury-bitcoin-mining-lawsuit-noise-complaints.

Again, the residents in Granbury are actually concerned about the noise generated from Marathon's bitcoin facility; none have expressed any specific or well-taken complaint about Applicant's operation or power generation. That said, it also is apparent that Wolf Hollow's Application for expansion of its power plant now has unfortunately become a misplaced target for the residents' concerns about noise from Marathon's bitcoin facility. However, TCEQ lacks jurisdiction over noise concerns, further emphasizing the inapplicability of the objections at hand. Denial of these hearing requests would allow the proposed power plant to proceed based on the merits of its Application, ensuring that the decision regarding the Application is grounded in facts within the TCEQ's jurisdictional authority rather than misplaced concerns about unrelated bitcoin operations.

TCEQ staff have rigorously evaluated the Application and concluded that the proposed emissions of all criteria pollutants will not cause an exceedance of any National Ambient Air Quality Standards ("NAAQS").[8] The proposed emissions are all below every applicable federal

[8] Section 109 of the CAA requires that the primary NAAQS be set at a level that will protect public health with an adequate margin of safety. EPA has interpreted this phrase to require setting the NAAQS at levels below those at which adverse health effects have been detected or expected for sensitive and at-risk groups of people (e.g., children and asthmatics); *see* 83 Fed. Reg. 17226, 17228 n. 2: "The legislative history of section 109 indicates that a primary

and state standard, which are specifically designed to be protective of public health and the environment. The claims that emissions from this facility will cause adverse health effects are vague, lack specific details, and do not clearly identify how emissions at the levels proposed in the Application would actually cause adverse impacts.

The Requestors have made it clear that they would like Wolf Hollow to take action to address the noise concerns coming from Marathon. Whether or not the residents of Hood County have a valid complaint regarding noise from Marathon's bitcoin mining operation, it is not appropriate to allow the contested case hearing process to be misused as leverage to attempt to somehow resolve Hood County residents' lawsuit against Marathon. Those complaints need to be addressed to Marathon. This is an inappropriate forum, and one that, under the law and TCEQ's authority, cannot help them in any event.

The Commission clearly has the authority and should "weigh and resolve matters that may go to the merits of the underlying application, including the likely impact" of the emissions from the proposed Facility.[9] The merits of the Application and the Executive Director's robust review of the Application and the Response to Comments demonstrate that the proposed Facility will be protective of public health and the environment, that no contested case is warranted, and the requests for reconsideration should be denied.

B. Requests Fail to Satisfy the Procedural and Substantive Requirements and Should be Denied.

The TCEQ Commissioner's Integrated Database classifies 149 submittals as requests for a contested case hearing at the State Office of Administrative Hearings ("SOAH") (referred to collectively as the "Hearing Requests"). Additionally, multiple individuals submitted a form letter

standard is to be set at "the maximum permissible ambient air level . . . which will protect the health of any [sensitive] group of the population."

[9] *Sierra Club v. Tex. Comm'n on Envtl. Quality*, 455 S.W.3d 214, 225 (Tex. App.—Austin Dec. 30, 2014).

as a Request for Reconsideration of the Executive Director's Decision. For the reasons set forth below, Applicant respectfully requests that the Commission find that each individual who submitted a request is not an "affected person" and deny each of the Hearing Requests. Furthermore, Applicant respectfully requests that the Commission deny each of the Requests for Reconsideration.

The vast majority of the Hearing Requests fail to meet the minimum legal requirements to even be considered with respect to a contested case hearing. Understandably, the Chief Clerk takes a conservative approach when determining whether a particular comment should be considered a contested case hearing request; however, 77 of the requests are truly public *meeting* requests, rather than contested case *hearing* requests as specifically detailed in Section V below.

The Executive Director determined that the predicted maximum ground level concentrations from the Wolf Hollow Facility for sulfur dioxide (SO_2), particulate matter less than or equal to 10 microns in aerodynamic diameter (PM_{10}), nitrogen dioxide (NO_2) (annual standard), and carbon monoxide (CO) were so far below the NAAQS *de minimis* levels that no further NAAQS analysis was required.

Table 1: Comparison of GLC_{MAX} Levels, *De Minimis*, and NAAQS

Pollutant and Averaging Period	**GLC_{MAX} ($\mu g/m^3$)**	***De Minimis*** **($\mu g/m^3$)**
SO_2 1-hour	1.87	7.8
SO_2 3-hour	1.06	25
PM_{10} 24-hour	1.83	5
PM_{10} Annual	0.36	1
NO_2 Annual	0.58	1
CO 1-hour	181	2000
CO 8-hour	19	500

For the two pollutants above the *de minimis* standard, $PM_{2.5}$ and NO_2 (1-hour standard), the NAAQS analysis demonstrated that emissions of those pollutants, when added to background concentrations, were below the applicable NAAQS standard.

Table 2: Comparison of GLC_{MAX} Levels, Background Concentrations, and NAAQS

Pollutant	GLC_{MAX} ($\mu g/m^3$)	Total Conc. = [Background + GLC_{MAX}] ($\mu g/m^3$)	Standard ($\mu g/m^3$)
$PM_{2.5}$ 24-hour	4.28	21.79	35
$PM_{2.5}$ Annual	0.67	8.45	9
NO_2 1-hour	***	164.33[10]	188

The Executive Director correctly concluded that emissions from the Wolf Hollow Facility "should not cause or contribute to a violation of the NAAQS and are protective of human health and the environment."[11]

The Executive Director's Response to Public Comment ("RTC") addressed all possible relevant and material concerns raised by commenters. The Executive Director's RTC does not recommend any changes to the draft Permit as a result of the public comments and continues to recommend the issuance of the Permit.

The Application and the Executive Director's thorough review of that Application demonstrate that the Wolf Hollow Facility will comply with all applicable statutory and regulatory requirements for issuance of the Permit. The Executive Director determined that the Application met the requirements of the TCAA, 30 TAC Chapter 116, and the Federal Clean Air Act, and that construction and operation of the Wolf Hollow Facility in compliance with the Permit would be

[10] Applicant modeled for the NO_2 1-hour standard using the Plume Volume Molar Ratio Method ("PVMRM"), which evaluates the "Total Concentration." A "project only" GLC_{MAX} was not obtained as part of this modeling process. Therefore, the Total Concentration was compared to the applicable NAAQS.

[11] Executive Director's RTC at 6. Executive Director's Response to Hearing Request, TCEQ Docket No. 2024-1918-AIR at 6 (hereinafter Executive Director's RTC).

protective of human health and the environment. Environmental Protection Agency ("EPA") and TCEQ air quality standards are protective of human health and the environment, and emissions from Wolf Hollow's proposed facilities are below those regulatory thresholds; therefore, by definition, air quality in the vicinity of Wolf Hollow's proposed Facility will be protective.

As demonstrated below, the requestors fail to satisfy the procedural and substantive requirements of requests for reconsideration or contested case hearings, as applicable, and accordingly, all requests should be denied. While citizen complaints should not be dismissed lightly, the TCEQ permitting process should not be misused for unrelated purposes, wasting the resources of the State of Texas and the Applicant. Use of environmental buzzwords and generalized claims without any basis in fact should not be enough to result in a contested case hearing.

III. Standard of Review

A. Requests for Reconsideration

Pursuant to 30 TAC § 55.201(e), requests for reconsideration must be in writing and filed within 30 days after the Executive Director's RTC. Additionally, the request for reconsideration must include a name, address, daytime telephone number, and must give reasons why the decision should be reconsidered.

B. Contested Case Hearing Requests

Only the Commission, the Executive Director, the applicant, or an affected person may request a contested case hearing.[12] A hearing request by an affected person must be in writing, timely, cannot be based on a comment that was withdrawn, and must be based on the requestor's own timely comments.[13] A hearing request must identify all relevant and material disputed issues

[12] 30 TAC § 55.201(b).
[13] 30 TAC § 55.201(c).

of fact or mixed questions of law and fact that were raised during the comment period and that form the basis of the request for a contested case hearing.[14] The Commission may not refer an issue to SOAH for a contested case hearing unless the Commission determines that the issue:

(1) Involves a disputed question of fact or a mixed question of law and fact;
(2) Was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by an affected person whose request is granted; and
(3) Is relevant and material to the decision on the application.[15]

Therefore, in its contested case hearing request analysis, the Commission must make two determinations:

1) whether the contested case hearing request threshold requirements are substantially complied with; and
2) whether the requestor is an "affected person."[16]

The threshold requirements for a contested case hearing request are set forth in 30 TAC §55.201(d), which requires that a hearing request must:

1) give the name, address, daytime telephone number, and, where possible, fax number of the person (or group of persons) who is filing the request;
2) identify the person's personal justiciable interest affected by the application, including the requestor's location and distance from the proposed facility and how and why the requestor will be adversely affected by the proposed facility in a manner not common to members of the general public;
3) request a contested case hearing;
4) for applications filed on or after September 1, 2015, list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request; and
5) provide any other information specified in the public notice of application.

