

**TCEQ DOCKET NO. 2025-1310-AIR
TCEQ AIR QUALITY PERMIT NO. 177380, PSDTX1650, AND GHGPSDTX244**

APPLICATION BY	§	BEFORE THE
SL ENERGY POWER PLANT I, LLC	§	TEXAS COMMISSION ON
SL ENERGY POWER PLANT I	§	ENVIRONMENTAL QUALITY
LEXINGTON, LEE COUNTY	§	

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

September 25, 2025

**TCEQ DOCKET NO. 2025-1310-AIR
TCEQ AIR QUALITY PERMIT NO. 177380, PSDTX1650, AND GHGPSDTX244**

APPLICATION BY SL ENERGY POWER PLANT I, LLC SL ENERGY POWER PLANT I LEXINGTON, LEE COUNTY	§ § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
--	----------------------------	---

TABLE OF CONTENTS

I.	Application Background	1
II.	Argument Summary	3
	A. Protestants Are Using the Contested Case Hearing as a Delay Tactic	3
	B. Protestants’ Requests Ask the Commission to Act Outside of Its Authority	4
	C. The Commission Has the Authority to and Should Consider the Merits of the Application and the Executive Director’s Analysis of the Application	5
III.	Standard of Review	6
	A. Requests for Reconsideration	6
	B. Contested Case Hearing Requests	7
	1. Distance and Residence	10
	2. Executive Director’s Analysis	11
	3. Expert Opinions, Affidavits	13
IV.	SL Energy’s Response to Requests for Reconsideration	15
	A. Ms. Magnuson’s Request for Reconsideration	15
	B. Ms. Green’s Request for Reconsideration	16
	C. Mr. Dickey’s Request for Reconsideration	17
V.	SL Energy’s Response to the Contested Case Hearing Requests	19

A. Likely Impact of the Regulated Activity and Reasonable Relationship Between Interest and Activity Regulated.....	19
1. Criteria Pollutants and NAAQS.....	20
2. Ozone Analysis	21
3. Effects Screening Levels.....	21
4. State Property Line Analysis.....	22
VI. Individual Hearing Requests.....	23
A. Eric Allmon (Submitted on Behalf of Neighbors for Neighbors, Inc d/b/a Move the Gas Plant and Sierra Club).....	24
1. Associational Standing of Neighbors for Neighbors, Inc d/b/a Move the Gas Plant	25
a) <i>Applicable Law</i>	25
b) <i>MTGP's First Request</i>	26
c) <i>MTGP's Second Request, MTGP's Third Request, and MTGP's Fourth Request</i>	27
1. Rachel Cain Bailey	28
2. Kourtney Jirasek	32
3. Trish Siler.....	32
4. Julie and Kevin Drake.....	36
5. Tonya and Tim Leslie.....	39
6. Hugh Brown.....	40
7. Susan and William Davis	44
8. Lucia Dodson	47
9. Donna Westbrook.....	50

10. Other Concerns Raised by MTGP	50
B. Brian Dickey and Heidi Graham	56
C. Michele G. Gangnes and William N. (Bill) Turner, Sr.	62
D. County Judge Frank Malinak III	62
VII. Applicant’s Requirements under 30 Tex. Admin Code § 55.209(e).....	62
VIII. Conclusion	64

**TCEQ DOCKET NO. 2025-1310-AIR
TCEQ AIR QUALITY PERMIT NO. 177380, PSDTX1650, AND GHGPSDTX244**

APPLICATION BY	§	BEFORE THE
SL ENERGY POWER PLANT I, LLC	§	TEXAS COMMISSION ON
SL ENERGY POWER PLANT I	§	ENVIRONMENTAL QUALITY
LEXINGTON, LEE COUNTY	§	

**APPLICANT’S RESPONSE TO REQUESTS FOR RECONSIDERATION AND
REQUESTS FOR CONTESTED CASE HEARING**

In accordance with 30 TEX. ADMIN. CODE (“TAC”) § 55.209(d), SL Energy Power Plant I, LLC (“Applicant” or “SL Energy”) submits this Response to Requests for Reconsideration and Requests for a Contested Case Hearing.

I. APPLICATION BACKGROUND

On August 29, 2024, SL Energy submitted an application (the “Application”) to the Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) for the issuance of Permit Nos. 177380, PSDTX1650, and GHGPSDTX244 (collectively, 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 two natural gas combined cycle gas turbines along with associated support equipment, located near Lexington, Lee County, Texas (the “SL Energy Plant”). Emission from the SL Energy Plant will be controlled by a combination of selective catalytic reduction, oxidation catalysts, good combustion practices.

The Executive Director reviewed the Application and, on September 4, 2024, determined it was administratively complete. SL Energy then published a Notice of Receipt and Intent (“NORI”) on September 12, 2024 in English and on September 17, 2024 in Spanish. After

completing a technical review, the Executive Director issued its Preliminary Decision, which provides that:

[T]he applicant has demonstrated that the project meets all applicable rules, regulations and requirements of the Texas and Federal Clean Air Acts. The proposed emissions are not expected to have an adverse impact on public health or the environment. The Executive Director's preliminary determination is that the permits should be issued.¹

SL Energy published a Notice of Application and Preliminary Decision ("NAPD") on March 20, 2025 in English and on March 19, 2025 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 notice of public meeting was mailed March 21, 2025 and a public meeting was held on April 24, 2025 in Lexington, 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 April 24, 2025.

The TCEQ responded to all public comments in a July 18, 2025 Executive Director's Response to Public Comment. After responding to all comments, it noted that "[n]o changes to the draft permit have been made in response to public comment."² TCEQ's Decision of the Executive Director was issued on July 24, 2025 and stated that "[t]he executive director has made a decision that the above-referenced permit application meets the requirements of applicable law" and that "[t]his decision will be considered by the commissioners at a regularly scheduled public meeting

¹ Notice of Application and Preliminary Decision for Air Quality Permits, Proposed Air Quality Permit Numbers 177380, PSDTX1650, and GHGPSDTX244, at 47–48 (Mar. 18, 2025).

² Executive Director's Response to Public Comment ("RTC"), at 36.

before any action is taken on this application unless all requests for contested case hearing or reconsideration have been withdrawn before that meeting.”³

This Response to Requests for Reconsideration and Requests for Contested Case Hearings is filed in accordance with the TCEQ’s Agenda Setting Letter of September 12, 2025. The TCEQ Commissioner’s Integrated Database characterizes fifteen submittals as requests for a contested case hearing at the State Office of Administrative Hearings (“SOAH”) (referred to collectively as the “Hearing Requests”). Applicant respectfully requests that the Commission find that each requester 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.

II. ARGUMENT SUMMARY

A. Protestants Are Using the Contested Case Hearing as a Delay Tactic

The TCEQ’s contested case hearing process is designed to ensure that permit applications comply with all applicable laws and regulations. This process provides an important opportunity for public input and participation, allowing affected individuals and groups to raise specific, material concerns about whether a proposed permit meets the legal and technical requirements established to protect public health and the environment.

Here, however, the protestants have misused that process, seeking to use the contested case hearing process as means to delay the project. The protestants’ own public statements confirm that their objective is to delay the permitting process in hopes of derailing the project, not to resolve any material permitting dispute. In this case, the primary hearing requestor is an organization

³ Decision of the Executive Director, SL Energy Plant I, LLC, TCEQ Air Quality Permit No. 177380, PSDTX1650, and GHGPSDTX244, July 24, 2025, at 1.

known as called Move the Gas Plant (“MTGP”). Two of its members, Michelle Gangnes and Travis Brown, recently published an “opinion” on the MTGP’s website related to this Application.⁴ In this article, they openly celebrate the delays they have caused and expressly link their efforts to the hope that such delays will ultimately prevent the project from moving forward. For example, the opinion describes the potential impact of delaying the permitting process on the financial backers for the project, stating;

“[e]stablished entities prioritize long-term planning and investment decisions. But private equity firms tend to focus on high financial returns within a relatively short-term investment horizon, as short as five to seven years. Such investors often have exit strategies within their investment timeframe, and unexpected delays may trigger their early withdrawal. All this means that long delays due to various factors could affect SLE’s ability to carry out its plan to build one of the largest natural gas power plants in Texas.”⁵

Thus, MTGP has made it clear that it is not truly seeking to address any air quality or technical permitting issue, but rather to cause delay. In their own words, “long delays due to various factors could affect SLE’s ability to carry out its plan to build one of the largest natural gas power plants in Texas.”⁶ The purpose of a contested case hearing is to gather evidence and provide a recommendation as to whether the application meets applicable air quality requirements—it should not be misused as a delay tactic.

B. Protestants’ Requests Ask the Commission to Act Outside of Its Authority

The hearing requests and many of the comments in them focus on the location of the proposed SL Energy Plant, asking the TCEQ to require that it be built in a different location. The name of the primary requestor, “Move the Gas Plant,” make clear that the proposed location of the

⁴ MTGP Blog, *Opinion*, available at <https://movethegasplant.org/news/f/opinion> (July 23, 2025).

⁵ *Id.*

⁶ *Id.*

Plant, not air permitting concerns, are truly what animate the requesters' objections here. Location, however, is outside the scope of the Commission's permitting authority. The Commission does not have the authority to consider potential effects from plant location, aesthetics, zoning and land use issues, or quality of life when determining whether to approve or deny an air permit. Nor does the Commission have authority to force an applicant to move the location of a proposed project. Thus, any hearing request related to the location or relocation of SL Energy's Plant should be denied.

C. The Commission Has the Authority to and Should Consider the Merits of the Application and the Executive Director's Analysis of the Application

In determining whether a person is an affected person, the Commission has the authority to consider the merits of the underlying application, including whether the application meets the requirements for permit issuance, the Executive Director's analysis of the permit application, and expert reports, affidavits, and opinions.⁷

In looking at whether the application meets the requirements for permit issuance, the answer, according to the Executive Director's analysis of the permit application, could not be more clear:

[P]otential impacts to human health and welfare or the environment are determined by comparing the Applicant's proposed air emissions to appropriate state and federal standards and guidelines. These standards and guidelines include the National Ambient Air Quality Standards (NAAQS), TCEQ Effects Screening Levels (ESLs), and TCEQ rules. As described in detail below, the Executive Director determined that the emissions authorized by this permit are protective of both human health and welfare and the environment.⁸

⁷ 30 TAC § 55.203(d).

⁸ Executive Director's RTC at 3.

The Application and the Executive Director's thorough review of that Application demonstrate that the SL Energy Plant 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 SL Energy Plant in compliance with the Permit would be 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 SL Energy's proposed facilities are below those regulatory thresholds; therefore, by definition, air quality in the vicinity of SL Energy's proposed Plant will be protective.

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. The Commission should deny the hearing requests and requests for reconsideration and grant the Permit as drafted.

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 Response to Public Comment ("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.⁹ 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.¹⁰ A hearing request must identify all relevant and material disputed issues 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.¹¹ 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.¹²

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."¹³

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

⁹ 30 TAC § 55.201(b).

¹⁰ 30 TAC § 55.201(c).

¹¹ 30 TAC § 55.211(c)(2)(A)(ii).

¹² 30 TAC § 50.115(c).

¹³ See TEX. WATER CODE §§ 5.115, 5.556.

- 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 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.¹⁴ An interest common to members of the general public does not meet the threshold for a personal justiciable interest.¹⁵ 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.¹⁶

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;

¹⁴ *See id.* § 5.115(a).

¹⁵ *Id.*

¹⁶ Tex. Water Code §§ 5.115, 5.556; *see also*, *Tex. Disposal Sys. Landfill, Inc. v. Tex. Comm’n on Env’tl. 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)).

- 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.¹⁷

In determining “affected person” status, a key factor is the likelihood of the impact on the individual due to the regulated activity. To make this determination, the Commission considers various factors such as how far the requester’s property is from the proposed Plant, whether the requester actually lives at the property, the frequency and the duration of time spent at the property, the likelihood that the property would experience elevated concentrations of pollutants based on air dispersion modeling and wind rose analysis, and the potential toxicological impacts (or lack thereof) of the proposed emissions.

