

Brooke T. Paup, *Chairwoman*
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 17, 2025

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

RE: **IN THE MATTER OF THE APPLICATION BY WOLF HOLLOW II
POWER, LLC FOR AIR QUALITY PERMIT NOS. 175173,
GHGPSDTX238, AND PSDTX1636
TCEQ DOCKET NO. 2024-1918-AIR**

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Jamison".

Jennifer Jamison, Attorney
Assistant Public Interest Counsel

A handwritten signature in cursive script that reads "Pranjal".

Pranjal M. Mehta, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2024-1918-AIR

APPLICATION BY	§	BEFORE THE
WOLF HOLLOW II POWER, LLC	§	
WOLF HOLLOW II	§	TEXAS COMMISSION ON
GRANBURY, HOOD COUNTY	§	
FOR TCEQ AIR QUALITY	§	ENVIRONMENTAL QUALITY
PERMIT NUMBERS 175173,	§	
GHGPSDTX238, and	§	
PSDTX1636	§	

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE
TO REQUESTS FOR HEARING AND REQUESTS FOR RECONSIDERATION**

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this Response to Requests for Hearing and Requests for Reconsideration on the application in the above-captioned matter and respectfully submits the following.

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by Wolf Hollow II Power, LLC (Applicant or Wolf Hollow) for a New Source Review (NSR) Authorization under Texas Clean Air Act (TCAA) § 382.0518, which would authorize the construction of a new facility that may emit air contaminants. The Commission received numerous timely-filed hearing requests and requests for reconsideration. For the reasons detailed below, OPIC recommends the Commission grant the hearing requests of Donna and Robert Adair; Mary and Ronnie Allard; Mark Beatty; David and Lisa Blankenship; Nick and Virginia Browning; Shenice and Travis

Copenhaver; Tommy Engle; Maci English; Daniel and Deanna Lakey; Brent, Linda, and Ted Hayes; Helen Hensel; Denna Jones; Margaret and Robert Killion; Toby Mitchell; Courtney and Jonathan Pedroza; Karen Pearson; Beverley and Larry Potts; Barbara and Steven Potts; Tanner Randall; Daniel, Nancy, and Gwyneth Rohde; Cheryl Shadden; Corey and Jacob Webster; and Thomas Weeks. OPIC further recommends the Commission refer the issues specified in Section III.G. for a contested case hearing at the State Office of Administrative Hearings (SOAH) with a maximum duration of 180 days. Finally, OPIC recommends the Commission deny all other hearing requests and all pending requests for reconsideration.

B. Description of Application and Facility

As previously stated, Wolf Hollow has applied to TCEQ for a NSR Authorization under Texas Clean Air Act (TCAA) § 382.0518. If issued, this permit would authorize Applicant to construct new power generation facilities to be known as the Wolf Hollow III (WHIII) expansion that would expand the existing Wolf Hollow II Power Plant. The plant is located at 8787 Wolf Hollow Ct, in Hood County. Contaminants authorized under this permit include carbon monoxide, nitrogen oxides, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less, hazardous air pollutants, organic compounds, sulfur dioxide, sulfur hexafluoride, and sulfuric acid mist. The proposed plant will also emit greenhouse gases.

C. Procedural Background

Wolf Hollow's application was received on January 25, 2024, and declared administratively complete on February 1, 2024. The Notice of Receipt and Intent to Obtain an Air Quality Permit for this application was published in English on March 2, 2024, in the *Hood County News*, and in Spanish on March 5, 2024, in *La Prensa Comunidad*. The Notice of Application and Preliminary Decision for an Air Quality Permit was published on August 10, 2024, in English in the *Hood County News*, and in Spanish on August 6, 2024 in *La Prensa Comunidad*. A public meeting was held on Monday, September 9, 2024 in Granbury. The public comment period ended on September 11, 2024. The deadline to request a contested case hearing or to request reconsideration of the Executive Director (ED)'s decision was December 23, 2024.