Once the Commission has determined that the requestor satisfies these threshold requirements, then the Commission evaluates whether the requestor is an "affected person." The term "affected person" has been narrowly defined by the Texas Legislature. Only those persons

[14] 30 TAC § 55.211(c)(2)(A)(ii).
[15] 30 TAC § 50.115(c).
[16] *See* Tex. Water Code §§ 5.115, 5.556.

who have a "personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing" are entitled to a contested case hearing.[17] An interest common to members of the general public does not meet the threshold for a personal justiciable interest.[18] The authority granted by the Legislature prohibits the Commission from granting a contested case hearing if the requestor is not an affected person and requires requestors to establish a personal justiciable interest. To be a personal justiciable interest, that interest must be one that is not common with members of the general public and that interest must be one that is actually harmed by or will imminently be harmed by the proposed permit.[19]

Furthermore, the TCEQ has adopted rules that specify the factors that must be considered in evaluating whether a person is an affected person. The factors are as follows:

1) Whether the interest claimed is one protected by the law under which the application will be considered;
2) Distance restrictions or other limitations imposed by law on the affected interest;
3) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
4) The likely impact of the regulated activity on the health and safety of the person, and on the use of the property of the person;
5) The likely impact of the regulated activity on the use of the impacted natural resource by the person;
6) For a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
7) For governmental entities, their statutory authority over or interest in the issues relevant to the application.[20]

Notably, this is not just a "check the box" exercise. The TCEQ has discretion to look closely at the merits of any submissions made by the public, as well as the application, and the

[17] Tex. Water Code § 5.115(a).
[18] *Id.*
[19] Tex. Water Code §§ 5.115, 5.556; *see also*, *Tex. Disposal Sys. Landfill, Inc. v. Tex. Comm'n on Envtl. Quality*, 259 S.W.3d 361, 363 (Tex. App.—Amarillo 2008) (citing *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304–05 (Tex. 2008)).
[20] 30 Tex. Admin. Code ("TAC") § 55.203(c).

analysis and opinions of the Executive Director. In determining what evidence to apply to the above factors when evaluating a given request, the Third Court of Appeals explained that TCEQ "enjoys the discretion to weigh and *resolve matters that may go to the merits of the underlying application, including the likely impact the regulated activity* . . . will have on the health, safety, and use of property by the hearing requestor and on the use of natural resources."[21]

This discretion to consider the underlying merits of the application is also reflected in TCEQ rules, which allow the Commission to consider the following:

1) The merits of the underlying application and supporting documentation in the commission's administrative record, including whether the application meets the requirements for permit issuance;
2) The analysis and opinions of the executive director; and
3) Any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.[22]

Last, if the Commission determines that there is a contested case hearing request that meets all of the requirements described above, then it can decide whether any of the issues presented in the request should be referred to SOAH for a contested case hearing, based on the following requirements:

1) The issue must involve a disputed question of fact or a mixed question of law and fact;
2) The issue must have been raised during the public comment period, and, for applications filed on or after September 1, 2015, raised in a comment made by an affected person whose request is granted; and
3) The issue must be relevant and material to the decision on the application.[23]

Courts have recognized that the Commission has the discretion to deny a hearing requestor party status at the agenda hearing stage of the process based on "the sworn application, attached expert reports, the analysis and opinions of professionals on its staff, and reports, opinions, and

[21] *See Sierra Club v. Tex. Comm'n on Envtl. Quality*, 455 S.W.3d 214, 225 (Tex. App.—Austin Dec. 30, 2014).
[22] 30 TAC § 55.203(d).
[23] 30 TAC § 50.115(c).

data" it has before it.[24] The Courts have upheld that discretion when it is based either or both on (l) distance (too far away such that the alleged concern is common to the general public), or (2) the fact that adverse impacts are demonstrably unlikely and not actual or imminent. As shown below, substantial evidence is contained in this record and can be relied upon by the Commission in reaching its decision. None of the hearing requestors submitted expert reports, affidavits, opinions or data. On the other hand, Wolf Hollow has submitted the Application under seal of an engineer licensed by the Texas Board of Professional Engineers, as well as an air dispersion and modeling analysis. Both were carefully considered by TCEQ's air permitting staff, toxicologists, and modelers, as part of the determination that the Permit should be granted. There is no disputed issue to be considered at a hearing.

IV. Wolf Hollow's Response to Requests for Reconsideration

The deadline to file requests for reconsideration was December 23, 2024, thus all those filed after December 23, 2024, should be considered untimely. All of the requests for reconsideration were submitted on the same form letter.

While the vast majority of hearing requests related to air emissions are extremely generic in nature – concerns about "air pollution" and opposition to "air pollutants" – the requests for reconsideration focus on a single air pollutant, mercury, making it the requestors' primary environmental concern (a misguided concern for the reasons discussed below). The form letters argue that the Commission should reconsider the Executive Director's decision to grant the air permit to Wolf Hollow based on concerns that emissions from the Facility will not comply with the Mercury and Air Toxics Standards ("MATS"). This form letter also requests reconsideration based on noise coming from Marathon's bitcoin mining facility and suggests that Wolf Hollow

[24] *Tex. Comm'n on Envtl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013).

should resolve the ongoing nuisance lawsuit filed by local citizens against Marathon before building a new gas plant at the Wolf Hollow site. Finally, the form letter states without explanation or substantiation "I do not believe that Wolf Hollow II will actually run at the threshold they would need to satisfy their minor source designation" and states that there are no provisions in the permit requiring Wolf Hollow to operate under 3,500 hours per year.

Natural gas-fired EGUs are not subject to MATS.[25] The Commission should not grant the request for reconsideration based on whether Wolf Hollow can comply with a rule that is not even applicable. In fact, EPA has clearly indicated that emissions of mercury compounds from burning natural gas are negligible.[26] The RTC also clearly states that there are no mercury emissions from natural gas-fired turbines. Any request for reconsideration based on concerns related to mercury emissions should be denied.

Similarly, the concerns related to noise from Marathon's bitcoin facility and the lawsuit related to such noise is wholly unrelated to Wolf Hollow, is outside of the Commission's jurisdiction, and has no bearing on the Executive Director's evaluation of whether the Application meets the requirements in TCEQ rules and the Texas Clean Air Act.

Finally, concerns about the number of operating hours per year are specifically addressed in the Permit Application and the RTC, which states:

> Draft Special Condition No. 6 limits the combustion turbine generators to not exceed an annual firing rate of 13,076,000 MMBtu/yr on a 12-month rolling average, which is based on each turbine operating at approximately 3500 hours per year (~39.95%).

While the Permit does not have a specific hour limit, it has a MMBtu/yr limit which is based on hours of operation per year. Wolf Hollow is required to monitor its firing rate and the

[25] *See* 40 C.F.R. §63.9981, which provides that operators are subject to MATS if they "operate a coal-fired EGU or an oil-fired EGU."
[26] *See* 81 Fed. Reg. 6,731, n. 134 (February 8, 2016).

limit is indeed enforceable. Furthermore, in making an affected person determination, the Commission must presume the facility will be operated in compliance with the permit terms.[27] As to the requests for reconsideration, the Commission should not make any determination based on the Applicant's presumed non-compliance with the express terms of the Permit.

All of the requests for reconsideration should be denied.

V. Wolf Hollow's Response to the Contested Case Hearing Requests

A. Timeliness

The Commission's rules require that a hearing request list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request.[28] A hearing request that is not based on disputed issues of fact *that were raised during the comment period* does not comply with the Commission's regulations and must be denied. In other words, if a requestor did not submit comments during the comment period, and that same requestor raises an issue for the first time during the contested case hearing request period, that hearing request must be denied.

The following requestors did not submit any comments or hearing requests during the public comment period.

[27] Tex. Water Code § 5.115((a-1)(1)(B); 30 TAC § 55.203(c)(3)-(4) (Commission must consider the likely impact of the *regulated activity*).
[28] 30 TAC § 55.201(d)(4)(B).

Table 3: Untimely Filed Hearing Requests

Commenter	Date Submitted
Courtney Hubbell	9.16.2024
Nikki Sopchak	9.16.2024
Mary McGuffey	9.16.2024
Audrie Tibljas	9.12.2024
Edward J. Tibljas	9.12.2024
Kim Tibljas	9.12.2024
C.R. Rains	9.12.2024
Christy Rains	9.12.2024

Commenter	Date Submitted
Gina Rogers	9.12.2024
Mark Rogers	9.12.2024
Brent Hayes	9.12.2024
Linda Hayes	9.12.2024
Ted Hayes	9.12.2024
Wyveda Dowdy	9.12.2024
Lori Durbin	9.12.2024
Liana Oechsle	9.12.2024

B. Distance

When determining the likely impact of the activity on the health and safety of a requestor, the requestor's use of property, and the requestor's use of natural resources, the Commission consistently analyzes the distance between the proposed facility and the requestor's interests.[29] The Commission's rules do not provide a bright distance limitation beyond which requestors do not have a right to a contested case hearing. At the same time, the Commission has historically acknowledged that persons residing more than one mile from the point of emissions will only be considered to be an affected person if they provide specific unique details about how they are affected despite the significant distance.[30] The distance between the requestor and the proposed

[29] *See* Executive Director's Response to Requests for Reconsideration and Hearing Requests, *Saint-Gobain Ceramics & Plastics, Inc.* (TCEQ Docket No. 2017-0533-AIR) and Order (May 30, 2017); *Freeport LNG Development, L.P.* (TCEQ Docket No. 2014-0692-AIR) and Order (July 10, 2014).

[30] *See Collins v. Tex. Natural Res. Conservation Comm'n*, 94 S.W.3d 876, 880–83 (Tex. App.—Austin 2002) (affirming the Commission's determination that a requestor was not an affected person because he lived 1.3 miles away from the applicant, although his property line was only 590 feet away); *see also* Executive Director's Response to Hearing Requests, *In re Regency Field Services, LLC*, TCEQ Docket No. 2010-0843-AIR at 8 (stating that "distance from the proposed facility is key to the issue whether or not there is likely impact of the regulated activity on a person's interests (such as the health and safety of the person) and on the use of property of the person" and that the "Executive Director has generally determined that hearing requestors who reside greater than one mile from the facility are not likely to be impacted differently than any other member of the general public"); Executive Director's Response to Hearing Request, *TPCO America Corporation*, TCEQ Docket No. 2010-0280-AIR at 5 (stating that the "ED considers persons residing more than one mile from the proposed facility to be unlikely to be impacted differently from the general public."); *Collins v. Tex. Natural Res. Conservation Comm'n*, 94 S.W.3d 876 (Tex. App.—Austin 2002)

Facility is critically important in evaluating hearing requests because of the impact of air dispersion on the potential impact, if any, of air contaminants. None of the requestors who reside more than one mile away from the proposed Facility have provided specific unique details as to how they would be affected in light of the significant distance between the proposed Facility and the requestor's location.