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 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.”¹⁸

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

¹⁷ 30 Tex. Admin. Code (“TAC”) § 55.203(c).

¹⁸ See *Sierra Club v. Tex. Comm’n on Env’tl. Quality*, 455 S.W.3d 214, 225 (Tex. App.—Austin Dec. 30, 2014).

- 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.¹⁹

1. Distance and Residence

The Commission has established that “[t]he 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.”²⁰ While being more than or less than one mile from the proposed Plant is not dispositive, requesters more than one mile from the point of emissions will generally only be considered to be an affected person if they provide specific unique details about how they are affected despite the significant distance.²¹ By that same logic, the Commission does not automatically grant hearing requests to those that are less than one mile. Instead, the Commission must determine the likely impact of the proposed emissions on the requester.

¹⁹ 30 TAC § 55.203(d); see also, *Tex. Comm’n on Env’tl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013) (recognizing 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 data” it has before it).

²⁰ See Application by Regency Field Services L.L.C., TCEQ State Air Quality Permit Number 6051, TCEQ Docket No. 2010-0843-AIR, Executive Director’s Response to Hearing Requests at 8 (July 8, 2010).

²¹ 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) (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).

For example, the Danevang Lutheran Church filed a hearing requests in response to an application by Indeck Wharton, LLC, which included a petition signed by a number of individuals. The TCEQ determined that “Although the church building is within one mile of the proposed facility, the request does not claim that any person resides at the church or on the church grounds.”²² The Executive Director went on to deny the church’s hearing request, finding that its “request failed to designate a representative member with a personal justiciable interest.”²³

2. Executive Director’s Analysis

The Executive Director determined that the predicted maximum ground level concentrations from the proposed Plant for sulfur dioxide (SO₂) and carbon monoxide (CO) were below the NAAQS *de minimis* levels. Therefore, no further NAAQS analysis was required for those pollutants. *See* Table 1, below.

For those pollutants above the *de minimis* standard, Applicant conducted a full NAAQS analysis to account for cumulative effects by including an evaluation of on-site sources, off-site sources, and representative monitored background concentrations. The full NAAQS analysis demonstrated that emissions of those pollutants, when added to background concentrations, were below the applicable NAAQS standard. *See* Table 2, below.

²² *See* Application by Indeck Wharton, LLC Indeck Wharton Energy Center, TCEQ Air Quality Permit Registration Nos. 111724 and PSDTX1374, TCEQ Docket No. 2014-0847-AIR, Executive Director’s Response to Hearing Requests at 6–7 (December 29, 2014).

²³ *Id.*

Table 1: Comparison of GLC_{MAX} Levels to *De Minimis*

Pollutant and Averaging Period	GLC_{MAX} (µg/m³)	<i>De Minimis</i> (µg/m³)
SO ₂ 1-hour	4.1	7.8
SO ₂ 3-hour	4	25
SO ₂ 24-hour	3	5
SO ₂ annual (increment)	0.3	1
PM ₁₀ 24-hour	9	5
PM ₁₀ Annual	1.4	1
PM _{2.5} 24-hour	9	1.2
PM _{2.5} Annual	1.35	0.13
NO ₂ 1-hr	113	7.5
NO ₂ Annual	2	1
CO 1-hour	1251	2000
CO 8-hour	983	500

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

Pollutant and Averaging Period	GLC_{MAX} (µg/m³)	Total Conc. = [Background + GLC_{MAX}] (µg/m³)	Standard (µg/m³)
PM ₁₀ 24-hr	7	93	150
PM _{2.5} 24-hour	5	26	35
PM _{2.5} Annual	1.3	8.6	9
NO ₂ 1-hour	109	150	188
NO ₂ Annual	2	6	100
CO 8-hr	969	1549	10,000

The Executive Director correctly concluded that emissions from the SL Energy Plant “should not cause or contribute to a violation of the NAAQS and are protective of human health

and the environment.”²⁴ SL Energy also conducted a Prevention of Significant Deterioration (“PSD”) increment analysis, ozone analysis, health effects analysis using Effects Screening Levels (“ESLs”), and a state property line analysis for sulfur compounds. The Executive Director reviewed each analysis and concluded that emissions from the SL Energy Plant will not cause existing health conditions to worsen, nor will there be adverse health effects on the general public, sensitive subgroups, or the public welfare and the environment.²⁵

The Executive Director’s 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 Commission can and should give significant weight to the Executive Director’s analysis of the Application and the Executive Director’s recommendation that the Draft permit be issued.

3. Expert Opinions, Affidavits

In addition to the distance of the property and the frequency and duration of visits to that property, the Commission may make its decision as to whether to grant a contested case hearing requests “based on expert affidavits and modeling, which concluded that conservative estimates of emission from proposed sources will be sufficiently attenuated by dispersion such that they will not present danger to the health or welfare of [requesters]...”²⁶ In the Max Midstream case, the 15th Court of Appeals concluded that substantial evidence supported the Commission decision on the basis of health and safety concerns.²⁷ SL Energy has provided an affidavit from Dr. Lucy

²⁴ Executive Director’s RTC at 6.

²⁵ Executive Director’s RTC at 10.

²⁶ Tex. Comm’n on Env’t Quality and Max Midstream, LLC v. San Antonio Bay Estuarine Waterkeeper, 714 S.W.3d 270, at 284 (Tex. App—Austin [15th Dist.] May 20, 2025).

²⁷ *Id.* at 284-285.

Fraiser, an expert in toxicology, in which she determined that the emissions from SL Energy's proposed Plant would be a fraction of the conservative state and federal air quality standards, which are designed to be protective of public health and welfare.²⁸

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 data" it has before it.²⁹ The Courts have upheld that discretion when it is based either or both on (1) 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. Substantial evidence is contained in this record and can be relied upon by the Commission in reaching a decision to deny requests for a contested case hearing.

SL Energy 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. SL Energy has also submitted the affidavit from an expert toxicologist, Dr. Lucy Fraiser, which concludes that emissions from the proposed Plant will not cause adverse impacts to human health or the environment.

Additionally, SL Energy has included a wind rose demonstrating the direction of the prevailing winds in the vicinity of the proposed Plant. Those requesters who are outside of the prevailing winds are less likely to be impacted by emissions from the proposed Plant.

²⁸ See Attachment B.

²⁹ *Tex. Comm'n on Env'tl. Quality v. City of Waco*, 413 S.W.3d 409, 417 (Tex. 2013).

IV. SL Energy's Response to Requests for Reconsideration

The deadline to file requests for reconsideration was August 23, 2025, and thus any requests for reconsideration filed after August 23, 2025, should be considered untimely. Three requests for reconsideration were filed in this case: (1) Amy Magnuson ("Ms. Magnuson"), submitted to the TCEQ on March 20, 2025; (2) Rebecca Green ("Ms. Green"), submitted to the TCEQ on March 20, 2025; and (3) Brian David Dickey, submitted on behalf of himself and Heidi Graham (collectively, "Mr. Dickey") to the TCEQ on August 25, 2025. As detailed below, all three individuals discuss issues outside of the TCEQ's jurisdiction and do not provide any separate basis warranting reconsideration of the TCEQ's determination that the Permit should be issued. Further, Mr. Dickey's request was submitted after the deadline for requests for reconsideration and should also be denied on those grounds.

A. Ms. Magnuson's Request for Reconsideration

Ms. Magnuson submitted her request for reconsideration on March 20, 2025. Pursuant to 30 TAC § 55.201(e), a request for reconsideration must include a name, address, daytime telephone number, and must give reasons why the decision should be reconsidered. Ms. Magnuson fails to include a daytime telephone number and, therefore, fails to meet the requirements of TCEQ's rules for a request for reconsideration.

Further, separate from the procedural error in her request, Ms. Magnuson fails to provide reasons that warrant reconsideration of the Executive Director's approval of the Permit. The health concerns have already been addressed by the Executive Director and do not merit reconsideration, as the issues she raises are not new or different from what the Executive Director has already considered, or are otherwise outside the scope of the TCEQ's jurisdiction. Ms. Magnuson fails to explain how or why the Plant's emissions would actually cause any health concerns to her. The

proposed emissions comply with every federal or state standard, which are specifically designed to be protective of public health and the environment. Thus, there is no evidence that emissions from the Plant will “exacerbate [her] symptoms further,” as she claims.

Furthermore, TCEQ does not have jurisdiction to consider traffic issues when determining whether to approve a permit application. As stated in the Executive Director’s Response to Comments, TCEQ does not have the authority to consider traffic when determining whether to approve a permit application.³⁰ Therefore, Ms. Magnuson does not provide adequate reasons for why the permit application should be reconsidered and her request for reconsideration should be denied.

B. Ms. Green’s Request for Reconsideration

Ms. Green submitted her request for reconsideration on March 20, 2025. Pursuant to 30 TAC § 55.201(e), a request for reconsideration must include a name, address, daytime telephone number, and must give reasons why the decision should be reconsidered. Ms. Green fails to include a daytime telephone number as required by the rules, and therefore, the request should be denied.

Further, separate from the procedural error in her request, Ms. Green fails to provide reasons that warrant reconsideration of the Executive Director’s approval of the Permit. In fact, the only concern she raises is about the location of the proposed Plant, which is outside the TCEQ’s jurisdiction. As stated in the Executive Director’s Response to Comments, the TCEQ does not generally have jurisdiction to consider facility location choices made by an applicant when determining whether to approve or deny a permit application unless a statute or rule specifically requires the TCEQ to consider some aspect of the location.³¹ The Executive Director’s Response

³⁰ Executive Director’s Response to Comments at 30.

³¹ Executive Director’s Response to Comments at 29–30.

to Comments goes on to state that the “TCEQ also does not consider the location of historic sites or conduct a land use review of historic sites for air quality permit applications.”³² Thus, the reasons provided by Ms. Green do not warrant reconsideration as they are outside the jurisdiction of the TCEQ, and her request for reconsideration should be denied.

C. Mr. Dickey’s Request for Reconsideration

Mr. Dickey submitted his request for reconsideration on August 25, 2025.³³ As stated above, the deadline to file requests for reconsideration was August 23, 2025, and thus any requests for reconsideration filed after August 23, 2025, like Mr. Dickey’s, should be considered untimely. Thus, his request for reconsideration should be denied on these grounds.

However, in the event that the Commission finds Mr. Dickey’s request to be timely, Mr. Dickey’s request should also be denied because he fails to provide reasons that warrant reconsideration of the TCEQ’s determination that the Permit should be issued. Specifically, all of the concerns he raises have already been addressed by the Executive Director’s Response to Comments or are otherwise outside the scope of the TCEQ’s jurisdiction.

Regarding compliance with the Permit, the issue before the Commission at this stage is whether the draft Permit, as written, is protective of public health and the environment and whether it satisfies all applicable state and federal air-quality requirements. The TCEQ has already performed its technical review and determined that the Application and the Draft Permit are compliant with the applicable statutory and regulatory requirements. Consequently, generalized

³² Executive Director’s Response to Comments at 30.

³³ The Applicant notes that this request was filed twice, but the two requests are identical other than a cover email that indicates Mr. Dickey requested assistance with uploading his to TCEQ’s portal. Therefore, the Applicant considers this as one request for reconsideration.

concerns from Mr. Dickey about potential non-compliance in the future have no bearing on whether the Application and Draft Permit comply with applicable regulations and the TCAA.

Regarding the location of the air monitor used, the Executive Director explained its Response to Comments that “[t]he ambient air monitors were selected to ensure that they are representative of the proposed site.”³⁴ The Executive Director also explained that “background concentrations from the selected monitors are conservative because background concentrations in the vicinity of the selective monitors are expected to be higher than background concentrations in the vicinity of the proposed project. In addition, the selected background monitors are located in more suburban/light industrial areas. Therefore, it is reasonable/conservative to use these monitors in suburban/light industrial areas when the project site is in a more rural area.”³⁵ Therefore, the air monitor used for the data in this Application was compliant with the TCEQ’s rules and does not require reconsideration.

Next, regarding health impacts, Mr. Dickey states that several people near the proposed Plant location have “health conditions that may be exacerbated by the proposed emissions.” However, Mr. Dickey 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 their health. However, simply writing the words “health conditions” is not sufficient to justify reconsideration here.