II. APPLICABLE LAW

A. Hearing Requests

The Application was filed after September 1, 2015, and is therefore subject to the procedural rules adopted pursuant to Senate Bill 709. Tex. S.B. 709, 84th Leg., R.S. (2015). Under 30 Texas Administrative Code (TAC) § 55.21(c), a hearing request by an affected person must be in writing, must be timely filed, may not be based on an issue raised solely in a public comment which has been withdrawn, and, for applications filed on or after September 1, 2015, must be based only on the affected person's timely comments.

Section 55.201(d) states that a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the requestor'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;
- (3) request a contested case hearing;
- (4) 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. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.¹

Under 30 TAC § 55.203(a), an "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Relevant factors to be considered in determining whether a person is affected include:

- (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;

¹ 30 TAC § 55.201(d).

- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on 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.

²

Under § 55.203(d), to determine whether a person is an affected person for the purpose of granting a hearing request for an application filed on or after September 1, 2015, the Commission may also consider the following:

- (1) the merits of the underlying application and supporting documentation in the 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.³

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by

² 30 TAC § 55.203(c).

³ 30 TAC § 55.203(c).

filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

Under § 55.211(c)(2)(B)–(D), the hearing request, to be granted, must also be timely filed with the Chief Clerk, pursuant to a right to hearing authorized by law, and comply with the requirements of § 55.201.

B. Request for Reconsideration

Any person may file a request for reconsideration of the ED's decision under Title 30, Texas Administrative Code (TAC) § 55.201(e). The request must be in writing and filed with the Chief Clerk no later than 30 days after the Chief Clerk mails the ED's decision and RTC. The request must expressly state that the person is requesting reconsideration of the ED's decision and give reasons why the decision should be reconsidered.

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestors are affected persons

Requestors Near the Facility Who Demonstrated Personal Justiciable Interest

The Commission received timely comments and hearing requests from Donna and Robert Adair; Mary and Ronnie Allard; Mark Beatty; David and Lisa Blankenship; Nick and Virginia Browning; Shenice and Travis Copenhaver; Tommy Engle; Maci English; Daniel and Deanna Lakey; Brent, Linda, and Ted Hayes; Helen Hensel; Denna Jones; Margaret and Robert Killion; Toby Mitchell; Courtney and Jonathan Pedroza; Karen Pearson; Beverley and Larry Potts; Barbara

and Steven Potts; Tanner Randall; Daniel, Nancy and Gwyneth Rohde; Cheryl Shadden; Corey and Jacob Webster; and Thomas Weeks⁴. The map and/or appendix prepared by the ED's staff show that these requestors are located within approximately one and a half miles of the facility. Collectively, they raise concerns regarding air quality, health effects, and potential impact on the environment.

These interests are protected by the law under which this application will be considered. 30 TAC § 55.203(c)(1). Further, considering their close proximity to the facility, a reasonable relationship exists between those interests and the Applicant's regulated activity – a relevant factor under 30 TAC § 55.203(c)(3). These requestors' relative proximity to the facility, when combined with their concerns regarding air quality and health effects, demonstrates that they are likely to be affected in a way not common to members of the general public, and thus possess a personal justiciable interest in this matter. *See* 30 TAC § 55.203(a). Therefore, OPIC concludes that these requestors qualify as affected persons.

Requestors Near the Facility Who Did Not Demonstrate Personal Justiciable Interest

The Commission received timely comments and hearing requests from

⁴ Most of these requestors have submitted the same hearing request, which states that the Mitchell Bend Community and other areas in Precinct 2 of Hood County request the hearing and outlines the residents' concerns. This hearing request includes the requestor's name, address, signature, phone number, and email address. Although the hearing requests are the same, each requestor has individually submitted it with their own information, and OPIC has considered each submission as an individual hearing request.