The following requestors are located a significant distance from the proposed Facility or failed to provide an address. The failure to provide an address, in and of itself, means the request does not meet the minimum requirements for a contested case hearing request in 30 T.A.C. §55.201(d)(1) and (d)(2).

(holding that there was substantial evidence to support TNRCC's decision to deny a hearing request because the requestor lives 1.3 miles from the facility at issue and the evidence before the Commission indicated that the proposed facility was "very unlikely" to adversely affect the hearing requestor).

Table 4: Hearing Requestors Who are Not Affected Persons Based on Distance

Commenter	Distance from Facility
John W. Highsmith	4 miles
Linda Oeschsle	9 miles
Karen J. Russell	10 miles
Dale Russell	10 miles
Mary McGuffey	5 miles
Courtney Hubbell	5 miles
Nikki Sopchak	4 miles
Randall Larson	4 miles
Patricia Larson	4 miles
James Bell	5 miles
Joseph Webber	1.75 miles
Janet M. Lowery	1.25 miles
Van Austin Williams	2 miles
Sheri Shaw	9 miles
Melanie Graft	15 miles
Michael Graft	15 miles
Cynthia Marie Highsmith	4 miles
Monica and Jim Brown	4 miles
Richard Brunning	5 miles

Commenter	Distance from Facility
Barbara Meuter	No address
Mary and Jimmy Wimberley	9 miles
Timothy Taylor	7 miles
Melanie R. Taylor	7 miles
Walter Wimberley	8 miles
John Joslin	5 miles
Rhonda Holliday	5 miles
Paul Holliday	5 miles
Eva Royer	7 miles
Tom and Kay Dykes	4 miles
1042 Mickelson Dr.	5 miles
Tim Harris	3 miles
Eva Royer	7 miles
Brett Niebes	1.5 miles
Christy Rains	4 miles
Keisha Doss	10 miles
Shannon Wolf	3 miles
Christy Rains	4 miles
C.R. Rains	4 miles
Shannon Wolf	3 miles

C. Likely Impact of the Regulated Activity and Reasonable Relationship Between Interest and Activity Regulated

After eliminating those requests that are either unrelated to this Application, untimely, a public meeting request, and requests from those who live significant distances from the proposed Facility, the Commission is left with far fewer hearing requests that require individual briefing. None of these requestors have demonstrated the likely impact of the regulated activity on the requestor's health and safety, the use of their property, or their use of an impacted resource, as required by 30 TAC §§ 55.203(c)(4) and 55.203(c)(5).

The requestors failed to show that a reasonable relationship exists between the interest claimed and the regulated activity.[31] None of the requestors have provided any evidence supporting a relationship between the alleged environmental harm and the proposed Facility. After reviewing the comments and hearing requests, it is abundantly clear that the real focus here is noise from an unaffiliated bitcoin operation. Wolf Hollow does not own or operate Marathon's bitcoin facility.

Additionally, any suggestions that the proposed Facility will impact health, safety, or property are entirely refuted by the overwhelming amount of information and evidence before the Commission contained in the Application itself and the Executive Director's RTC. These documents clearly demonstrate that the Permit is protective of human health and the environment and emissions from the proposed Facility will not adversely impact air quality in this region. There has not been a serious effort by any of the requestors to dispute that data or those findings.

1. Criteria Pollutants and NAAQS

The proposed emissions of all criteria pollutants will not cause an exceedance of the applicable NAAQS. In fact, for most of the criteria pollutants, the proposed emissions are below *de minimis* levels. Wolf Hollow conducted a NAAQS analysis for SO_2, PM_{10}, $PM_{2.5}$, NO_2, and

[31] *See* 30 TAC § 55.203(c)(3).

CO. The first step of the NAAQS analysis is to compare the proposed modeled emissions against the established *de minimis* level. Predicted concentrations (GLC_{MAX}^2) below the *de minimis* level are considered to be so low that they do not require further NAAQS analysis. Proposed emissions of SO_2, PM_{10}, NO_2 (annual standard), and CO were below EPA's *de minimis* levels.

For the two pollutants above the *de minimis* standard, $PM_{2.5}$ and NO_2 (1-hour standard), the NAAQS analysis demonstrated that emissions of those pollutants, when added to background concentrations, were below the applicable NAAQS standard.[32] Thus, by definition, air quality in the vicinity of Wolf Hollow, including the proposed emission from the Facility, will be protective of public health.

2. Ozone Analysis

Wolf Hollow also performed an ozone (O_3) analysis as part of the Prevention of Significant Deterioration ("PSD") Air Quality Analysis ("AQA"), evaluating proposed emissions of ozone precursor emissions (NOx and VOC). The ozone analysis, which was consistent with EPA's Guidance on Air Quality Models, demonstrated that ozone resulting from the proposed Facility was less than the EPA's *de minimis* level.

Pollutant	Averaging Time	GLC_{MAX} (µg/m^3)	*De Minimis* (µg/m^3)
Ozone	8-hour	0.989	1

3. Effects Screening Levels

To assess potential impacts of non-criteria pollutants, Wolf Hollow conducted a health effects analysis using TCEQ's Effects Screening Levels ("ESLs").[33] ESLs are specific guideline concentrations used in TCEQ's evaluation of certain non-criteria pollutants that are derived by

[32] RTC, at 6.

[33] The health effects analysis was conducted for the following non-criteria pollutants: propane, propylene, n-butane, pentane, hexane, formaldehyde, 50-00-0, and fuel oil No. 268476-30-2.

TCEQ's Toxicology Division and are based on a pollutant's potential to cause adverse health effects, odor nuisances, and effects on vegetation. Health-based ESLs are set *below* levels reported to produce adverse health effects, and are set to protect the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions.[34] Therefore, if the concentration of a pollutant is below its respective ESL, no adverse health or welfare effects are expected to occur.

In this case, Wolf Hollow followed the Modeling and Effects Review Applicability ("MERA") guidance and demonstrated that all of the pollutants evaluated in the health effects analysis satisfy the MERA requirements and are protective of human health and the environment.[35]

4. State Property Line Analysis

Wolf Hollow also conducted a state property line analysis for ground-level concentrations related to sulfur emission, including SO_2 and sulfuric acid (H_2SO_4). The analysis showed that concentrations for each of these pollutants would be below the applicable *de minimis* standard.

Pollutant	Averaging Time	GLC_{MAX} (µg/m^3)	*De Minimis* (µg/m^3)
SO_2	1-hour	1.87	20.42
H_2SO_4	1-hour	0.23	1
H_2SO_4	24-hour	0.04	0.3

As demonstrated in multiple air quality analyses, the emissions from the Facility will be below the applicable standards set by the EPA and TCEQ that are specifically designed to be protective of human health and the environment. There is not one shred of evidence presented by

[34] TCEQ Air Quality Modeling Guidelines, Air Permits Division (June 2024) at 5 ("Health-based screening levels are set at levels lower than those reported to produce adverse health effects and are set to protect the general public, including sensitive subgroups such as children, the elderly, or people with existing respiratory conditions.").
[35] RTC, at 7.

requestors that emissions below *de minimis* levels or concentrations below NAAQS standards will somehow cause adverse impacts to their health or the environment.

VI. The Form Letter

The TCEQ received a form letter that is dated March 20, 2024, which according to the Commissioner's Integrated Database, was signed by 77 individuals. The letter states that the "Mitchell Bend Community and other areas of Precinct 2 of Hood County requests a public hearing" regarding the air quality permits for Wolf Hollow. The letter goes on to list potential concerns and requests additional data regarding the Application. The letter closes by stating: "The main purpose of this letter is to request a *public meeting* so that TCEQ and the applicant can provide residents *a forum for their concerns and questions*."

The terms "public hearing" and "public meeting" are sometimes used interchangeably by the regulated community and as well as in statutes. This same interchangeable usage appears to occur in this letter, which at one point requests a public hearing and then later states that it is requesting a public meeting. More importantly, the signatories to this letter specifically spell out the "main purpose of this letter", which is "to request a public meeting so that TCEQ and the applicant can provide residents a forum for their concerns and questions." The exact purpose of a public meeting is 1) to provide a question-and-answer forum for TCEQ and Applicant to respond to questions from the public, and 2) to provide an opportunity for the public to submit concerns or oral comments to TCEQ that must be considered and responded to in the RTC. That public meeting was held on September 9, 2024, in Granbury, Texas. That forum was provided and the public was provided an opportunity to ask both Executive Director staff and the Applicant questions about the Application and proposed facility and to voice their concerns.

Furthermore, TCEQ's rules are clear that a hearing request must:

> (2) Identify the person's *personal* justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public.[36]

The persons who signed the form letter did not express a personal justiciable interest merely by signing this letter, unless the Commission is to believe that each one of the 78 individuals will have the exact same personal justiciable interest and will be affected by the proposed Facility in the exact same way. The failure of this request to meet the basic, specific requirements renders the hearing request incurably deficient, including the manner in which the form letters fail to describe more than "concerns", and the failure to clearly state a defined personal justiciable interest and why the hearing requestor thinks they will be impacted in a manner that is not common to the general public.