Last, Mr. Dickey notes concerns about unauthorized burning, the alleged provision of water service without certification, and alleged stormwater violations. These topics are and entirely irrelevant to the Commission’s processing of this air quality permit Application. As stated in the

³⁴ Executive Director’s RTC at 6.

³⁵ Executive Director’s RTC at 12-13.

Executive Director's Response to Comments, "this proposed permit will regulate the control and abatement of air emissions only. Therefore, issues regarding water quality or discharge . . . are not within the scope of this review."³⁶ Further, unsubstantiated claims of unauthorized outdoor burning should be addressed through enforcement and do not have any bearing on whether the Application and Draft Permit are consistent with TCEQ regulations and the TCAA.

Mr. Dickey's request attaches his previously filed contested case hearing request and asks that it be "incorporate[ed] by reference." Mr. Dickey's hearing request does not raise any additional grounds that warrant reconsideration, as further detailed in Section VI.B below.

Accordingly, the three requests for reconsideration should be denied.

V. SL Energy's Response to the Contested Case Hearing Requests

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

None of the 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.³⁷ As established in the RTC, emissions from the Plant are below every state and federal standard that are specifically set to be protective of human health and the environment. None of the requestors have provided any evidence supporting a relationship between the alleged environmental harm and the proposed Plant. Furthermore, as explained in Dr. Fraiser's affidavit, emission from the proposed Plant will not cause adverse health effects as

³⁶ Executive Director's Response to Comments at 17.

³⁷ See 30 TAC § 55.203(c)(3).

demonstrated by the conservative air dispersion modeling and compliance with applicable state and federal air quality standards.³⁸ After reviewing the comments and hearing requests, it is abundantly clear that the real focus here is the location of SL Energy's Plant, and the aesthetic impacts from that location, rather than actual impacts to air quality.

Additionally, any suggestions that the proposed Plant 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 Response to Comments. These documents clearly demonstrate that the Permit is protective of human health and the environment and emissions from the proposed Plant will not adversely impact air quality in this region. The information provided in the hearing requests fails to dispute the data provided by the Applicant or the Executive Director's conclusions.

1. Criteria Pollutants and NAAQS

The proposed emissions of all criteria pollutants will not cause an exceedance of the applicable NAAQS. In fact, for many of the NAAQS standards, the proposed emissions are below *de minimis* levels. SL Energy conducted a NAAQS analysis for SO₂, PM₁₀, PM_{2.5}, NO₂, and CO. The first step of the NAAQS analysis is to compare the proposed modeled emissions against the established *de minimis* level. If the modeled maximum ground level concentrations ("GLC_{MAX}") is below the *de minimis* level, then no further NAAQS analysis is required. Proposed emissions of CO 1-hour, SO₂ 1-hour, SO₂ 3-hour, SO₂ 24-hour, and SO₂ annual (increment) are below *de minimis* levels.

³⁸ Fraiser Aff. ¶ 13-17.

For the pollutants above the *de minimis* standard, PM₁₀ 24-hr, PM_{2.5} 24-hour, PM_{2.5} Annual, NO₂ 1-hour, NO₂ Annual, CO 8-hr, the NAAQS analysis demonstrated that emissions of those pollutants, when added with emissions from applicable off-site sources and representative background concentrations, were below the applicable NAAQS standard.³⁹ Thus, by definition, air quality in the vicinity of the proposed site, including the proposed emission from the Plant, will be protective of public health.

2. Ozone Analysis

SL Energy also performed an ozone (O₃) analysis as part of the Prevention of Significant Deterioration (“PSD”) Air Quality Analysis (“AQA”), evaluating proposed emissions of ozone precursor emissions (NO_x and VOC). The ozone analysis, which was consistent with EPA’s Guidance on Air Quality Models, demonstrated that ozone resulting from the proposed Plant was less than the EPA’s *de minimis* level.⁴⁰

Pollutant	Averaging Time	GLC _{MAX} (µg/m ³)	<i>De Minimis</i> (µg/m ³)
Ozone	8-hour	0.4	1

3. Effects Screening Levels

To assess potential impacts of non-criteria pollutants, SL Energy conducted a health effects analysis using TCEQ’s Effects Screening Levels (“ESLs”).⁴¹ ESLs are specific guideline concentrations used in TCEQ’s evaluation of certain non-criteria pollutants that are derived by TCEQ’s Toxicology Division and are based on a pollutant’s potential to cause adverse health

³⁹ Executive Director’s RTC, at 6.

⁴⁰ Executive Director’s RTC, at 7.

⁴¹ Executive Director’s RTC, at 8-9. The health effects analysis was conducted for the following non-criteria pollutants: ammonia, formaldehyde, toluene, naphthalene, benzene, acetaldehyde, acrolein, ethylbenzene, xylene, butadiene, polycyclic aromatic hydrocarbons, sulfur hexafluoride, hexane, cumene, diesel fuel, lubricating oils, petroleum, butane, propylene oxide, oleoyl sarcosine, and benzotriazole derivative.

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.⁴² 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, SL Energy 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.⁴³

4. State Property Line Analysis

SL Energy also conducted a state property line analysis for ground-level concentrations related to sulfur emission, including SO₂ and sulfuric acid (H₂SO₄). The analysis showed that concentrations for each of these pollutants would be below the applicable standard.

Pollutant	Averaging Time	GLC _{MAX} (µg/m ³)	Standard (µg/m ³)
SO ₂	1-hour	4	1021
H ₂ SO ₄	1-hour	6	50
H ₂ SO ₄	24-hour	3	15

As demonstrated in multiple air quality analyses, the emissions from the Plant 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 iota of evidence presented by requestors that emissions below *de minimis* levels, concentrations below NAAQS standards, or

⁴² 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.”).

⁴³ Executive Director’s RTC, at 8-9.

concentrations below the ESLs and state property line standards will somehow cause adverse impacts to their health or the environment.

VI. INDIVIDUAL HEARING REQUESTS

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 person.⁴⁴ 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.”⁴⁵

“[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.”⁴⁶

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.”⁴⁷

At the risk of being repetitive, SL Energy 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.

⁴⁴ See 30 TAC § 55.203(c)(4)–(5).

⁴⁵ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

⁴⁶ *Id.* at 363.

⁴⁷ See *Tex. Comm’n on Env’tl. Quality v. Sierra Club*, 455 S.W.3d 228, 240 (Tex. App.—Austin 2014).

A. Eric Allmon (Submitted on Behalf of Neighbors for Neighbors, Inc d/b/a Move the Gas Plant and Sierra Club)

On September 12, 2024, Eric Allmon submitted a hearing request on behalf of an organization called “Move the Gas Plant” (“MTGP”) (“MTGP’s First Request”). Subsequently, Mr. Allmon submitted nine more filings with the TCEQ, each of which have been classified on the TCEQ website as hearing requests. Specifically, on April 24, 2024, Mr. Allmon submitted the same filing three times. For simplicity and because each of these filings is identical, SL Energy shall refer to these hearing requests collectively as “MTGP’s Second Request.”⁴⁸ Then, on August 25, 2025, after the filing deadline for contested case hearing requests, Mr. Allmon submitted the same filing three times. For simplicity and because each of these filings is identical, SL Energy shall refer to these hearing requests collectively as “MTGP’s Third Request.” Last, on August 27, 2025, again after the filing deadline for hearing requests, Mr. Allmon submitted errata to his request for a contested case hearing, which provided corrected addresses for three members of the organization. Again, each of the filings is identical, so for simplicity, SL Energy shall refer to this errata (which is classified by the TCEQ as a hearing request) as “MTGP’s Fourth Request.”

Because the contents of the various hearing requests vary slightly, SL Energy will first address the associational standing of MTGP and then each of the four hearing requests submitted by MTGP. As explained further below, MTGP fails to meet the requirements for associational standing in this proceeding, primarily because it fails to demonstrate that one or more members of the organization would otherwise have standing to request a hearing in their own right. Although

⁴⁸ SL Energy notes that Mr. Allmon submitted his filing on behalf of Neighbors for Neighbors, Inc., d/b/a Move the Gas Plant and the Sierra Club. However, his filing specifically states that “These are submitted as comments on behalf of the Sierra Club, but the Sierra Club is not requesting a contested case hearing at this time.” The Sierra Club did not request a contested case hearing in this proceeding through any of MTGP’s hearing requests or on its own, and therefore, there is no hearing request from Sierra Club in this proceeding and the Applicant will not address Sierra Club’s public comments in this briefing.

some of MTGP's hearing requests list individuals that live near the proposed Plant, MTGP does not demonstrate that these individuals qualify as an "affected person" with a personable justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application. Instead, MTGP's hearing requests include generic statements of air quality (particularly in its MTGP's First Request) or fail to demonstrate that their members would have a justiciable interest in their own right. Thus, all of MTGP's hearing requests should be denied.

1. Associational Standing of Neighbors for Neighbors, Inc d/b/a Move the Gas Plant

a) *Applicable Law*

Pursuant to 30 TAC § 55.205(a), a "group or association may request a contested case hearing only if the group or association meets all of the following requirements: (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case." The rule goes on to expressly state that for applications filed after September 1, 2025, which include this Application, a hearing request from a group or association may not be granted unless all of the following requirements are met: "(1) comments on the application are timely submitted by the group or association; (2) the request identifies, by name and physical address, one or more members of the group or association that would otherwise have standing to request a hearing in their own right; (3) the interests the group or association seeks to protect are germane to the organization's purpose; and (4) neither the claim asserted nor the relief requested requires the participation of the individual members in the case."⁴⁹

⁴⁹ 30 TAC § 55.205(b).

Further, when considering whether one or more members of the association would otherwise have standing to request a hearing in their own right, the Commission looks to where the members reside and the distance of that residence from the proposed facility. Specifically, in the *Indeck Wharton* matter, although the church was located within one mile of the proposed facility, because no one resided at the church or on the church grounds,⁵⁰ the Executive Director recommended denial of the hearing request as the church did not meet the requirements for associational standing.⁵¹

b) *MTGP's First Request*

MTGP's First Request was submitted only on behalf of MTGP. SL Energy was able to locate an Assumed Name Certificate that was filed with the Texas Secretary of State, which states that "Neighbors for Neighbors, Inc." will use the assumed name of "Move the Gas Plant." This filing was submitted on September 11, 2024 and states that the period of time to use the assumed name is a maximum of ten years. However, MTGP's First Request failed to identify, by name and physical address, one or more members of the association that would otherwise have standing to request a hearing in their own right, as required by 30 TAC § 55.205(b)(2). Therefore, MTGP's First Request should be denied on these grounds.

Further, in addition to showing that MTGP has associational standing, they must also demonstrate that it has standing as an "affected person." This requires, among other things, demonstrating "a personal justiciable interest related to a legal right, duty, privilege, power, or

⁵⁰ The Applicant notes that there was one individual that had a residential address within one mile of the facility, however, they did not demonstrate a personal justiciable interest and therefore, did not allow for associational standing for the church.

⁵¹ See Application by Indeck Wharton, LLC Indeck Wharton Energy Center, TCEQ Air Quality Permit Registration Nos. 111724 and PSDTX1374, TCEQ Docket No. 2014-0847-AIR, Executive Director's Response to Hearing Requests at 6-7 (December 29, 2014).

economic interest affected by the application. An interest common to members of the general public does not qualify as a person justiciable interest.”⁵² Here, the only concern raised in MTGP’s First Request is that the “proposed emissions and contaminants would unreasonably impact air quality.” This generalized statement on the proposed emissions impacting air quality 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...”⁵³

MTGP’s First Request has not satisfied this requirement and therefore should be denied on these grounds as well.

c) *MTGP’s Second Request, MTGP’s Third Request, and MTGP’s Fourth Request*

The three subsequent hearing requests were submitted on behalf of “Neighbors for Neighbors, Inc. d/b/a Move the Gas Plant.” First, to attain associational standing, the organization is required to demonstrate that “comments on the application are timely submitted by the group or association.”⁵⁴ In this proceeding, the deadline to file requests for a contested case hearing was August 23, 2025. MTGP’s Third Request and MTGP’s Fourth Request were filed after this date

⁵² 30 TAC § 55.203(a).