Christine Brooking; Wyveda Dowdy; Kay and Tom Dykes; Brent, Linda, and Ted Hayes; Edward and Kim Tibljas. However, their hearing requests do not explain how or why they feel that the activity, or the facility would impact them or demonstrate a personal justiciable interest distinct from that of the general public, as required by 30 TAC § 55.201(d)(2).

The map and appendix prepared by the ED's staff show that these requestors are located within one and a half miles of the facility. However, without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. 30 TAC § 55.203(a). In spite of their proximity, these hearing requestors do not demonstrate a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by this application, and therefore, OPIC finds that they do not qualify as affected persons.⁵

State Representative DeWayne Burns

State Representative Burns states that he would like to formally contest this application. As a member of the legislature who represents the area in which the facility is located, Representative Burns may request a public meeting, and the TCEQ did conduct such a meeting in Grandbury on September 9, 2024. However, if Representative Burns is requesting a contested case hearing, his hearing request must be considered on an individual basis. Representative Burns has provided no information regarding his location and distance relative to the

⁵ While OPIC is unable to find that these requestors qualify as affected persons based on the information provided in their requests, we do note that pursuant to 30 TAC § 55.211(e), if any requests for contested case hearing are granted in this matter, and a preliminary hearing is convened at SOAH, any person whose request is denied may attend and seek to be admitted as a party.

facility and no assertion of a personal justiciable interest. Therefore, to the extent that Representative Burns is requesting a hearing in his individual capacity, OPIC cannot find that he is an affected person.

Requestors Who Are Relatively Distant from The Facility

The remaining hearing requestors who submitted timely comments and hearing requests also raise concerns regarding air quality and health effects. The map and appendix prepared by the ED's staff show that they are located further than one and a half miles. Initially, OPIC notes that the potential standing of these requestors is not legally restricted or limited by distance.⁶ However, considering their distance from the facility, OPIC cannot find that these requestors are likely to be impacted by the facility's operations in a way that differs from the general public as required by 30 TAC § 55.203(a). The intervening distance diminishes any likelihood that the regulated activity will impact their health, safety, or use of property. Without a personal justiciable interest, a hearing requestor cannot qualify as an affected person. Therefore, OPIC finds that these requestors do not qualify as affected persons.

B. Which issues raised in the hearing requests are disputed

Requestors raised the following disputed issues:

1. Whether the permit is adequately protective of human health and safety, animal life, and requestors' property in compliance the with TCAA;
2. Whether the proposed plant will interfere with the normal use and enjoyment of animal life and vegetation on requestors' properties;
3. Whether control technology proposed in the application and the resulting emission rate constitute BACT (best available control technology); and

⁶ See 30 TAC § 55.203(c)(2).

4. Whether the permit is adequately protective of noise and light pollution.

C. Whether the dispute involves questions of fact or of law

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. The issues raised in the request are issues of fact.

D. Whether the issues were raised during the public comment period

All issues were specifically raised by requestors during the public comment period.

E. Whether the hearing requests are based on issues raised solely in a withdrawn public comment

No public comments were withdrawn in this matter. Therefore, the hearing request is not based on issues raised in withdrawn public comments.

F. Whether the issues are relevant and material to the decision on the application

The hearing requests raise issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued.⁷

⁷ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Animal, Human, and Environmental Health and Safety and Use/Enjoyment

Under the Texas Clean Air Act, the Commission may issue this permit only if it finds no indication that the emissions from the facility will contravene the intent of the Texas Clean Air Act, including protection of the public's health and physical property.⁸ Because concerns about noncompliance, animal health, effects on the environment, and effects on health and safety could contravene the intent of the TCAA, Issue No. 1 is relevant and material. Further, the purpose of the Texas Clean Air Act is to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property.⁹ Further, relevant regulations such as 30 TAC § 101.4 prohibit the discharge of contaminants which may be injurious to, or adversely affect, animal life. Accordingly, Issue Nos. 1 and 2 regarding human health and safety, animal health, environmental concerns, and use of property are relevant and material to the Commission's decision on this application.