The letter dated March 20, 2024, should be considered a public meeting request, not a contested case hearing request. If it is considered a hearing request, the requestors have failed to show a defined personal justiciable interest and how each individual requestor will be impacted, and therefore should be denied.

VII. Individual Hearing Requests

As explained above, a valid hearing request must show a likely, concrete impact that is not hypothetical or speculative in nature. The "[l]ikely impact of the regulated activity on the health and safety of the person, and on the use of property of the person" and the "[l]ikely impact of the regulated activity on use of the impacted natural resource by the person" are key considerations in applying the personal justiciable interest test to determine if a hearing requestor is an affected

[36] 30 TAC § 55.201(d).

person.[37] Alleged injuries "couched in terms of potentialities or events that 'may' happen" are "mere speculation, and as such, it falls short of establishing a justiciable interest and standing."[38]

> "[To] have such an interest, the complainant must show that a concrete, particularized, actual or imminent injury faces him due to the decision; a hypothetical or speculative injury is not enough."[39]

Further, the Austin Court of Appeals has determined that it is reasonable to conclude that hearing requestors are not affected persons if the proposed "activity will have minimal effect on their health, safety, use of property, and use of natural resources."[40]

At the risk of being repetitive, Wolf Hollow will address how each of the remaining Hearing Requests fail to demonstrate a likely impact on the health and safety of the requestor, the use of property of the requestor, or use of the impacted natural resource by the requestor.

A. Representative Dewayne Burns

On March 28, 2004, Representative Dewayne Burns requested a public meeting and contested case hearing "on behalf of [his] constituents." The Commission's regulations are clear that it "shall hold a public meeting if:…a member of the legislature who represents the general are in which the facility is located or proposed to be located requests that a public meeting be held."[41] Consistent with Representative Burns' request, a public meeting was held on September 9, 2024, in Granbury, Texas.

Representative Burns is not, however, entitled to a contested case hearing on behalf of his constituents. Representative Burns must, himself, be an "affected party" to be entitled to a contested case hearing. While Wolf Hollow can appreciate Representative Burns' desire to provide

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[37] *See* 30 TAC § 55.203(c)(4)–(5).
[38] *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[39] *Id.* at 363.
[40] *See Tex. Comm'n on Envtl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App.— Austin 2014).
[41] 30 TAC § 55.154(c)(2).

such a forum for his constituents at the time he made the request, the statute is clear that an affected party must identify a "*personal* justiciable interest affected by the application… not common to members of the general public."[42] The request does not identify a personal justiciable interest not common to the general public. Furthermore, Representative Burns term as representative of the 58th District has ended. Therefore, his request on behalf of his former constituents should be denied.

B. Daniel Scott Lakey

Mr. Lakey has not demonstrated a likely impact from Wolf Hollow's proposed Facility. The concerns he has raised relate to noise, which is outside of the Commission's jurisdiction, and are attributable to Marathon, a facility that is wholly unrelated to the Wolf Hollow Facility. Therefore, Mr. Lakey should not be considered an affected person. Additionally, Mr. Lakey has not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation. Therefore, Mr. Lakey's request should be denied.

TCEQ received Mr. Lakey's request for a contested case hearing on March 1, 2024. Mr. Lakey's request for a contested case hearing states: "I will be directly impacted by, air quality and NOISE POLLUTION and I am currently suffering from the Current Noise pollution the plant is giving off. I live .6 miles from the current plant and the noise pollution on my property currently exceeds 70 DB 24 hours a day. This has caused an irregular heart beat in my wife's heart and both my grand Children suffer from Vomiting and nausea and I have hearing loss. All are regular causes of decibel exposure of 50 for extended periods…[Wolf] Hollow II supplies power to a Crypto Farm that is in violation of state law of 85Db daily…[Wolf] Hollow II is wanting to expand in

[42] 30 TAC § 55.201(d)(2).

order to increase the size of its Crypto farm that is the cause of destruction and noise pollution in the area."

None of the health concerns raised by Mr. Lakey relate to air pollution. Mr. Lakey attributes each one of the health concerns to noise he claims is created by a bitcoin operation, owned and operated by Marathon. The bitcoin mining operation is wholly outside the scope of this permit Application.

Even if the noise came from Wolf Hollow, which it does not, TCEQ does not have authority to require or enforce any noise abatement measures. TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve or deny a permit application.[43]

Mr. Lakey submitted a second hearing request on September 9, 2024. This request is on a form letter and states that he is "opposed to this permit application because [list anticipated health or environmental impacts]." The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing." In his handwritten notes, Mr. Lakey states: "I am opposed to the air pollution and water use."

Water use is wholly outside the scope of this application and cannot form the basis for a contested case hearing. Mr. Lakey's statement that he is "opposed to the air pollution" is simply not sufficient to identify a personal justiciable interest. This requirement for greater specificity when making a hearing request was spelled out in the case of *Bosque River Coalition v. Texas Commission on Environmental Quality*, where the Court stated:

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[43] TCEQ General Information, *Issues Outside TCEQ's Jurisdiction: Answers to Public Comments We Receive* (November 2024) at 2, available at https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf; *see also* TCEQ, *Concerns Outside of TCEQ's Authority*, available at https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/concerns-outside-of-tceqs-authority (noting that noise falls outside of TCEQ's jurisdiction).

> The Commission's rules, which are more specific with regard to the procedures for the "affected person" determination, impose what are essentially pleading requirements – the hearing requestor must file a written hearing request that "identif[ies] the person's personal justiciable interest affected by the application," including a "brief, but specific, written statement explaining in plain language … how and why the requestor believes he or she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[44]

Mr. Lakey has not satisfied this requirement.

Mr. Lakey's initial hearing request focused solely on the noise from a neighboring facility, wholly unrelated to the Application submitted by Wolf Hollow. His second hearing request raises another issue outside the scope of this Application and states that he is opposed to the air pollution. Neither of these requests satisfy the Commission's requirements for a valid hearing request.

C. Cheryl Shadden

Ms. Shadden has not demonstrated a likely impact from Wolf Hollow's proposed Facility. The vast majority of the concerns she has raised relate to noise, which is outside of the Commission's jurisdiction, and are attributable to Marathon, a facility that is wholly unrelated to the Wolf Hollow Facility. Additionally, Ms. Shadden fails to explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. Providing a list of medical conditions does not make one an affected person. Furthermore, Ms. Shadden fails to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Ms. Shadden should not be considered an affected person.

Ms. Shadden's first hearing request is dated March 19, 2024. She raises concerns about noise 24/7, screeching, plumes of smoke, noise from the bitcoin operations, and odors. She also

[44] *Bosque River Coalition v. Tex. Comm'n on Envtl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

raises concerns about property value and lights. Finally she sates that she does "not welcome another power plant to pollute my livestock, property, myself, nor my neighbors."

Consistent with several other requestors, Ms. Shadden's primary concern is noise. As noted earlier in this submission, Ms. Shadden has a sign criticizing bitcoin displayed prominently on her property. She mentions noise three times in her hearing request. As previously discussed, noise concerns raised about Marathon's bitcoin operation are entirely unrelated to Wolf Hollow's air permit Application and are also outside of the Commission's jurisdiction. TCEQ does not have authority to require or enforce any noise abatement measures. TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, TCEQ does not have jurisdiction to consider noise from any facility when determining whether to approve or deny a permit application.[45]

Several of Ms. Shadden's other concerns are also outside the Commission's jurisdiction, including property values and lights, and should be dismissed.

Ms. Shadden also mentions plumes of smoke, odor, and pollution. Simply stating that she has seen plumes of smoke or has smelled odors in her home is not sufficient to justify a contested case hearing. Obviously, any alleged smoke or odor has nothing to do with Wolf Hollow's Application as the proposed Facility has not yet been built. Similarly, stating that she does not welcome pollution does not establish a personal justiciable interest. Writing the word "pollution" on a contested case hearing request, with no explanation as to how the emissions from the proposed Facility will adversely impact her, should never form the justification for a contested case hearing.

[45] TCEQ General Information, *Issues Outside TCEQ's Jurisdiction: Answers to Public Comments We Receive* (November 2024) at 2, available at https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf; *see also* TCEQ, *Concerns Outside of TCEQ's Authority*, available at https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/concerns-outside-of-tceqs-authority (noting that noise falls outside of TCEQ's jurisdiction).

This requirement for greater specificity when making a hearing request was spelled out in the case of *Bosque River Coalition v. Texas Commission on Environmental Quality*, where the Court stated:

> The Commission's rules, which are more specific with regard to the procedures for the "affected person" determination, impose what are essentially pleading requirements – the hearing requestor must file a written hearing request that "identif[ies] the person's personal justiciable interest affected by the application," including a "brief, but specific, written statement explaining in plain language … how and why the requestor believes he or she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[46]

Ms. Shadden has not satisfied this requirement. At no point does Ms. Shadden explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. The proposed emissions are all below every federal or state standard, which are specifically designed to be protective of public health and the environment. Thus, the emissions from the Facility will not have a "likely impact" on Ms. Shadden's health and safety, use of property, or use of natural resources.[47] If there is any impact at all, despite the fact that emissions from the Facility will comply with all established federal and state standards, the Facility will not have an effect on Ms. Shadden's health, safety, use of property, and use of natural resources that is more than minimal. Thus, Ms. Shadden should not be considered an affected person.[48]

Ms. Shadden submitted two other hearing requests on August 25, 2024, and September 9, 2024. Again, Ms. Shadden notes her concerns with existing facilities in the area including: "noise from the bitcoin mine, noise and noxious clouds coming from Wolf Hollow Power Plants, valves exploding emergently at wolf hollow 4 times this last year, and visible pollution from the gas

[46] *Bosque River Coalition v. Tex. Comm'n on Envtl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).
[47] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[48] *See TCEQ v. Sierra Club*, 455 S.W.3d at 240.

plants." None of these concerns explain how she will be adversely affected by the proposed Facility and, therefore, cannot form the basis for a contested case hearing.