⁵³ *Bosque River Coalition v. Tex. Comm’n on Env’tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

⁵⁴ 30 TAC § 55.205(b)(1).

on August 25, 2025 and August 27, 2025, respectively, and therefore, the hearing requests should be denied for being untimely.

Further, to qualify for associational standing, this organization is required to demonstrate that one or more members of the group would otherwise have standing to request a hearing in their own right. Meeting this standard requires that the individuals listed qualify as an “affected person” under 30 TAC § 55.203. Neighbors for Neighbors, Inc. d/b/a Move the Gas Plant failed to demonstrate that any of the individuals listed in the various hearing requests qualify as an affected person entitled to a contested case hearing in this proceeding and therefore, all of MTGP’s hearing requests should be denied.

1. Rachel Cain Bailey

MTGP’s Second Request and MTGP’s Third Request both list Dr. Rachel Cain Bailey (“Dr. Bailey”) as a member. While MTGP’s Third Request should be denied for being untimely, as described above, Dr. Bailey has not demonstrated a likely impact from the proposed Plant. To determine whether an individual is an “affected person,” one of the factors to evaluate is the likely impact of the regulated activity on the health and safety of the person.⁵⁵ Here, Dr. Bailey fails to explain how or why the Plant’s emissions would actually cause any health concerns or impacts to her property. Further, as evidenced by the affidavits attached as **Exhibit “A”** hereto, while Dr. Bailey does own property located near the proposed Plant (with an address of 6059 County Road 309, Lexington, Texas 78947), she permanently resides at another property located in or near Austin, Texas.⁵⁶ Therefore, her permanent residence is located much more than a mile away from the proposed Plant. Furthermore, the main structure located at 6059 County Road is not a habitable

⁵⁵ 30 TAC § 55.203(c)(4).

⁵⁶ See Attachment A.

structure, i.e., not suitable for use as a home, as it is open to weather, construction has been abandoned for many years, and the house is in a state of disrepair. While Dr. Bailey does visit the site, the frequency and duration of the time she spends at that property are significantly less than if she actually resided at the 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 activity. Also, any alleged impact must be more than speculative or theoretical. Listing one’s medical conditions does not make one an affected person. Similarly, stating that she owns property near the proposed Plant, while permanently residing somewhere much further away, negates the likely impact of the proposed Plant on her health and safety. Ownership of property within one mile does not, by itself, justify granting a hearing request where the requester does not reside at, regularly occupy, or otherwise show likely health or safety impacts at that location. Furthermore, Dr. Bailey fails to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ’s regulations. Therefore, Dr. Bailey should not be considered an affected person.

In noting her concerns about impacts on her and her family’s health, Dr. Bailey lists several health conditions within her family. However, she neglects to 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 or her family’s health. The NAAQS and state ESLs are designed to be protective of human health, including particularly sensitive populations such as the elderly, children, and people with existing medical conditions. If concentrations of pollutants are demonstrated to be below these protective standards, how is Dr. Bailey able to demonstrate a “likely impact”?

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.”⁵⁷

“[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.”⁵⁸

Simply listing medical conditions is 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*. Dr. Bailey has not provided a specific statement about how the proposed Plant will adversely affect her in a way not common to the general public and therefore, she should not be considered an affected person.

Dr. Bailey’s concerns about participating in outdoor recreational activities on her property and her concerns about livestock on her property do not qualify her as an affected person in this proceeding. As stated in the Executive Director’s Response to Comments, “because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water.”⁵⁹

Dr. Bailey indicates concerns that the proposed Plant’s “emissions would adversely affect the air quality.” Indicating a general apprehension with “air quality” from the Plant is not sufficient to warrant granting a request for a 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 Plant will not have an impact on Dr. Bailey’s health and

⁵⁷ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

⁵⁸ *Id.* at 363.

⁵⁹ Executive Director’s RTC at 16.

safety, use of property, or use of natural resources. A broad statement regarding air quality does not qualify Dr. Bailey as an affected person. Moreover, as described above, Dr. Bailey permanently resides at a different property in or near Austin, Texas, and even her own request confirms that she does not actually live on this property full time and her permanent residence is elsewhere. Given the short duration of time Dr. Bailey seems to spend on the property, this further negates the impacts she will experience from air quality or emissions.

As explained in Dr. Fraiser's affidavit:

The Primary NAAQS are set specifically to protect against the development or worsening of asthma (NO₂, O₃, PM₁₀, PM_{2.5}, SO₂), respiratory effects (NO₂, O₃, PM₁₀, PM_{2.5}, SO₂), chronic obstructive pulmonary disease (“*COPD*”) (PM₁₀), lung and cardiovascular disease (CO, PM₁₀, PM_{2.5}), hospital admissions (CO, NO₂, O₃, PM₁₀, PM_{2.5}, SO₂) and premature death (O₃, PM₁₀, PM_{2.5}). Health-based ESLs are established to prevent a variety of health effects, including but not limited to respiratory effects (Acrolein, Ammonia, Formaldehyde, Toluene, Xylenes), cancer (Benzene), immunosuppression (Benzene), reproductive toxicity (1,3-Butadiene), eye toxicity (Ethylbenzene, Toluene), CNS effects (Diesel Fuel, Lubricating Oils, Toluene, Xylenes), kidney toxicity (Ethylbenzene), and liver damage (Diesel Fuel, Lubricating Oils). All pollutants potentially emitted from the proposed Facility resulted in maximum off-property concentrations that are less than the health-protective primary NAAQS or health-based ESLs. Therefore, it is not expected that existing health conditions will worsen, or that there will be adverse health effects in the general public or sensitive subgroups as a result of proposed emission rates associated with the proposed Facility.⁶⁰

Dr. Fraiser goes on to explain that the even when considering a worst case emissions and the maximum ground level concentrations, the proposed Project is not expected to have adverse health impacts.

No location within the dense air dispersion model receptor grid, which extends 50 km (31 miles) in all directions from the proposed

⁶⁰ Fraiser Aff. ¶ 19.

Facility, will have higher concentrations than those evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation. In other words, *worst-case* air concentrations for each pollutant was evaluated for their potential to cause adverse health and welfare effects. Given that all pollutant concentrations were less than their respective NAAQS and ESLs at maximum-modeled impact locations (i.e., GLC_{max}), combined with the fact that the primary NAAQS and health-based ESLs are set at concentrations below which negative health impacts in any member of the public are expected to occur (including the most sensitive members of the public [e.g., children, elderly, and the infirm]) or at insignificant risk levels, maximum allowable emissions from the Project are not expected to negatively affect the health of any member of the general public, including the hearing requestors.⁶¹

Finally, as indicated in the attached Wind Rose Map, Dr. Bailey's property is outside the prevailing wind pattern and is expected to experience wind from the emission points to her property, approximately three (3) days per year.⁶²

Based on the limited time Dr. Bailey spends at the property, the ED's analysis, the affidavit of Dr. Fraiser, an expert toxicologist, and the prevailing wind patterns, Dr. Bailey is not likely to be impacted by the proposed Plant and should not be considered an affected person.

2. Kourtney Jirasek

Ms. Jirasek submitted a formal withdrawal of her hearing request on September 23, 2025. Thus, Ms. Jirasek's hearing request is no longer before the Commission for consideration. No hearing request should be granted in response to the withdrawn hearing request.

3. Trish Siler

MTGP's Second Request and MTGP's Third Request both list Trish Siler ("Ms. Siler") as a member. While MTGP's Third Request should be denied for being untimely, as described above,

⁶¹ Fraiser Aff. ¶ 22.

⁶² Attachment D.

Ms. Siler has not demonstrated a likely impact from the proposed Plant. Ms. Siler fails to explain how or why the Plant'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 activity. Also, any alleged impact must be more than speculative or theoretical. Listing one's medical conditions does not make one an affected person. Furthermore, Ms. Siler fails to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Ms. Siler should not be considered an affected person.

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..."⁶³ Ms. Siler fails to meet these requirements and therefore, she should not be considered an affected person. Specifically, Ms. Siler's listed concerns are: health impacts on her, her family, and her livestock from emissions, as well as concerns about impacts on her time spent outdoors doing recreational activities.

In noting her concerns about impacts to her and her family's health, Ms. Siler lists several health conditions within her family, including migraines, thyroid nodules, fibromyalgia, multiple chemical sensitivity, and asthma. However, she neglects to explain how the proposed emissions, which are below those levels determined by state and federal environmental agencies to be

⁶³ *Bosque River Coalition v. Tex. Comm'n on Env'tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

protective of human health and the environment, will have an adverse effect on her or her family's 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.”⁶⁴

“[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.”⁶⁵

Writing out a laundry list of medical conditions 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*. Ms. Siler has not provided a specific statement about how the proposed Plant will adversely affect her in a way not common to the general public and therefore, she should not be considered an affected person.

Next, regarding her concerns about participating in outdoor recreational activities on her property and her concerns about livestock on her property do not qualify her as an affected person in this proceeding. As stated in the Executive Director's Response to Comments, “because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water.”⁶⁶

Last, Ms. Siler indicates concerns that the proposed Plant's “emissions would negative impact air quality.” Indicating a general apprehension with “air quality” from the Plant is not sufficient to warrant granting a request for a hearing. The proposed emissions are all below every

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

⁶⁵ *Id.* at 363.

⁶⁶ Executive Director's RTC at 16.

federal and state standard, which are specifically designed to be protective of public health and the environment.

As explained in Dr. Fraiser's affidavit:

The Primary NAAQS are set specifically to protect against the development or worsening of asthma (NO₂, O₃, PM₁₀, PM_{2.5}, SO₂), respiratory effects (NO₂, O₃, PM₁₀, PM_{2.5}, SO₂), chronic obstructive pulmonary disease (“*COPD*”) (PM₁₀), lung and cardiovascular disease (CO, PM₁₀, PM_{2.5}), hospital admissions (CO, NO₂, O₃, PM₁₀, PM_{2.5}, SO₂) and premature death (O₃, PM₁₀, PM_{2.5}). Health-based ESLs are established to prevent a variety of health effects, including but not limited to respiratory effects (Acrolein, Ammonia, Formaldehyde, Toluene, Xylenes), cancer (Benzene), immunosuppression (Benzene), reproductive toxicity (1,3-Butadiene), eye toxicity (Ethylbenzene, Toluene), CNS effects (Diesel Fuel, Lubricating Oils, Toluene, Xylenes), kidney toxicity (Ethylbenzene), and liver damage (Diesel Fuel, Lubricating Oils). All pollutants potentially emitted from the proposed Facility resulted in maximum off-property concentrations that are less than the health-protective primary NAAQS or health-based ESLs. Therefore, it is not expected that existing health conditions will worsen, or that there will be adverse health effects in the general public or sensitive subgroups as a result of proposed emission rates associated with the proposed Facility.⁶⁷

Dr. Fraiser goes on to explain that the even when considering a worst case emissions and the maximum ground level concentrations, the proposed Project is not expected to have adverse health impacts.

No location within the dense air dispersion model receptor grid, which extends 50 km (31 miles) in all directions from the proposed Facility, will have higher concentrations than those evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation. In other words, *worst-case* air concentrations for each pollutant was evaluated for their potential to cause adverse health and welfare effects. Given that all pollutant concentrations were less than their respective NAAQS and ESLs at maximum-modeled impact locations (i.e., GLC_{max}), combined with the fact that the primary NAAQS and health-based ESLs are set at concentrations below

⁶⁷ Fraiser Aff. ¶ 19.

which negative health impacts in any member of the public are expected to occur (including the most sensitive members of the public [e.g., children, elderly, and the infirm]) or at insignificant risk levels, maximum allowable emissions from the Project are not expected to negatively affect the health of any member of the general public, including the hearing requestors.⁶⁸

Finally, as indicated in the attached Wind Rose Map, Ms. Siler's property is outside the prevailing wind pattern and is expected to experience wind from the emission points to her property, approximately ten (10) days per year.⁶⁹

The emissions from the Plant will not have an impact on Ms. Siler's health and safety, use of property, or use of natural resources. She also neglects to identify how she will be adversely affected by the proposed Plant in a manner not common to members of the public. Therefore, a broad statement regarding air quality does not qualify Ms. Siler as an affected person.