Best Available Control Technology

Requestors questioned the control technology proposed in the application and asked if the emissions were being filtered or scrubbed. The TCAA and TCEQ rules require an evaluation of air quality permit applications to determine whether adverse effects to public health, general welfare, or physical property

⁸ TEX. HEALTH & SAFETY CODE § 382.0518(B)(2).

⁹ TEX. HEALTH & SAFETY CODE § 382.002(A).

are expected to result from a facility's proposed emissions. Further, under the Texas Clean Air Act, applicant is required to use BACT. The issue of BACT is therefore relevant and material to the Commission's decision on this application.

Noise and Light Pollution

Requestors expressed concern regarding noise and light pollution from the proposed project disturbing daily and nighttime activities, such as work, sleep, time with their families, outdoor activities, as well as causing unnecessary stress to pets, livestock, and wildlife. TCEQ does not have jurisdiction to consider noise or light when evaluating an air quality permit application and determining whether to approve or deny an application. Accordingly, TCEQ does not have authority under the TCAA to require or enforce any noise or light abatement measures, and Issue No. 4 is not relevant and material to the Commission's decision on this application.

G. Issues Recommended for Referral

For the reasons stated above, OPIC recommends referral of the following issues:

1. Whether the permit is adequately protective of human health and safety, animal life, and requestors' property compliant with TCAA.
2. Whether the proposed plant will interfere with the normal use and enjoyment of animal life and vegetation on requestors' properties.
3. Whether the control technology proposed in the application and the resulting emission rate constitutes BACT (best available control technology).

H. Maximum expected duration for the contested case hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1, 2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this application should be 180 days from the first day of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

The Commission received timely requests for reconsideration from Geraldine Lathers and Nanette Samuelson articulating several concerns pertaining to environmental protection, health, and safety related to this application. Specifically, Ms. Lathers and Ms. Samuelson question whether emissions for mercury will meet Mercury and Air Toxics Standards (MATS) set by EPA, and they are concerned that the application contains no enforcement mechanism to ensure that applicant will operate under 3500 hours per year as intended. In addition, requestors would prefer to delay any issuance of a permit until the resolution of the ongoing nuisance lawsuit regarding the Wolf Hollow property.

While OPIC notes that many of the concerns expressed by Ms. Lathers and Ms. Samuelson are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the request for reconsideration be granted. As no such record yet exists, OPIC cannot recommend the requests be granted at this time.

V. CONCLUSION

For the reasons discussed above, OPIC respectfully recommends the Commission find Donna and Robert Adair; Mary and Ronnie Allard; Mark Beatty; David and Lisa Blankenship; Nick and Virginia Browning; Shenice and Travis Copenhaver; Tommy Engle; Maci English; Daniel and Deanna Lakey; Brent, Linda, and Ted Hayes; Helen Hensel; Denna Jones; Margaret and Robert Killion; Toby Mitchell; Courtney and Jonathan Pedroza; Karen Pearson; Beverley and Larry Potts; Barbara and Steven Potts; Tanner Randall; Daniel, Nancy, and Gwyneth Rohde; Cheryl Shadden; Corey and Jacob Webster; and Thomas Weeks are affected persons in this matter and grant their hearing requests. OPIC further recommends the Commission refer the issues listed in section III.G. for a contested case hearing at SOAH with a maximum duration of 180 days. Finally, OPIC respectfully recommends denial of all remaining requests for contested case hearing as well as all requests for reconsideration.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2025, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.



Jennifer Jamison

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TCEQ DOCKET NO. 2024-1918-AIR

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REQUESTER(S):

See attached list.

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COUNTY: HOOD

PRINCIPAL NAME: WOLF HOLLOW II POWER LLC, CN604679639

FROM

FILED BY:

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