Ms. Shadden also indicates that existing facilities have caused a variety of health concerns. Again, these concerns do not demonstrate how she will be adversely affected by the proposed Facility. Ms. Shadden poses questions about the motivation for building additional power supplies and whether the purpose is to attract more bitcoin mines and industrial users. As the Commission is well aware, the motivation of the Applicant and who it supplies power to is not relevant consideration as to whether the Application meets the technical and legal requirements in the TCAA and TCEQ's regulations.

Ms. Shadden also states without any supporting data or other evidence that the additional pollution is dangerous to breathe and could cause Hood County to violate the CAA. As explained above and in the Executive Director's RTC and Technical Review, the proposed emissions are all below every federal or state standard, which are specifically designed to be protective of public health and the environment, including sensitive populations like children and the elderly. Thus, the emissions from the Facility will not have a "likely impact" on Ms. Shadden's health and safety, use of property, or use of natural resources.[49] If there is any impact from the Facility at all, despite the fact that emissions from the Facility will comply with all established federal and state standards, such impact will be minimal at most.

Finally, the issues raised by Ms. Shadden do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation. Ms. Shadden has not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation.

[49] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

Thus, Ms. Shadden should not be considered an affected person.[50]

D. Mark Beatty

The hearing requests submitted by Mr. Beatty raise issues that are outside the Commission's jurisdiction or fail to demonstrate that Wolf Hollow's Facility will have a "likely impact" on Mr. Beatty's health and safety, use of property, or use of natural resources. Therefore, Mr. Beatty should not be considered an affected person.

TCEQ received Mr. Beatty's request for a contested case hearing on September 3, 2024. Mr. Beatty's request for a contested case hearing is on a form letter and states that he is "opposed to this permit application because [list anticipated health or environmental impacts]." In his handwritten notes, Mr. Beatty lists the following concerns: breathing difficulty, known explosive occurrences, and expected particulates. The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

Mr. Beatty's concerns about explosions are wholly outside of the Commission's jurisdiction and the scope of this application and should be dismissed on their face. Mr. Beatty also explains that he has breathing difficulty. However, as explained above and in the ED's Response to Comments and Technical Review, the proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. The NAAQS are designed to be protective of human health, including particularly sensitive populations such as the elderly, children, and people with existing medical conditions.

As explained above, a valid hearing request must a show a likely, concrete impact that is not hypothetical or speculative in nature. The "[l]ikely impact of the regulated activity on the health and safety of the person, and on the use of property of the person" and the "[l]ikely impact

[50] *See TCEQ v. Sierra Club*, 455 S.W.3d at 240.

of the regulated activity on use of the impacted natural resource by the person" are key considerations in applying the personal justiciable interest test to determine if a hearing requestor is an affected person.[51] Alleged injuries "couched in terms of potentialities or events that 'may' happen" are "mere speculation, and as such, it falls short of establishing a justiciable interest and standing."[52]

> "[To] have such an interest, the complainant must show that a concrete, particularized, actual or imminent injury faces him due to the decision; a hypothetical or speculative injury is not enough."[53]

The proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. Thus, the emissions from the Facility will not have a "likely impact" on Mr. Beatty's health and safety, use of property, or use of natural resources.[54]

Mr. Beatty submitted a second hearing request on December 23, 2024. He states that he is opposed to the Application because of "extreme noise pollution," because the permit does not contain provisions limiting Wolf Hollow to 3,500 operating hours per year, and because of the ongoing nuisance lawsuit related to Marathon's bitcoin facility.

Mr. Beatty's concern about noise is outside of the Commission's jurisdiction. Furthermore, the lawsuit against Marathon is wholly unrelated to Wolf Hollow's air permit Application and is also outside of the Commission's jurisdiction. TCEQ does not have authority to require or enforce any noise abatement measures. TCEQ's jurisdiction is established by the Texas Legislature and is

[51] *See* 30 TAC § 55.203(c)(4)–(5).
[52] *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[53] *Id.* at 363.
[54] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

limited to the issues set forth in statute. Accordingly, TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve or deny a permit application.[55]

Mr. Beatty's concerns about the number of operating hours per year are specifically addressed in the Permit Application and the RTC, which states:

> Draft Special Condition No. 6 limits the combustion turbine generators to not exceed an annual firing rate of 13,076,000 MMBtu/yr on a 12-month rolling average, which is based on each turbine operating at approximately 3500 hours per year (~39.95%).

While the permit does not have a specific hour limit, it has a MMBtu/yr permit which is based on hours of operation per year. Wolf Hollow is required to monitor its firing rate and the limit is indeed enforceable.

E. Virginia and Nick Browning

Virginia and Nick Browning have not demonstrated a likely impact from Wolf Hollow's proposed Facility. The Brownings fail to explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. Providing a list of medical conditions does not make one an affected person. Furthermore, the Brownings fail to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, the Brownings' requests should be denied.

TCEQ received Ms. Browning's request for a contested case hearing on September 11, 2024. Ms. Browning's request for a contested case hearing is on a form letter and states that she is "opposed to this permit application because [list anticipated health or environmental impacts]." In her handwritten notes in the margin, Ms. Browning lists the following concerns: animals stopped

[55] TCEQ General Information, *Issues Outside TCEQ's Jurisdiction: Answers to Public Comments We Receive* (November 2024) at 2, available at https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf; *see also* TCEQ, *Concerns Outside of TCEQ's Authority*, available at https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/concerns-outside-of-tceqs-authority (noting that noise falls outside of TCEQ's jurisdiction).

producing, loss of property value, headaches, hair loss, loss of wildlife, potential fire from plant, high electric bills, noise pollution, emissions in air, lack of sleep, and decline in water sources. The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

Several of the concerns identified, such as, animals stopped producing, property value, loss of wildlife, potential fire, electric bills, noise, and water sources are wholly outside of the Commission's jurisdiction and the scope of this application and should be dismissed on their face. Furthermore, at no point does Ms. Browning provide any evidence that the Facility's emissions would actually cause any of the health concerns or impacts to her property that she mentions. The proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. Thus, the emissions from the Facility will not have a "likely impact" on Ms. Browning's health and safety, use of property, or use of natural resources.[56] If there is any impact at all, despite the fact that emissions from the Facility will comply with all established federal and state standards, the Facility will not have an effect on Ms. Browning's health, safety, use of property, and use of natural resources that is more than minimal. Thus, Ms. Browning should not be considered an affected person.[57]

Nick Browning's request for a contested case hearing is on the same form letter and states that he is "opposed to this permit application because [list anticipated health or environmental impacts]." In his handwritten notes in the margin, Mr. Browning provides a similar list of concerns: hypertension, anxiety, hair loss, lack of sleep, headaches, dog died, animals stopped production, fire at plant, property value gone down, high electric bills, decline in water, noise pollution, and toxins in air.

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[56] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[57] *See TCEQ v. Sierra Club*, 455 S.W.3d at 240.

Several of the concerns identified, such as, dog died, animals stopped production, fire, property value, electric bills, decline in water, and noise are wholly outside of the Commission's jurisdiction and the scope of this application and should be dismissed on their face. Furthermore, at no point does Mr. Browning provide any evidence that the Facility's emissions would actually cause any of the health concerns or impacts to his property. The proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. Thus, the emissions from the Facility will not have a "likely impact" on Mr. Browning's health and safety, use of property, or use of natural resources.[58] If there is any impact at all, despite the fact that emission from the Facility will comply with all established federal and state standards, the Facility will not have an effect on Mr. Browning's health, safety, use of property, and use of natural resources that is more than minimal. Thus, Mr. Browning should not be considered an affected person.[59]

Finally, the issues raised by the Brownings do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation. The Brownings have not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation. Therefore, the Brownings' request should be denied.

F. Karen Pearson

Ms. Pearson has not demonstrated a likely impact from Wolf Hollow's proposed Facility. Ms. Pearson fails to explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. As Texas courts have explained, in determining whether a person is an affected party, the Commission should look to the "likely impact" of the regulated

[58] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[59] *See TCEQ v. Sierra Club*, 455 S.W.3d at 240.

activity. Furthermore, any alleged impact must be more than speculative or theoretical. Listing one's medical conditions does not make one an affected person. Furthermore, Ms. Pearson fails to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Ms. Pearson should not be considered an affected person.

TCEQ received Ms. Pearson's request for a contested case hearing on September 11, 2024. Ms. Pearson's request for a contested case hearing is on a form letter and states that she is "opposed to this permit application because [list anticipated health or environmental impacts]." In her handwritten notes in the margin, Ms. Pearson lists the following concerns: hypertension, anxiety, hair loss, stress, lack of sleep, headaches, loss of animals-dogs, animals not producing, loss of wildlife, potential fire/explosion, near homes, loss of property value, decline in water sources, high electric bills, noise pollution, emissions/toxics in air. The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

Several of the concerns identified, such as, loss of animals-dog, animals not producing, wildlife, fire, location, property value, water sources, electric bills, and noise are wholly outside of the Commission's jurisdiction and the scope of this Application and cannot form the basis for granting a contested case hearing. Furthermore, at no point does Ms. Pearson provide any data or other evidence that the Facility's emissions would actually cause any of the health concerns or impacts to her property that she raises. The proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. Thus, the emissions from the Facility will not have a "likely impact" on Ms. Pearson's health and safety, use of property, or use of natural resources.[60] If there is any impact at all, despite the fact that emissions from the Facility will comply with all established federal and

[60] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

state standards, the Facility will not have an effect on Ms. Pearson's health, safety, use of property, and use of natural resources that is more than minimal. Thus, Ms. Pearson should not be considered an affected person.[61]

Ms. Pearson also provided a written comment at the public meeting citing numerous concerns about noise and her family's health. While she states she is "concerned about emissions" from the current facilities and the proposed Facility, she does not explain how the proposed emissions, which are below those levels determined by state and federal environmental agencies to be protective of human health and the environment, will have an adverse effect on her health.