4. Julie and Kevin Drake

MTGP's Second Request lists Julie Drake and Kevin Drake as members. However, Mr. Drake and Ms. Drake have not demonstrated a likely impact from the proposed Plant. Mr. Drake and Ms. Drake fail to explain how or why the Plant's emissions would actually cause any health concerns or impacts to their 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 activity. Also, any alleged impact must be more than speculative or theoretical. Furthermore, Mr. Drake and Ms. Drake fail to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Mr. Drake and Ms. Drake should not be considered affected persons.

⁶⁸ Fraiser Aff. ¶ 22.

⁶⁹ Attachment D.

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..."⁷⁰ Mr. Drake and Ms. Drake fail to meet these requirements and therefore, should not be considered affected persons. Specifically, Mr. Drake and Ms. Drake's listed concerns are: impacts from air contaminants on their health, impacts to her livestock, and impacts on outdoor recreational activities.

In noting her concerns about impacts on her and her family's health, Mr. Drake and Ms. Drake neglect to 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 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."⁷¹

"[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."⁷²

Simply stating that "air contaminants from the Plant would adversely affect their health" is 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*. Mr. Drake and Ms. Drake have not provided a specific statement about how the proposed Plant will adversely

⁷⁰ *Bosque River Coalition v. Tex. Comm'n on Env'tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

⁷¹ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

⁷² *Id.* at 363.

affect them in a way not common to the general public and therefore, they should not be considered affected persons. Also, as explained above and in the Executive Director's Response to Comments, 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.

Next, regarding Mr. Drake and Ms. Drake's concerns about participating in outdoor recreational activities on their property and her concerns about livestock on their property do not qualify them as affected persons in this proceeding. As stated in the Executive Director's Response to Comments, "because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water."⁷³

Last, Mr. Drake and Ms. Drake indicates concerns that the proposed Plant's "emissions would adversely affect the air quality." Indicating a general apprehension with "air quality" from the Plant is not sufficient to warrant granting a request for a 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 Plant will not have an impact on Mr. Drake and Ms. Drake's health and safety, use of property, or use of natural resources. They also neglect to identify how they will be adversely affected by the proposed Plant in a manner not

⁷³ Executive Director's RTC at 16.

common to members of the public. Therefore, a broad statement regarding air quality does not qualify Mr. Drake and Ms. Drake as affected persons.

5. Tonya and Tim Leslie

MTGP's Second Request and MTGP's Third Request both list Tonya Leslie and Tim Leslie as members. While MTGP's Third Request should be denied for being untimely, as described above, Mr. Leslie and Ms. Leslie have not demonstrated a likely impact from the proposed Plant. Mr. Leslie and Ms. Leslie fail to explain how or why the Plant'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 activity. Also, any alleged impact must be more than speculative or theoretical. Furthermore, Dr. Bailey fails to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Mr. Leslie and Ms. Leslie should not be considered affected persons.

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..."⁷⁴ Mr. Leslie and Ms. Leslie fail to meet these requirements and therefore, she should not be considered affected persons. Specifically, Mr. Leslie and Ms. Leslie's listed concerns are: impacts to her livestock, impacts on outdoor recreational activities, impacts on air quality.

⁷⁴ *Bosque River Coalition v. Tex. Comm'n on Env'tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

Mr. Leslie and Ms. Leslie's concerns about participating in outdoor recreational activities on their property and their concerns about livestock on their property do not qualify them as affected persons in this proceeding. As stated in the Executive Director's Response to Comments, "because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water."⁷⁵

Further, Mr. Leslie and Ms. Leslie indicates concerns that the proposed Plant's "emissions would negatively impact the air quality." Indicating a general apprehension with "air quality" from the Plant is not sufficient to warrant granting a request for a 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 Plant will not have an impact on Mr. Leslie and Ms. Leslie's health and safety, use of property, or use of natural resources. Mr. Leslie and Ms. Leslie also neglect to identify how they will be adversely affected by the proposed Plant in a manner not common to members of the public. Therefore, a broad statement regarding air quality does not qualify Mr. Leslie and Ms. Leslie as affected persons.⁷⁶

6. Hugh Brown

MTGP's Third Request and MTGP's Fourth Request both list Hugh Brown as a member. While MTGP's Third Request and MTGP's Fourth Request should both be denied for being untimely, as described above, Mr. Brown has not demonstrated a likely impact from the proposed Plant. Mr. Brown's property is located more than 1.5 miles away from the proposed Plant.

⁷⁵ Executive Director's Response to Comments at 16.

⁷⁶ This section will be modified to state that they withdrew their hearing request if the settlement goes through.

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.⁷⁷ 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.⁷⁸ The distance between the requestor and the proposed Plant is critically important in evaluating hearing requests because of the effect of air dispersion on the potential impact, if any, of air contaminants.

Mr. Brown fails to explain how or why the Plant's emissions would actually cause any health concerns or impacts to his 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 activity. Also, any alleged impact must be more than speculative or theoretical. Furthermore, Mr. Brown fails to raise any fact issue about whether the Application and Draft Permit comply

⁷⁷ 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).

⁷⁸ 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) (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).

with applicable laws and TCEQ's regulations. Therefore, Mr. Brown should not be considered an affected person.

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..."⁷⁹ Mr. Brown fails to meet these requirements and therefore, he should not be considered an affected person. Specifically, Mr. Brown's listed concerns are: impacts to wildlife on his property and use of his property for outdoor recreational purposes, including for wildlife rescue and rehabilitation, impacts on his health, and impacts on air quality.

In noting his concerns about potential impacts on his health, Mr. Brown neglects to 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 his 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."⁸⁰

"[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."⁸¹

Simply writing that "[h]e is concerned about the impact of emissions on his health" is not sufficient to identify a personal justiciable interest and does not meet the requirements as spelled

⁷⁹ *Bosque River Coalition v. Tex. Comm'n on Env'tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

⁸⁰ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

⁸¹ *Id.* at 363.

out in *Bosque River Coalition v. Texas Commission on Environmental Quality*. Mr. Brown has not provided a specific statement about how the proposed Plant will adversely affect him in a way not common to the general public and therefore, he should not be considered an affected person. Also, as explained above and in the Executive Director's Response to Comments, 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.

Next, regarding Mr. Brown's concerns about participating in outdoor recreational activities on his property and his concerns about wildlife on his property do not qualify him as an affected person in this proceeding. As stated in the Executive Director's Response to Comments, "because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water."⁸²

Last, Mr. Brown indicates concerns that the proposed Plant's "emissions would negatively impact the air quality." Indicating a general apprehension with "air quality" from the Plant is not sufficient to warrant granting a request for a 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 Plant will not have an impact on Mr. Brown's health and safety, use of property, or use of natural resources. He also neglects to identify how he will be adversely affected by the proposed Plant in a manner not common to members of the public.

⁸² Executive Director's Response to Comments at 16.

Therefore, a broad statement regarding air quality does not qualify Mr. Brown as an affected person.⁸³

7. Susan and William Davis

MTGP's Third Request and MTGP's Fourth Request both list Susan Davis and William Davis as members. While MTGP's Third Request and MTGP's Fourth Request should both be denied for being untimely, as described above, Mr. Davis and Ms. Davis have not demonstrated a likely impact from the proposed Plant. The Davis' property is located approximately 2 miles away from the proposed Plant.

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.⁸⁴ 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.⁸⁵ The distance between the requestor and the proposed

⁸³ This section will be modified to state that he withdrew his hearing request if the settlement goes through.

⁸⁴ 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).

⁸⁵ 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

Plant is critically important in evaluating hearing requests because of the effect of air dispersion on the potential impact, if any, of air contaminants.

Mr. Davis and Ms. Davis fail to explain how or why the Plant's emissions would actually cause any health concerns or impacts to their 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 activity. Also, any alleged impact must be more than speculative or theoretical. Further, Mr. Davis and Ms. Davis fail to raise any fact issue about whether the Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Mr. Davis and Ms. Davis should not be considered affected persons.

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..."⁸⁶ Mr. Davis and Ms. Davis fails to meet these requirements and therefore, she should not be considered an affected person. Specifically, Mr. Davis and Ms. Davis' listed concerns are: health impacts on themselves and their family (including daughter and her young family), impacts on outdoor recreational activities, impacts on livestock and pets, and impacts to air quality.

general public."); *Collins v. Tex. Natural Res. Conservation Comm'n*, 94 S.W.3d 876 (Tex. App.—Austin 2002) (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).

⁸⁶ *Bosque River Coalition v. Tex. Comm'n on Env'tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), *reversed on other grounds*, 413 S.W.3d 403 (Texas 2013).

In noting their concerns about impacts on the health of themselves and their family, Mr. Davis and Ms. Davis list some health conditions impacting Mr. Davis, including pulmonary disease and a previous heart attack. However, they neglect to 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 their health or their family's 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.”⁸⁷

“[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.”⁸⁸

Simply listing medical conditions is 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*. Mr. Davis and Ms. Davis have not provided a specific statement about how the proposed Plant will adversely affect her in a way not common to the general public and therefore, they should not be considered affected persons. Also, as explained above and in the Executive Director's Response to Comments, 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.

Next, regarding their concerns about participating in outdoor recreational activities on their property and their concerns about livestock on their property do not qualify them as affected

⁸⁷ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

⁸⁸ *Id.* at 363.

persons in this proceeding. As stated in the Executive Director's Response to Comments, "because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water."⁸⁹

Last, Mr. Davis and Ms. Davis indicate concern that the proposed Plant's "emissions would negatively impact the air quality." Indicating a general apprehension with "air quality" from the Plant is not sufficient to warrant granting a request for a 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 Plant will not have an impact on Mr. Davis and Ms. Davis' health and safety, use of property, or use of natural resources. They also neglect to identify how they will be adversely affected by the proposed Plant in a manner not common to members of the public. Therefore, a broad statement regarding air quality does not qualify Mr. Davis and Ms. Davis as affected persons.

8. Lucia Dodson

MTGP's Third Request lists Lucia Dodson as a member. While MTGP's Third Request should be denied for being untimely, as described above, Ms. Dodson has not demonstrated a likely impact from the proposed Plant. Ms. Dodson fails to explain how or why the Plant'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 activity. Also, any alleged impact must be more than speculative or theoretical. Furthermore, Ms. Dodson fails to raise any fact issue about whether the

⁸⁹ Executive Director's RTC at 16.

Application and Draft Permit comply with applicable laws and TCEQ's regulations. Therefore, Ms. Dodson should not be considered an affected person.

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..."⁹⁰ Ms. Dodson fails to meet these requirements and therefore, she should not be considered an affected person. Specifically, Ms. Dodson's listed concerns are: health impacts on her and her family, impacts to her livestock and pets, impacts on outdoor recreational activities, and impacts on air quality.

In noting her concerns about impacts on her and her family's health, Ms. Dodson neglects to 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 or her family's 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."⁹¹

"[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."⁹²

Simply stating she is concerned that "the Plant's emissions will also cause adverse health effects for all family members" is not sufficient to identify a personal justiciable interest and does

⁹⁰ *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).

⁹¹ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

⁹² *Id.* at 363.

not meet the requirements as spelled out in *Bosque River Coalition v. Texas Commission on Environmental Quality*. Ms. Dodson has not provided a specific statement about how the proposed Plant will adversely affect her in a way not common to the general public and therefore, she should not be considered an affected person. Also, as explained above and in the Executive Director's Response to Comments, 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.

Next, regarding Ms. Dodson's concerns about participating in outdoor recreational activities on her property and her concerns about livestock on her property do not qualify her as an affected person in this proceeding. As stated in the Executive Director's Response to Comments, "because the emissions from this facility should not cause an exceedance of the NAAQS, air emissions from this facility are not expected to adversely impact land, livestock, wildlife, crops, or visibility, nor should emissions interfere with the use and enjoyment of surrounding land or water."⁹³

Last, Ms. Dodson indicates concerns that the proposed Plant's "emissions would negatively impact the air quality." She also states that she is located "well-within one mile of the proposed Plant site," however, by the Applicant's calculation, her residence is located just over one mile (1.03 miles) from the Plant.⁹⁴ Indicating a general apprehension with "air quality" from the Plant is not sufficient to warrant granting a request for a hearing. The proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health

⁹³ Executive Director's Response to Comments at 16.