Alleged injuries "couched in terms of potentialities or events that 'may' happen" are "mere speculation, and as such, it falls short of establishing a justiciable interest and standing."[62]

> "[To] have such an interest, the complainant must show that a concrete, particularized, actual or imminent injury faces him due to the decision; a hypothetical or speculative injury is not enough."[63]

Stating that she has concerns about emissions is simply not sufficient to identify a personal justiciable interest. This requirement for greater specificity when making a hearing request was spelled out in the case of *Bosque River Coalition v. Texas Commission on Environmental Quality*, where the Court stated:

> The Commission's rules, which are more specific with regard to the procedures for the "affected person" determination, impose what are essentially pleading requirements – the hearing requestor must file a written hearing request that "identif[ies] the person's personal justiciable interest affected by the application," including a "brief, but specific, written statement explaining in plain language … how and why the requestor believes he or she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[64]

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[61] *See Sierra Club*, 455 S.W.3d at 240.

[62] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

[63] *Id.* at 363.

[64] *Bosque River Coalition v. Tex. Comm'n on Envtl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

Ms. Pearson's request fails to meet these requirements and she should, therefore, not be considered an affected person.

Finally, the issues raised by Ms. Pearson do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation. Ms. Pearson has not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation. Therefore, Ms. Pearson's request should be denied.

G. Wesley and Amy Rawle

The Commission's rules impose what are essentially pleading requirements wherein the hearing requestor must identify a personal justiciable interest affected by the application, including a "brief, but specific, written statement explaining in plain language … how and why the requestor believes he or she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[65] Both Mr. Rawle's and Ms. Rawle's requests fail to meet these requirements; therefore, neither of the Rawles should not be considered affected persons.

Wesley and Amy Rawle both provided hearing requests on September 9, 2024. Both requests are on a form letter and state that they are "opposed to this permit application because [list anticipated health or environmental impacts]." The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

In their handwritten notes, both Mr. and Ms. Rawle provide the following reasons for their opposition: property devaluation, health issues (asthma, nosebleeds, etc.), and carbon footprint (though in different orders in their individual letters). The Rawles' concern regarding property value is outside the Commission's jurisdiction and cannot form the basis for a contested case

[65] *Bosque River Coalition v. Tex. Comm'n on Envtl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

hearing. The Rawles' concern about the carbon footprint is also an issue for which there is no right to a contested case hearing. The emissions of greenhouse gases, including carbon dioxide, would be authorized by Draft Permit No. GHGPSDTX238, for which there is no right to a contested case hearing.[66] Finally, the Rawles raise concerns about asthma and nosebleeds. However, neither explains how the proposed emissions, which are below those levels determined by state and federal environmental agencies to be protective of human health and the environment, will have an adverse effect on their health.

Alleged injuries "couched in terms of potentialities or events that 'may' happen" are "mere speculation, and as such, it falls short of establishing a justiciable interest and standing."[67]

> "[To] have such an interest, the complainant must show that a concrete, particularized, actual or imminent injury faces him due to the decision; a hypothetical or speculative injury is not enough."[68]

Writing the words "asthma, nosebleeds, etc." is simply not sufficient to identify a personal justiciable interest and does not meet the requirements as spelled out in *Bosque River Coalition v. Texas Commission on Environmental Quality.* The Rawles have not provided a specific statement about how the proposed facility will adversely affect them in a way not common to the general public. Both Mr. Rawle's and Ms. Rawle's requests fail to meet these requirements; therefore, neither of the Rawles should be considered affected persons.

H. Helen Hensel

Ms. Hensel has not demonstrated a likely impact from Wolf Hollow's proposed Facility. Ms. Hensel lists a medical condition she has, but fails to explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. As Texas courts

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[66] 30 TAC § 55.201(i)(3)(C).
[67] *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[68] *Id.* at 363.

have explained, in determining whether a person is an affected party, the Commission should look to the "likely impact" of the regulated activity. Furthermore, any alleged impact must be more than speculative or theoretical. Listing one's medical conditions does not make one an affected person. Additionally, the issues raised by Ms. Hensel do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation. Ms. Hensel has not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation. Therefore, Ms. Hensel's request should be denied.

TCEQ received Ms. Hensel's request for a contested case hearing on September 9, 2024. Ms. Hensel's request for a contested case hearing is on a form letter and states that she is "opposed to this permit application because [list anticipated health or environmental impacts]." In her handwritten notes in the margin, Ms. Hensel lists the following concerns: "deathly allergic to sulfa." The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

A sulfa allergy is an allergic reaction to drugs containing sulfonamides. Sulfonamides are a class of antibiotics and are not emitted from power plants. Ms. Hensel has failed to show that a reasonable relationship exists between the interest claimed (sulfa allergy) and the regulated activity. Furthermore, Ms. Hensel's request does not provide a "brief, but specific, written statement explaining in plain language … how and why … she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[69]

At no point does Ms. Hensel explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. The proposed emissions are all below every

[69] 30 TAC § 55.201(d).

federal and state standard, which are specifically designed to be protective of public health and the environment. The emissions from the Facility will not have a "likely impact" on Ms. Hensel's health and safety, use of property, or use of natural resources.[70] Therefore, Ms. Hensel should not be considered an affected party.

I. Donna and Rob Adair

The issues raised by the Adairs do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation. The Adairs have not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation. Therefore, the Adairs requests should be denied.

TCEQ received Donna Adair's and Rob Adair's requests for a contested case hearing on September 9, 2024. Ms. Adair's request for a contested case hearing is on a form letter and states that she is "opposed to this permit application because [list anticipated health or environmental impacts]." In her handwritten notes, Ms. Adair lists the following concerns: "air pollutants." Stating that she is opposed to this permit because of "air pollutants" is woefully inadequate in identifying a personal justiciable interest. This requirement for greater specificity when making a hearing request was spelled out in the case of *Bosque River Coalition v. Texas Commission on Environmental Quality*, where the Court stated:

> The Commission's rules, which are more specific with regard to the procedures for the "affected person" determination, impose what are essentially pleading requirements – the hearing requestor must file a written hearing request that "identif[ies] the person's personal justiciable interest affected by the application," including a "brief, but specific, written statement explaining in plain language … how and why the requestor believes he or she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[71]

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[70] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

[71] *Bosque River Coalition v. Tex. Comm'n on Envtl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

Ms. Adair has not satisfied this requirement.

In her comment letter, Ms. Adair states that the amount of pollutants from the proposed facility "is rather overwhelming to say the least." She also notes that residents near Wolf Hollow have to deal with "noise, health, property value loss, etc. coming from the Marathon Digital Bitcoin-Mining-Plant…"

Again, stating that the amount of pollutants is "overwhelming" does not identify a personal justiciable interest. Furthermore, the concerns she raises about "noise, health, and property value loss" stemming from the bitcoin operation are entirely unrelated to Wolf Hollow's Application. Noise and property values are outside the Commission's jurisdiction.

Finally, in her comments dated September 2, Ms. Adair states that **"**SIGNIFICANT amounts of [pollutants], will affect the people, animals, plants, pastures, fish and water for miles around." The term "significant" she uses here is in reference to the language used in the public notice of the public meeting and the Executive Director's Preliminary Decision. As noted in the RTC, the term "significant" refers specifically to the regulatory language in EPA's rules regarding whether the Facility is considered a major source and subject to PSD review. The Facility is a major source, but the modeling performed as part of the Application demonstrated that seven of the 10 pollutant/averaging times are below the applicable *de minimis* standard, and the three that were above *de minimis*, were still below the NAAQS. Furthermore, Ms. Adair's concerns do not identify how she will be adversely affected by the proposed facility in a manner not common to members of the public and therefore, fails to identify a personal justiciable interest.

Ms. Adair's comment goes on to describe her concerns with higher electricity bills and the use of electricity by Marathon's bitcoin mining facility, both of which are outside the Commission's jurisdiction. Ms. Adair has failed to identify a personal justiciable interest and should not be considered an affected person.

Rob Adair's hearing request is limited to the form letter which states he is "opposed to this permit application because [list anticipated health or environmental impacts]." Mr. Adair does not include any handwritten notes or other statements to support his request. Without providing a single reason as to how the proposed Facility will affect him, Mr. Adair has failed to identify a personal justiciable interest and should not be considered an affected party.

J. Barbara Meuter

Ms. Meuter's hearing request is limited to the form letter which states she is "opposed to this permit application because [list anticipated health or environmental impacts]." Ms. Meuter does not include any handwritten notes or other statements to support her request. Without providing a single reason as to how the proposed Facility will affect her, Ms. Meuter has failed to identify a personal justiciable interest and should not be considered an affected party.

Furthermore, Ms. Meuter has failed to provide an address and therefore, does not meet the Commission's minimum requirements for filing a contested case hearing request.[72] Her request should be denied on these grounds, as well.

K. James Bell

Mr. Bell submitted comments and a contested case hearing request to TCEQ on September 2, 2024. The distance between the requestor and the proposed Facility is critically important in evaluating hearing requests because of the impact of air dispersion on the potential impact, if any, of air contaminants. Mr. Bell provided two different addresses, 2503 Pebble Dr. and 3503 Pebble Dr., both in Granbury. Regardless of which address is correct, both addresses are more than five miles from the proposed Facility. Mr. Bell has not provided specific unique details as to how he

[72] 30 TAC § 55.201(d).

would be affected in light of the significant distance between the proposed Facility and his residence. Therefore, Mr. Bell should not be considered an affected party.

L. Wyveda Dowdy

Ms. Dowdy's hearing request is limited to the form letter which states she is "opposed to this permit application because [list anticipated health or environmental impacts]." Ms. Dowdy does not include any handwritten notes or other statements to support her request. Without providing a single reason as to how the proposed Facility will affect her, Ms. Dowdy has failed to identify a personal justiciable interest and should not be considered an affected party.

M. Brent, Linda, and Ted Hayes

Each of Brent, Linda, and Ted Hayes' hearing requests are limited to the form letter which states they are "opposed to this permit application because [list anticipated health or environmental impacts]." None of these hearing requests include any handwritten notes or other statements to support their requests. Without providing a single reason as to how the proposed Facility will affect the requestor, Brent, Linda, and Ted Hayes have failed to identify a personal justiciable interest and should not be considered affected parties.

N. Gina and Mark Rogers

Both Gina and Mark Rogers' hearing requests are limited to the form letter which states they are "opposed to this permit application because [list anticipated health or environmental impacts]." Neither hearing request includes any handwritten notes or other statements to support their requests. Without providing a single reason as to how the proposed Facility will affect the requestor, Gina and Mark Rogers have failed to identify a personal justiciable interest and should not be considered affected parties.

Gina and Mark Rogers list their residence as 9600 Nubbin Ridge Ct., Granbury, Texas. According to Hood County Appraisal District records, this property is owned by Audrie Tibjlas.

Furthermore, Gina and Mark Rogers' homestead (i.e., primary residence) is listed by Hood County Appraisal District as 308 Pine Lane, Tolar, Texas, which is more than 11 miles from the Facility.

O. Audrie, Edward, and Kim Tibljas

Audrie, Edward and Kim Tibljas' hearing requests are limited to the form letter which states they are "opposed to this permit application because [list anticipated health or environmental impacts]." None of these hearing requests include any handwritten notes or other statements to support their requests. Furthermore, Audrie Tibljas notes that her residence is located at 3835 Legend Trail, Granbury, Texas 76049, which is over five miles from the proposed Facility. She states that her family ranch is located at 9600 Nubbin Ridge Ct. Ms. Tibjlas notes that she will "probably move back out there."

Without providing a single reason as to how the proposed Facility will affect the requestor, Audrie, Edward, and Kim Tibljas have failed to identify a personal justiciable interest and should not be considered affected parties.

P. Christine Brooking and Thomas Weeks

TCEQ received Ms. Brooking's and Mr. Weeks' request for a contested case hearing on September 12, 2024. Both requestors' residence is listed as 8704 Mitchell Bend Court, Granbury, Texas. Both Ms. Brooking's and Mr. Weeks' requests for a contested case hearing are on a form letter and state that they are "opposed to this permit application because [list anticipated health or environmental impacts]." Neither one provided any information other than a name and address and failed to include any specific anticipated health or environmental impacts in their request. Instead, the form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing." At no point does Ms. Brooking or Mr. Weeks provide any evidence that the Facility would cause any health or environmental impacts, nor do they provide any details on how they would be adversely affected by the Facility. Therefore, both Ms. Brooking

and Mr. Weeks fail to provide a personal justiciable interest entitling them to a contested case hearing.[73]

Thus, given Ms. Brooking's and Mr. Weeks' failure to demonstrate a personal justiciable interest separate from an interest common to members of the general public, they should not be considered an affected person.[74]

Q. Janet Lowery

Ms. Lowery's request for a contested case hearing is on a form letter and states that she is "opposed to this permit application because [list anticipated health or environmental impacts]." In her handwritten notes in the margin, Ms. Lowery lists the following concerns: "tremors" and "tinitas". The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

It is most likely that Ms. Lowery is referring to the noise related medical condition "tinnitus" (ringing in the ears) in her handwritten comments instead of tinitas (an antibiotic), as well as the medical condition of tremors. Regardless, Ms. Lowery has failed to show that a reasonable relationship exists between the interest claimed (tremors and tinnitus) and the regulated activity. Furthermore, Ms. Lowery's request does not provide a "brief, but specific, written statement explaining in plain language … how and why … she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[75]

At no point does Ms. Lowery explain how or why the Facility's emissions would actually cause any health concerns or impacts to her property. The proposed emissions are all below every federal or state standard, which are specifically designed to be protective of public health and the

[73] Tex. Water Code § 5.115(a) (stating that only those persons who have a "personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing" are entitled to a contested case hearing).
[74] *See TCEQ v. Sierra Club*, 455 S.W.3d at 240.
[75] 30 TAC § 55.201(d).

environment. The emissions from the Facility will not have a "likely impact" on Ms. Lowery's health and safety, use of property, or use of natural resources.[76] Therefore, Ms. Lowery should not be considered an affected party.

R. Linda Oeschsle

Ms. Oeschsle's request for a contested case hearing is on a form letter and states that she is "opposed to this permit application because [list anticipated health or environmental impacts]." The form letter goes on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing." In her handwritten notes, she states" "I have property I was going to build a house on, but because of the noise, I am waiting to see what happens with bitcoin and wanting to build [a] third power plant."

It should be noted that Ms. Oeschsle's address is listed as 2501 Wills Way Dr., Granbury, Texas, which is over nine miles from the proposed Facility. Furthermore, the only issue Ms. Oeschsle raises is related to noise. Noise concerns related to the bitcoin operation are entirely unrelated to Wolf Hollow's air permit Application and are also outside of the Commission's jurisdiction. Even if the noise came from Wolf Hollow, TCEQ does not have authority to require or enforce any noise abatement measures. TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve or deny a permit application.[77]

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[76] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–364.

[77] TCEQ General Information, *Issues Outside TCEQ's Jurisdiction: Answers to Public Comments We Receive* (November 2024) at 2, available at https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf; *see also* TCEQ, *Concerns Outside of TCEQ's Authority*, available at https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/concerns-outside-of-tceqs-authority (noting that noise falls outside of TCEQ's jurisdiction).

Because the only concerns raised by Ms. Oeschsle are outside the Commission's jurisdiction, she should not be considered an affected person.

S. Shannon Wolf

TCEQ received Ms. Wolf's public comment on September 11, 2024. In this comment, she did not request a public meeting or a contested case hearing. However, in the event that TCEQ categorizes her public comment as a hearing request, Ms. Wolf has failed to demonstrate that she is an affected person for the reasons set forth below.

First, Ms. Wolf states that she lives "near" the proposed Facility and lists her address as 4718 Medina Street, Granbury, Texas 76048, which is located over three miles from the Facility. The Commission has historically acknowledged that persons residing more than one mile from point of emissions will only be considered to be an affected person if they provide specific unique details about how they are affected despite the significant distance. Here, however, Ms. Wolf neglected to provide any specific unique details as to how she would be affected in light of the significant distance between the Facility and her residence.

Second, in her public comment, she lists certain concerns with the proposed Facility, including: air pollution, impacts to cattle and fish that the community eats, and health problems. Ms. Wolf also provided comments at the public meeting on September 9, 2024. These comments included concerns about the emission of air contaminants in "significant amounts," including hazardous air pollutants, organic compounds, sulfur dioxide, sulfur hexafluoride, and sulfuric acid mix, the presence of mercury in natural gas, and impacts to her health because of preexisting lung issues.

Regarding her concerns about air pollutants and "significant" emissions, simply stating that she is opposed to this permit because of pollutants is not sufficient to identify a personal justiciable interest. This requirement for greater specificity when making a hearing request was spelled out in

the case of *Bosque River Coalition v. Texas Commission on Environmental Quality*, where the Court stated:

> The Commission's rules, which are more specific with regard to the procedures for the "affected person" determination, impose what are essentially pleading requirements – the hearing requestor must file a written hearing request that "identif[ies] the person's personal justiciable interest affected by the application," including a "brief, but specific, written statement explaining in plain language … how and why the requestor believes he or she will be adversely affected by the proposed facility, or activity in a manner not common to members of the public…"[78]

Ms. Wolf has not satisfied this requirement.

Further, Ms. Wolf states that the amount of pollutants will be "significant." The term "significant" she uses here is in reference to the language used in the public notice of the public meeting and the Executive Director's Preliminary Decision. As noted in the RTC, the term "significant" refers specifically to the regulatory language in EPA's rules regarding whether the Facility is considered a major source and subject to PSD review. The Facility is a major source, but the modeling performed as part of the Application demonstrated that seven of the 10 pollutant/averaging times are below the applicable *de minimis* standard, and the three that were above *de minimis*, were still below the NAAQS. Furthermore, Ms. Wolf's concerns do not identify how she will be adversely affected by the proposed facility in a manner not common to members of the public and therefore, fails to identify a personal justiciable interest.

Next, regarding Ms. Wolf's concerns about mercury in natural gas, as discussed above, natural gas-fired EGUs are not subject to MATS. The Commission should not grant a request for a contested case hearing based on whether Wolf Hollow can comply with a rule that is not even applicable. In fact, EPA has clearly indicated that emissions of mercury compounds from burning

[78] *Bosque River Coalition v. Tex. Comm'n on Envtl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

natural gas are negligible.[79] The RTC also clearly states that there are no mercury emissions from natural gas-fired turbines. Thus, any request for a contested case hearing based on concerns related to mercury emissions cannot form the basis for a contested case hearing.

The proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. The emissions from the Facility will not have an impact on Ms. Wolf's health and safety, use of property, or use of natural resources.[80] Therefore, Ms. Wolf should not be considered an affected party.

Lastly, some of the concerns highlighted by Ms. Wolf should be dismissed as they are outside of the Commission's jurisdiction. Specifically, Ms. Wolf notes that "homes will be devalued," raising a concern about potential impacts to property values. Concerns about property values are outside of the Commission's jurisdiction and should be dismissed.

Therefore, for the reasons set forth above, Ms. Wolf has failed to identify a personal justiciable interest and should not be considered an affected person.

T. Shenice and Travis Copenhaver

The issues raised by the Copenhavers do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation. The Copenhavers have not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulation. Therefore, the Copenhavers requests should be denied.

Mr. and Ms. Copenhaver's requests for a contested case hearing are on a form letter. Both of their request's state that they are "opposed to this permit application because [list anticipated health or environmental impacts]." In her handwritten notes in the margin, Ms. Copenhaver lists

[79] Additions to List of Categorical Non- Waste Fuels, 81 Fed. Reg. 6,731, n. 134 (February 8, 2016).
[80] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

the following concerns: "my asthma". In his handwritten notes in the margin, Mr. Copenhaver lists the following concerns: "wife's asthma". Both form letters go on to state, "I believe that I will be adversely affected by this facility and request a contested case hearing."

The Copenhavers lists their address as 8710 Mitchell Bend Ct, and state their residence is 1.3 miles from the Facility. The Copenhavers have failed to provide any specific unique details as to how emissions from the Facility will affect their health. Ms. Copenhaver states she is opposed to the Facility because "my asthma."

The proposed emissions are in compliance with the federal NAAQS, as well as TCEQ's health-based ESLs and TCEQ rules. Both the EPA and the TCEQ have explained in numerous instances that the NAAQS and the TCEQ's health-based ESLs are set to protect the general public, including children, the elderly, and asthmatics.[81] When contaminants are below these health-based standards, they are protective of everyone – even those with asthma.

The Commission has the authority to and should consider the merits of the Application, the quantity of emissions from this type of natural gas facility, the demonstrated compliance with federal and state health-based standards, and the Executive Director's analysis and opinion as to the potential health effects of the Facility. Considering these factors, the Commission should determine that the Facility will not have an impact on Ms. Copenhaver and that Ms. Copenhaver is not an affected party.

Travis Copenhaver does not provide a personal justiciable interest, but instead objects to the issuance of the Permit because of "my wife's asthma." Mr. Copenhaver cannot claim a personal

[81] RTC at 4, 6; Section 109 of the CAA requires that the primary NAAQS be set at a level that will protect public health with an adequate margin of safety. EPA has interpreted this phrase to require setting the NAAQS at levels below those at which adverse health effects have been detected or expected for sensitive and at-risk groups of people (e.g., children and asthmatics); *see* 83 Fed. Reg. 17226, 17228 n. 2: "The legislative history of section 109 indicates that a primary standard is to be set at "the maximum permissible ambient air level . . . which will protect the health of any [sensitive] group of the population."

justiciable interest based on alleged impacts to another person. Because the request does not identify a personal justiciable interest, this request should be denied.

The emissions from the Facility will not have a "likely impact" on Mr. and Ms. Copenhaver's health and safety, use of property, or use of natural resources.[82] Therefore, Mr. and Ms. Copenhaver's should not be considered affected parties.

U. Brett Niebes

TCEQ received a public comment from Mr. Niebes on March 25, 2024. In this public comment, Mr. Niebes states that he is "requesting a public forum to determine the impacts that changes to the Wolf Hollow complex will have on the surrounding areas." This usage of the phrase public forum does not indicate that Mr. Niebes seeks to have a contested case hearing and does not comply with the Commission's requirements that the requestor must actually "request a contested case hearing."[83] However, in the event that the Commission determines this is in fact a request for a contested case hearing, Mr. Niebes fails to demonstrate that he is an affected person for the reasons set forth below.

Mr. Niebes lists his address as 1905 Burkett Ct. Cleburne, Texas, which is located 1.5 miles from the Facility. The Commission has historically acknowledged that persons residing more than one mile from point of emissions will only be considered to be an affected person if they provide specific unique details about how they are affected despite the significant distance. Here, however, Mr. Niebes has failed to provide any specific unique details as to how emissions from the Facility, which more than one mile from their residence, will affect him.

The only issue Mr. Niebes raises is related to noise, which is wholly unrelated to the proposed Facility. He states: "[b]ased on current noise pollution and inaction, I would like to hear

[82] *See Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.
[83] 30 TAC § 55.201(d)(3).

any mitigation strategies that would be in place to not only reduce the current output, but also any increase in the current baseline that will result from changes." Noise concerns related to the bitcoin operation are entirely unrelated to Wolf Hollow's air permit Application and are also outside of the Commission's jurisdiction. TCEQ does not have authority to require or enforce any noise abatement measures. TCEQ's jurisdiction is established by the Texas Legislature and is limited to the issues set forth in statute. Accordingly, TCEQ does not have jurisdiction to consider noise from a facility when determining whether to approve or deny a permit application.[84]

Therefore, Mr. Niebes has not demonstrated a likely impact from Wolf Hollow's proposed Facility. The concerns he has raised relate to noise, which are outside of the Commission's jurisdiction. Therefore, Mr. Niebes should not be considered an affected person.

VIII. Applicant's Requirements under 30 Tex. Admin Code § 55.209(e)

TCEQ requirements found in 30 TAC § 55.209(e) require Applicant to address certain issues as part of its Response to Hearing Requests. Applicant provides that information as follows:

1. *Whether the requestor is an affected person:* As discussed above, none of the requestors meet the requirements to qualify as an "affected person."

2. *Whether issues raised in the hearing request are disputed:* Wolf Hollow's Application and the Executive Director's review of the application demonstrate that the Application and the Draft Permit will comply with the Texas Clean Air Act and the Commission's regulations. None of the Hearing Requests dispute whether the Application or the Draft Permit comply with the Texas Clean Air Act and the Commission's regulations. Please see discussion above.

[84] TCEQ General Information, *Issues Outside TCEQ's Jurisdiction: Answers to Public Comments We Receive* (November 2024) at 2, available at https://www.tceq.texas.gov/downloads/agency/decisions/participation/gi-650-issues-outside-tceqs-jurisdiction-x.pdf; *see also* TCEQ, *Concerns Outside of TCEQ's Authority*, available at https://www.tceq.texas.gov/agency/decisions/participation/permitting-participation/concerns-outside-of-tceqs-authority (noting that noise falls outside of TCEQ's jurisdiction).

3. *Whether the dispute involves questions of fact or of law:* The issues raised are generic and do not refer to specific aspects of the Application, the Draft Permit, or any of the supporting documentation; Requestors have not raised any questions of fact as it pertains to the Application or the Draft Permit, and whether those comply with the Texas Clean Air Act and the Commission's regulations.

4. *Whether the issues were raised during the public comment period:* Most of the Requestors submitted comments during the NORI and/or NAPD comment periods with the exception of those Requestors listed in Table 3 above.

5. *Whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment*: Applicant has received no indication that Requestors have withdrawn their comments.

6. *Whether the issues are relevant and material to the decision on the application*: The Application involves a request for an NSR air permit. The Commission's decision on the Application is based on whether the Application and Draft Permit comply with the Texas Clean Air Act and the Commission's regulations. Emissions from the proposed Facility will be below all federal and state levels that are specifically designed to be protective of human health and the environment, including sensitive members of the population such as children, the elderly, and those individuals with preexisting health conditions. Requestors have not raised any issues to dispute that the proposed emissions are in compliance with applicable laws and regulations.

7. *Maximum expected duration for the contested case hearing*: Each of the requests for contested case hearing should be denied; therefore, no contested case hearing should occur. However, if a request for a contested case hearing is granted by the Commission, the hearing

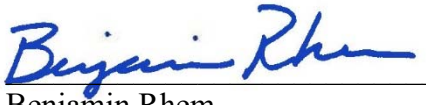
should last no more than 180 days from the date the SOAH takes jurisdiction until the Proposal for Decision is issued.

IX. Conclusion

Wolf Hollow respectfully requests that the Commission deny the requests for reconsideration because they do not state adequate grounds to reconsider the Executive Director's decision. Additionally, Wolf Hollow respectfully requests that the Commission deny all of the contested case hearing requests received in this docket as none of the requestors are entitled to a contested case hearing as a matter of law. Therefore, Wolf Hollow hereby requests that the requests for reconsideration and hearing requests be denied and that State Air Quality Permit Nos. 175173, GHGPSDTX238, and PSDTX1636 be issued.

Respectfully submitted,

JACKSON WALKER LLP



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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list.

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Permit No./Permiso N.º 175173, GHGPSDTX238, and PSDTX1636

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RN NUMBER: RN108779729

PERMIT NUMBER: PSDTX1636

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COUNTY: HOOD

PRINCIPAL NAME: WOLF HOLLOW II POWER LLC, CN604679639

FROM

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DOCUMENT NAME: Applicant's Response to Request for Reconsideration and Request for Hearing3.pdf

Based on 30 TAC Section 1.10(h), the TCEQ General Counsel has waived the filing requirements of Section 1.10(c) to allow the filing of documents using this online system. The General Counsel also has waived the requirements of Section 1.10(e) so that the time of filing your documents is the time this online system receives your filings. Filings are considered timely if received by close of business (usually 5:00 p.m. CST) on the deadline date unless otherwise ordered. If your document is for Commission consideration at an open meeting, General Counsel has also waived the requirement of Section 1.10(d) to file paper copies with the Office of the Chief Clerk.