⁹⁴ See Attachment D.

and the environment. The emissions from the Plant will not have an impact on Ms. Dodson's health and safety, use of property, or use of natural resources. She also neglects to identify how she will be adversely affected by the proposed Plant in a manner not common to members of the public, particularly given the distance between her residence and the Plant. Therefore, a broad statement regarding air quality does not qualify Ms. Dodson as an affected person.⁹⁵

9. Donna Westbrook

Ms. Westbrook filed a formal withdrawal letter of their hearing request on September 24, 2025. Thus, Ms. Westbrook's hearing request is no longer before the Commission for consideration. No hearing request should be granted in response to a withdrawn hearing request.

10. Other Concerns Raised by MTGP

MTGP's Second Request lists additional concerns, which are not included in any of its other requests. First, MTGP argues that the proposed Permit improperly allows for indeterminate exemptions for periods of startup, as it "allows for an indefinite period of exemption from applicable requirements without regard for the time period feasibly necessary for startup to be achieved." They go on to claim that this improperly exempts emissions. This is incorrect, as the Draft Permit indicates that startups can last no longer than 60 minutes.⁹⁶

Second, MTGP claims that operation of the proposed Plant has the potential to contribute to a nonattainment condition in the Austin area. As stated in the Executive Director's Response to Comments, the proposed location for the Plant is in "Lee County, which is currently designated being in attainment or unclassifiable for all pollutants, including all criteria pollutants and

⁹⁵ This section will be modified to state that she withdrew her hearing request if the settlement goes through.

⁹⁶ See Draft Permit, Special Condition 6(A).

precursors. Additionally, surrounding counties of the Austin, Round Rock, and San Marcos areas (Williamson, Travis, and Hays County) are also currently designated as being in attainment or unclassifiable for all pollutants. An impacts analysis was conducted for this project and demonstrates that the proposed facility will not cause or contribute to an exceedance of the NAAQS; therefore, the project is not expected to cause the county to be designated as nonattainment.” Thus, concerns about potential nonattainment do not justify a contested case hearing in this proceeding.

Third, MTGP raises concerns regarding the Best Available Control Technology (“BACT”) analysis, including that: (i) the Executive Director failed to account for BACT in relationship to startup events; (ii) with regard to volatile organic compounds (“VOC”), the establishment of an emission limitation based on a 24-hour average fails to reflect implementation of available BACT (and instead requires a shorter averaging period for VOC emissions); (iii) for particulate matters, no averaging time is established and instead, should be set at a level consist with available technology with compliance monitored by continuous emission monitoring systems; and (iv) the emission rate for ammonia of 10 ppm far exceeds what is appropriately considered BACT for ammonia. First, as provided in the Application and reiterated in the Executive Director’s Response to Comments, Tier I BACT was applied to all facilities authorized by this project and BACT will be used as the proposed Plant site.⁹⁷ Next, with regard to VOC emissions, “Tier I BACT for VOC emissions from combustion turbines is a range of averaging periods including up to a 24-hour averaging period.”⁹⁸ Therefore, MTGP inaccurately claims that the emission limit for VOCs was based solely on a 24-hour average. Regarding PM emissions, as stated in the Executive Director’s

⁹⁷ Executive Director’s RTC at 23.

⁹⁸ Executive Director’s RTC at 24.

Response to Comments, “Tier I BACT for particular matter emissions does not include specifying an averaging period.”⁹⁹ Therefore, the Draft Permit is in compliance with the TCEQ’s rules, despite MTGP’s claim. Then, with regard to VOCs, the establishment of an emission limitation based on a 24-hour average fails to reflect implementation of available BACT (and instead requires a shorter averaging period for VOC emissions). Last, regarding ammonia emissions, the current BACT Guidelines require that for combined cycle natural gas turbines, the Tier I BACT Requirements for ammonia are 7-10 ppmvd,¹⁰⁰ and thus, MTGP’s statement that an emission rate of 10ppm “far exceeds what is approximately considered BACT for ammonia” is incorrect. Further, as stated in the Executive Director’s Response to Comments, the Applicant is required to maintain the ammonia concentrations below 10 ppmvd at 15% O₂ on a 3-hour rolling average, as also specified in the Special Conditions of the Permit. Therefore, concerns about BACT do not justify granting a hearing in this proceeding.

Fourth, MTGP states that the draft Permit fails to incorporate the emission limits of 30 TAC § 111.153, as the limitation that the emissions from a gas fuel-fired steam generator with a heat input greater than 2,500 million Btu per hour may not exceed 0.1 pound of total suspended particulate per million Btu averaged over a two-hour period was not included in the Permit. As stated in the Executive Director’s Response to Comments:

The heat recovery steam generator for each gas turbine may be considered a gas fuel-fired steam generator since it uses a supplemental natural gas-fired duct burner to produce steam, which is then used to drive the steam turbine and generator to produce electricity. Total suspended particulate matter includes particulate matter for determining compliance with the primary and secondary NAAQS. Particulate matter includes the mixture of suspended solid

⁹⁹ Executive Director’s RTC at 24.

¹⁰⁰ TCEQ, BACT Guidelines for Combustion Sources, available at <https://www.tceq.texas.gov/permitting/air/newsourcesreview/bact/air-bact-combustsource>.

particles and liquid droplets found in air. The permit emission limit is based on an emission factor of 0.0046 pounds of particulate matter per million Btu (lb PM/MMBtu) over a one-hour period, which is below 0.1 lb total suspended particulate matter per million Btu over a two-hour period, as stated in 30 TAC § 111.153(c). This particulate matter emission limit is included in the permit Maximum Allowable Emissions Rate Table (MAERT).¹⁰¹

Therefore, the draft Permit complies with the requirements of 30 TAC § 111.153 and this does not warrant a contested case hearing.

Fifth, MTGP claims that the draft Permit fails to ensure that the Plant will be protective of health and public property. In making this argument, MTGP states that the proposed Plant “will be in close proximity to a number of residences” and states that “the analysis performed does not address the heightened potential for impacts upon health and welfare given the proximity to sensitive receptors to the proposed Plant.” However, as explained above and in the Executive Director’s Response to Comments, the proposed emissions are all below every federal and state standard, which are specifically designed to be protective of public health and the environment. Further, the proposed location for the Plant is outside of the jurisdiction of the TCEQ.

Last, MTGP argues that the modeling provided in support of the Application is inadequate and attaches comments from a consultant. MTGP states that the Applicant has not demonstrated that the source is isolated and that the background ambient concentrations are inadequate without a consideration of specific modeling of other nearby sources. They also indicated concern that background concentration values used are not from the project site and therefore cannot be assumed to be representative. Further, they state that although the preliminary decision summarily notes that background locations were reasonable based on the Applicant’s review of land use,

¹⁰¹ Executive Director’s RTC at 28.

county population, and county emissions, along with qualitative assessments of the urban/rural nature of the monitor and project sites, this discussion is not supported in the record. Additionally, MTGP stated concern that the *de minimis* analysis modeling results indicated the 8-hr CO exceeded the respective monitoring significance level and therefore required the gathering of ambient monitoring information, stating that the Applicant did not gather this ambient CO data.

As noted in the Executive Director's Response to Comments, the Applicant submitted an Air Quality Analysis ("AQA") in support of its Application, which included a discussion and justification for the selection of representative background concentrations and the modeling of nearby sources.¹⁰² The Executive Director subsequently conducted a review to verify the technical quality of the AQA. Through the AQA review process and subsequent correspondence with the Applicant, the Executive Director confirmed that the Applicant sufficiently addressed and technically justified the representative background concentrations used in the analysis. Further, in addition to including background concentrations, the Executive Director points out that the Applicant's modeling included an inventory of nearby sources out to 50 kilometers for each pollutant and averaging time that required a full NAAQS analysis. In particular, for each background monitor, the Applicant conducted a quantitative analysis of pollutant emissions in the vicinity of the monitor site relative to the proposed project site, including 8-hr CO. The reported pollutant emissions in the vicinity of the selected monitor sites were greater than the reported pollutant emissions in the vicinity of the proposed Plant site. Thus, the Executive Director concluded that the background concentrations from the selected monitors are conservative because background concentrations in the vicinity of the selective monitors are expected to be higher than

¹⁰² Executive Director's RTC at 11–14.

background concentrations in the vicinity of the proposed Plant. Moreover, the Executive Director stated that the selected background monitors are located in more suburban/light industrial areas, and thus, it is reasonable/conservative to use these monitors in suburban/light industrial areas when the project site is in a more rural area. Also, MTGP questioned the surface meteorological data used for the modeling, but as noted in the Executive Director's Response to Comments, the Applicant relied on TCEQ's pre-processed meteorological data for Lee County, "which is appropriate for the project."¹⁰³ Additionally, MTGP questioned source parameters utilized in the modeling, specifically use of the same temperature and velocity for both normal and MSS conditions, stating that it is not technically supportable and either support should be provided or parameters revised. However, as provided in the Executive Director's Response to Comments, the Executive Director's Air Dispersion Modeling Team reviewed the modeling inputs, determined they were correct, and determined the modeling was sufficient for all pollutants.¹⁰⁴

Finally, MTGP questioned the preliminary modeling results for several pollutants in comparison to the 1-hour and Annual ESLs, stating that it is not clarified why respective concentrations would be exactly the same for various HAPs identified. As provided in the Executive Director's Response to Comments, MTGP inaccurately states that the concentrations are exactly the same, as the concentrations are in fact not the same values.¹⁰⁵ While the air dispersion modeling evaluation may appear to show two or more HAPs at the same averaging time with the same concentrations, this is because the concentrations are rounded to the nearest whole number, unless the concentration is below a value of one. Therefore, alleged errors in modeling do

¹⁰³ Executive Director's RTC at 13.

¹⁰⁴ Executive Director's RTC at 11–14.

¹⁰⁵ Executive Director's RTC at 13.

not support a contested case hearing as the Applicant complied with the TCEQ's modeling requirements in the Application.

B. Brian Dickey and Heidi Graham

On April 22, 2025, Mr. Dickey filed a request for hearing and comments in this proceeding. Then, on August 25, 2025—after the deadline to submit hearing requests or requests for reconsideration—Mr. Dickey submitted four filings to the TCEQ, two of which were classified as requests for reconsideration and two were classified as requests for a hearing. All four filings are identical in substance, with some including a cover email from Mr. Dickey requesting help with uploading his submittals. These filings incorporate Mr. Dickey's April 22, 2025 request for a hearing and attach a copy of his prior hearing request.¹⁰⁶

To the extent that any of Mr. Dickey's filings from August 25, 2025 are considered a request for a hearing, these requests should be denied for being untimely, as these filings were submitted on August 25, 2025, after the deadline to file requests for a hearing was August 23, 2025.

In his April 22, 2025 request for a hearing, Mr. Dickey raises issues that are outside the Commission's jurisdiction or fail to demonstrate that proposed Plant will have a "likely impact" on Mr. Dickey's health, use of property, or use of natural resources. Therefore, Mr. Dickey should not be considered an affected person.

Mr. Dickey's address is 1161 Private Road 3063, Lexington, Texas 78947. He claims that their home is located "less than 3,000 feet" from the proposed site for the Plant and his property

¹⁰⁶ The Applicant notes that Mr. Dickey and his wife are also listed as members of the MTGP organization, as reflected the hearing request submitted by MTGP. However, the concerns addressed that are specific to Mr. Dickey (which include potential impacts on the health of Mr. Dickey and his wife, air quality, and enjoyment of property due to the emissions from the Facility) are addressed in Mr. Dickey's individual hearing request. Therefore, the Applicant will not address Mr. Dickey's hearing request as a part of MTGP's hearing request as an organization, but rather addresses it individually in Section VI.B below.

boundary “is much closer than 3,000 feet” from the proposed site for the Plant. However, the Applicant calculated that his residence is actually located 1.1 miles from the proposed site for the Plant.¹⁰⁷ 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. Dickey neglected to provide any specific unique details as to how he would be affected in light of the distance between the Plant and his residence.

Next, Mr. Dickey lists several concerns that are outside of the TCEQ’s jurisdiction in this proceeding, including potential impacts on property values, noise and light from operations of the Plant, traffic, impacts on roadways, and concerns about water availability and impacts to surface and groundwater. As stated in the Executive Director’s Response to Comments, the “Executive Director’s review the Application is limited to whether the Application and the proposed activities meet the requirements of applicable TCEQ rules.”¹⁰⁸ Thus, TCEQ does not have authority to consider noise from a facility when determining whether to approve a permit application.¹⁰⁹ Similarly, the TCEQ does not have jurisdiction to consider whether the proposed activity will impact property values, nor does it have the authority to address issues regarding light pollution, traffic issues, or road repair costs as part of the permitting process.¹¹⁰ Moreover, this permit relates to the control and abatement of air emissions only, and thus, water use is wholly scope of this Application and cannot form the basis for a contested case hearing.¹¹¹

¹⁰⁷ See Attachment D.

¹⁰⁸ Executive Director’s Response to Comments at 31.

¹⁰⁹ See Executive Director’s Response to Comments at 31.

¹¹⁰ See Executive Director’s Response to Comments at 30–31.

¹¹¹ Executive Director’s Response to Comments at 17.

Next, Mr. Dickey describes potential damage to his metal roof from acid rain and impacts to wildlife, soil, and vegetation. As stated in the Executive Director's Response to Comments, "[a]cid rain requirements are addressed through the Federal Acid Rain Program" and the "requirement to obtain an Acid Rain Permit is independent of the requirement to obtain a New Source Review permit." Thus, an Acid Rain Permit is outside the scope of this Permit and does not provide grounds for a contested case hearing.

Therefore, all of the aforementioned issues raised by Mr. Dickey are outside the scope of the TCEQ's jurisdiction and do not justify granting a contested case hearing.

Mr. Dickey also notes potential impacts to the Houston Toad, which is an endangered species, as well as other animals. As stated in the Executive Director's Response to Comments, the secondary NAAQs are determined by the EPA Administrator as necessary to protect the environment, including animals, from any known or anticipated adverse effects associated with the presence of a contaminant in ambient air.¹¹² Further, compliance with rules related to endangered species are handled by the Texas Parks and Wildlife Department and the United States Fish and Wildlife Service, not TCEQ, and is therefore, outside the jurisdiction of the TCEQ in this proceeding.

Further, Mr. Dickey's general concerns about "air pollution" are 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

¹¹² Executive Director's Response to Comments at 16.

“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...”¹¹³

Mr. Dickey has not satisfied this requirement.

Mr. Dickey also claims that this Permit violates the TCAA. However, the Executive Director determined that the Application met the requirements of the TCAA.¹¹⁴ A general statement that the Permit violates TCAA is insufficient to justify granting a contested case hearing request.

Additionally, Mr. Dickey states that the Plant will have a negative impact on the health of himself and his family. However, as explained above and in the Executive Director’s Response to Comments, 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.

In his request, Mr. Dickey fails to explain how the proposed emissions 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.”¹¹⁵

“[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.”¹¹⁶

¹¹³ *Bosque River Coalition v. Tex. Comm’n on Env’tl. Quality*, 347 S.W.3d 366, 379 (Tex. App.—Austin 2011), reversed on other grounds, 413 S.W.3d 403 (Texas 2013).

¹¹⁴ Executive Director’s Response to Comments at 22, 33.

¹¹⁵ *Texas Disposal Systems Landfill*, 259 S.W.3d at 363–64.

¹¹⁶ *Id.* at 363.

Simply writing the words “asthma” and “lung cancer” is not sufficient to explain why the Plant’s proposed emissions will allegedly exacerbate these conditions and therefore, also does not justify a hearing here.

As explained in Dr. Fraiser’s affidavit:

The Primary NAAQS are set specifically to protect against the development or worsening of asthma (NO₂, O₃, PM₁₀, PM_{2.5}, SO₂), respiratory effects (NO₂, O₃, PM₁₀, PM_{2.5}, SO₂), chronic obstructive pulmonary disease (“*COPD*”) (PM₁₀), lung and cardiovascular disease (CO, PM₁₀, PM_{2.5}), hospital admissions (CO, NO₂, O₃, PM₁₀, PM_{2.5}, SO₂) and premature death (O₃, PM₁₀, PM_{2.5}). Health-based ESLs are established to prevent a variety of health effects, including but not limited to respiratory effects (Acrolein, Ammonia, Formaldehyde, Toluene, Xylenes), cancer (Benzene), immunosuppression (Benzene), reproductive toxicity (1,3-Butadiene), eye toxicity (Ethylbenzene, Toluene), CNS effects (Diesel Fuel, Lubricating Oils, Toluene, Xylenes), kidney toxicity (Ethylbenzene), and liver damage (Diesel Fuel, Lubricating Oils). All pollutants potentially emitted from the proposed Facility resulted in maximum off-property concentrations that are less than the health-protective primary NAAQS or health-based ESLs. Therefore, it is not expected that existing health conditions will worsen, or that there will be adverse health effects in the general public or sensitive subgroups as a result of proposed emission rates associated with the proposed Facility.¹¹⁷

Dr. Fraiser goes on to explain that the even when considering a worst case emissions and the maximum ground level concentrations, the proposed Project is not expected to have adverse health impacts.

No location within the dense air dispersion model receptor grid, which extends 50 km (31 miles) in all directions from the proposed Facility, will have higher concentrations than those evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation. In other words, *worst-case* air concentrations for each pollutant was evaluated for their potential to cause adverse health and welfare effects. Given that all pollutant concentrations were less than their respective NAAQS and ESLs at maximum-modeled impact

¹¹⁷ Fraiser Aff. ¶ 19.

locations (i.e., GLC_{max}), combined with the fact that the primary NAAQS and health-based ESLs are set at concentrations below which negative health impacts in any member of the public are expected to occur (including the most sensitive members of the public [e.g., children, elderly, and the infirm]) or at insignificant risk levels, maximum allowable emissions from the Project are not expected to negatively affect the health of any member of the general public, including the hearing requestors.¹¹⁸

Finally, as indicated in the attached Wind Rose Map, Mr. Dickey's property is outside the prevailing wind pattern and is expected to experience wind from the emission points to his property, approximately six (6) days per year.¹¹⁹

Mr. Dickey further asserts that because the Permit was only found to be compliant with NAAQS, which is a federal standard, the TCEQ improperly ignored any state health and safety code requirements when evaluating this permit. This is incorrect. In determining whether a permit is protective of human health and the environment, the Applicant conducted a health impacts assessment using TCEQ's ESLs and a state property line assessment. Both were analyzed by the Executive Director and determined to be in compliance with TCEQ's requirements.¹²⁰

Mr. Dickey also expresses concern that the emissions from this project could cause Austin's metro area to be designated as nonattainment. As stated in the Executive Director's Response to Comments, the proposed location for the Plant is in "Lee County, which is currently designated being in attainment or unclassifiable for all pollutants, including all criteria pollutants and precursors. Additionally, surrounding counties of the Austin, Round Rock, and San Marcos areas (Williamson, Travis, and Hays County) are also currently designated as being in attainment or unclassifiable for all pollutants. An impacts analysis was conducted for this project and

¹¹⁸ Fraiser Aff. ¶ 22.

¹¹⁹ Attachment D.

¹²⁰ Executive Director's Response to Comments at 7–10.

demonstrates that the proposed facility will not cause or contribute to an exceedance of the NAAQS; therefore, the project is not expected to cause the county to be designated as nonattainment.” Therefore, apprehensions about potential nonattainment do not justify a contested case hearing in this proceeding.

C. Michele G. Ganges and William N. (Bill) Turner, Sr.

On April 23, 2025, Michele G. Ganges (“Ms. Ganges”) filed comments related to the Application on behalf of herself and her partner, William N. (Bill) Turner Sr. (“Mr. Turner”). Her filed comments stated “[w]e fully support MTGP’s request for a contested case hearing on the permit” and was classified in TCEQ’s database as a hearing request. However, on August 22, 2025, Ms. Ganges filed a withdrawal of this hearing request. Therefore, Ms. Ganges and Mr. Turner have withdrawn their hearing request, no issues raised in the original public hearing request should be considered by the Commission.

D. County Judge Frank Malinak III

On October 21, 2024, the Honorable County Judge Frank Malinak III (“Judge Malinak”) requested a public hearing. Then, on May 15, 2025, Judge Malinak submitted a letter withdrawing his previous hearing request. Therefore, as this request for a contested case hearing has been withdrawn, no issues raised in Judge Malinak’s original hearing request should be considered by the Commission and a contested case hearing should not be granted based on this request.

VII. 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:* SL Energy'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. While some of the Hearing Requests dispute whether the Application or the Draft Permit comply with the Texas Clean Air Act and the Commission's regulations, as explained above, the Applicant has demonstrated that the Permit is compliant with applicable standards and regulations. Please see discussion above.

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:* The Requestors submitted comments during the NORI and/or NAPD comment periods.

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:* SL Energy is not aware of any hearing requests that is based on issues raised in a public comment that was later withdrawn prior to the filing of the Response to Comment. Applicant is aware that Ms. Westbrook, Ms. Jirasek, Mr. Malinak and Ms. Ganges, have withdrawn their hearing requests.

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 Plant 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.

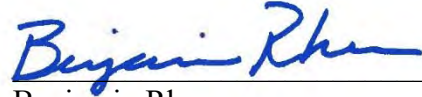
7. *Maximum expected duration for the contested case hearing:* Each of the requests for contested case hearing should be denied; therefore, no contested case hearing should occur. However, if a request for a contested case hearing is granted by the Commission, the hearing should last no more than 180 days from the date the SOAH takes jurisdiction until the Proposal for Decision is issued.

VIII. Conclusion

SL Energy 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, SL Energy 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, SL Energy hereby requests that the requests for reconsideration and hearing requests be denied and that State Air Quality Permit Nos. 177380, PSDTX1650, and GHGPSDTX244 be issued.

Respectfully submitted,

JACKSON WALKER LLP



Benjamin Rhem

State Bar No. 24065967

Peter Wahl

State Bar No. 24028192

Alisha Adams

State Bar No. 24102190

100 Congress Ave., Suite 1100

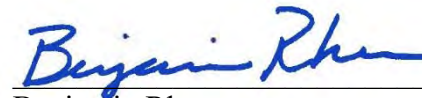
Austin, Texas 78701

Phone: (512) 236-2012

**ATTORNEYS FOR SL ENERGY
POWER PLANT I, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2025, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list.



Benjamin Rhem

EXHIBIT “A”

(Affidavits Related to Dr. Bailey’s Residence)

STATE OF TEXAS

§
§
§

COUNTY OF MILAM

AFFIDAVIT OF ALAN GARDENHIRE

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make this affidavit, and that the statements contained below are true and correct.

1. My name is Alan Gardenhire. I am over 18 years of age, of sound mind, and am fully competent to execute this affidavit. The facts stated herein are true and correct and based on my personal knowledge.
2. I work as V.P. of Operations for SLR Property I, LP (SLR), and one of my job duties is to work with all SLR adjoining neighbors. I have also negotiated with many people in the Adina area and property owners adjacent to Rachael Cain Bailey in Lee County, Texas.
3. Based on conversations I have had with more than three (3) people, I understand Rachael Cain Bailey does not live at this property but instead has a residence near and or around Austin, Texas.
4. Mrs. Bailey requested that I talk with her real estate broker on any issues related to SLR interest in her property. His name is Todd Sherman of Residential Reality group. I have spoken to him within the last week, and he specifically confirmed that the Baileys do not live on the property they own in Lee County, Texas.
5. Based on conversations with the neighbor adjacent to the Bailey property, the Baileys infrequently come and go to the property but do not stay overnight due to there not being a permanent livable residence.
6. I make this affidavit voluntarily for all lawful purposes.



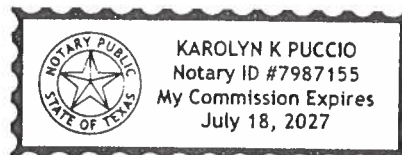
Name: Alan Gardenhire

Subscribed and sworn before me on this 23rd day of September 2025.



Notary Public in and for Milam County, Texas

My commission expires: July 18, 2027



STATE OF TEXAS

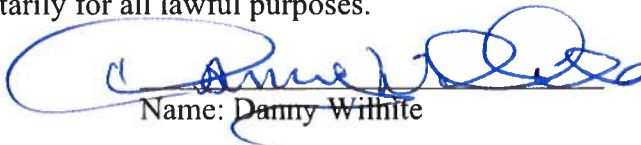
COUNTY OF MILAM

§
§
§

AFFIDAVIT OF DANNY WILHITE

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned, who, after being duly sworn, stated on his oath that he is entitled to make this affidavit, and that the statements contained below are true and correct.

1. My name is Danny Wilhite. I am over 18 years of age, of sound mind, and am fully competent to execute this affidavit. The facts stated herein are true and correct and based on my personal knowledge.
2. I am the owner of a property located at 5389 W. FM. 696; McDade, TX 78650. I currently reside at this address and have for forty-five (45) years.
3. I am an Elder at Adina Christian Church and travel County Road 309 frequently - at least three (3) times per week.
4. I am familiar with the property owned by Dr. Rachel Cain Bailey (address: 6059 County Road 309, Lexington, Texas 78947).
5. Based on my personal knowledge from living nearby and regularly observing the property of Ms. Bailey, Ms. Bailey does not live at her County Road 309 property. Instead, she permanently resides at another property located in or near Austin, Texas.
6. I make this affidavit voluntarily for all lawful purposes.


Name: Danny Wilhite

Subscribed and sworn before me on this 23rd day of September 2025.



Notary Public in and for Milam County, Texas

My commission expires: July 18, 2027

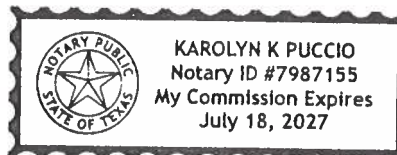


EXHIBIT “B”

(Affidavit of Dr. Lucy Fraiser)

**TCEQ AIR QUALITY PERMIT NUMBERS 177380, PSDTX1650, GHGPSDTX244
AFFIDAVIT OF LUCY FRAISER, PH.D., DABT
FRAISER TOXICOLOGY CONSULTING, LLC**

**STATE OF ARKANSAS
COUNTY OF WASHINGTON**

§
§

BEFORE ME, the undersigned authority, on this day personally appeared Lucy Fraiser, Ph.D., DABT, who after being duly sworn upon her oath stated as follows:

1. My name is Lucy Fraiser. I am over 21 years of age, am of sound mind, and am fully competent to make this affidavit. Each and every statement contained in this affidavit is based upon my personal knowledge and is true and correct.

EXPERIENCE

2. I am a toxicologist with over 35 years of experience in the areas of exposure and risk assessment, health effects and toxicology evaluations, development of quantitative toxicity criteria, development of risk-based air and water quality guidelines, and soil cleanup criteria, and litigation support. My education includes a B.A. in Psychology and a Ph.D. in Toxicology from the University of Texas in Austin. I am a Diplomate of the American Board of Toxicology ("**DABT**"). The DABT certification is a globally recognized credential in toxicology awarded by the American Board of Toxicology ("**ABT**"), which is the largest professional toxicology credentialing organization in the world. The DABT certification represents competency and commitment to human health and environmental sciences. Becoming certified by the ABT requires a combination of higher education and experience, with rigorous certification (testing) and recertification processes. I am also a member of the American College of Toxicology. I worked for the Toxicology Division of the Texas Natural Resource Conservation Commission ("**TNRCC**") early in my career. I have extensive experience performing public Health and Welfare Effects Evaluations related to air quality permit applications submitted to the Texas Commission on Environmental Quality ("**TCEQ**") and its predecessor agency, the TNRCC. I have worked for a number of consulting firms and formed Lucy Fraiser Toxicology Consulting LLC, a toxicology consulting firm, in 2017. A copy of my curriculum vitae is included in this affidavit as **Exhibit LF-1**.

BACKGROUND

3. I have been retained by Sandow Lakes Energy Power Plant I, LLC ("**SL Energy**") to conduct a public Health and Welfare Effects Evaluation of the maximum allowable emissions proposed in SL Energy's New Source Review ("**NSR**") application for TCEQ Air Quality Permit No. 177380, Prevention of Significant Deterioration ("**PSD**") Permit No. PSDTX1650, and Greenhouse Gas ("**GHG**") Permit No. GHGPSDTX244.

4. In its Application, SL Energy seeks authorization to construct and operate a power generation plant, consisting of two natural gas combined cycle gas turbines and ancillary equipment (the "**Project**"), located at Lat:30.419441, Long:-97.191243 in Lexington, Lee County, Texas (the "**Facility**"). The Facility will produce electricity for public and private consumption.
5. I reviewed the documents and data listed in **Table 1** in relation to the Application. RSB Environmental prepared the Application and Alliance Technical Group performed the required air dispersion modeling for the Application. These documents are the same type of documents that any toxicologist would be expected to review and rely upon when conducting a public Health and Welfare Effects Evaluation for an air quality permit.
6. Lee County is currently designated as attainment with respect to the National Ambient Air Quality Standards ("**NAAQS**") for all criteria pollutants. Individual stationary sources are subject to different requirements depending on air contaminants and proposed emission rates. As indicated in **Section 7** of the Application, the Project will emit 100 tons per year ("**tpy**") or more of Carbon Monoxide ("**CO**"), Particulate Matter ("**PM**") with a diameter less than 10 micrometers ("**PM₁₀**"), PM with a diameter less than 2.5 micrometers ("**PM_{2.5}**") and Nitrogen Oxides ("**NOx**") and, thus triggers PSD review (i.e., Major NSR). Project emission increases of Sulfur Dioxide ("**SO₂**"), Sulfuric Acid ("**H₂SO₄**") and Volatile Organic Compounds ("**VOC**") exceed associated Significant Emissions Rates ("**SE_R**") for SO₂ (40 tpy), H₂SO₄ (7 tpy), and VOC (40 tpy) and, therefore, PSD Review applies to these constituents as well. PSD Review also applies to O₃ because the Project has the Potential to Emit ("**PTE**") 100 tpy or more of Nitrogen Oxides ("**NOx**").

TOXICOLOGY EVALUATION

7. Applicants for TCEQ NSR air permit applications use site-specific air dispersion modeling to predict and evaluate concentrations of air contaminants from proposed new or modified facilities at off-property "receptors," which TCEQ modeling guidance defines as locations "where the public could be exposed to an air contaminant in the ambient air." Air dispersion models predict movement of contaminants in the atmosphere and provide conservative estimates (i.e., overestimates) of air contaminant concentrations at different distances and directions from an emissions source. Therefore, conservatively estimated air concentrations from air dispersion modeling are routinely used to evaluate potential exposures by providing conservatively estimated air concentrations at different locations. The concentration of an air contaminant to which a member of the public is potentially exposed is critical to determining whether adverse health or welfare effects will occur. In reality, exposure only occurs if local populations come into contact with air contaminants emitted from a facility. The objectives of an air quality dispersion modeling analysis are to: 1) establish maximum off-property ground-level concentrations ("**GLC_{max}**") of contaminants resulting from proposed and/or existing emissions in an air quality permit application; and 2) evaluate the GLC_{max} of proposed contaminants for their potential to cause adverse health or welfare effects, regardless of whether any person is actually exposed at that location.

**Table 1.
Materials Reviewed**

Date	Description
July 2024	Permit Application for SL Energy Power Plant I, LLC prepared by RSB Environmental (“ <i>Application</i> ”)
February 2025	Air Quality Analysis that Alliance Technical Group prepared for the Application (“ <i>AQA</i> ”)
August 29, 2024	TCEQ Construction Permit Source Analysis & Technical Review (“ <i>Technical Review</i> ”)
March 14, 2025	TCEQ Preliminary Determination Summary
July 24, 2025	TCEQ Executive Director’s (“ <i>ED’s</i> ”) Response To Public Comment (“ <i>RTC</i> ”)
June 2024	TCEQ <i>Air Quality Modeling Guidelines</i> , APDG 6232
March 2018	TCEQ <i>Modeling and Effects Review Applicability</i> , APDG 5874 (“ <i>MERA</i> ”)
April 2018	EPA <i>Technical Basis for the EPA’s Development of the Significant Impact Thresholds for PM_{2.5} and Ozone</i> , EPA-454/R-18-001
September 2015	TCEQ <i>Guidelines to Develop Toxicity Factors</i> , RG-442
Accessed September 2025	TCEQ Toxicity Factor Database, https://www17.tceq.texas.gov/tamis/index.cfm?fuseaction=home.welcome
2001, 2008, 2001	American Conference for Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) Documentation for Coal Tar Pitch Volatiles, Diesel Fuel (Fuel Oil No. 2), and Sulfur Hexafluoride
Various	TCEQ Development Support Documents (DSDs) for Acrolein, Ammonia, Benzene, 1-3-Butadiene, Butanes, Ethylbenzene, Formaldehyde, n-Hexane, Toluene, Xylenes available at https://www.tceq.texas.gov/toxicology/dsd/final
Various	Interim ESL documents for Polycyclic Aromatic Hydrocarbons (PAHs), 1,2,3-Benzotriazole, and Oleoyl Sarcosine available via links in the TCEQ Toxicity Factor Database
November 1990	Integrated Risk Information System (IRIS) Summary for Propylene Oxide available at https://www.epa.gov/iris
2010	Acute Exposure Guideline Levels for Selected Airborne Chemicals, Volume 9 available at http://www.nap.edu/catalog/12978.html
2007	Grant, R. L., Kadlubar, B. J., Erraguntla, N. K., & Honeycutt, M. Evaluation of acute inhalation toxicity for chemicals with limited toxicity information. <i>Regulatory Toxicology and Pharmacology</i> , 47(3), 261-273.
2003	Nagata, Y., & Takeuchi, N. Measurement of odor threshold by triangle odor bag method. <i>Odor measurement review</i> , 118, 118-127.
1983	Amoore, J. E., & Hautala, E. Odor as an aid to chemical safety: Odor thresholds compared with threshold limit values and volatilities for 214 industrial chemicals in air and water dilution. <i>Journal of applied toxicology</i> , 3(6), 272-290.
2011	Gemert, L. J. V. Odour Thresholds: Compilations of Odour Threshold Values in Air. Water and other media.

8. The criteria pollutants CO, PM₁₀, PM_{2.5}, NO₂, and O₃, in the Application were evaluated in a PSD (Major NSR) NAAQS Analysis. Secondary PM_{2.5} formation from Project Facilities was evaluated due to precursor (NO_x and SO₂) emissions exceeding the SER (40 tons per year (“*tpy*”)) and an O₃ analysis was performed because the Project has the PTE more than 100 tpy NO_x, as described in **Section 7.4** and **Section 7.5** of the Air Dispersion Modeling Protocol (Attachment A of the Application) using an EPA Tier 1 demonstration

tool referred to as Modeled Emission Rates for Precursors (“**MERPs**”). MERPs relate precursor emissions (NO_x, SO₂, and VOC) and peak secondary pollutant (O₃ and PM_{2.5}) impacts from a source. In addition to the Major (PSD) NAAQS analysis, a State Property Line Standard Analysis was conducted for sulfur compounds (i.e., SO₂ and H₂SO₄) proposed in the Application. Finally, speciated compounds from Project Facilities were subjected to a TCEQ Health and Welfare Effects Evaluation. Hence, the three areas of TCEQ’s review for the Application include: 1) NAAQS Analysis; 2) State Property Line Standard Analysis; and 3) Health and Welfare Effects Evaluation.

9. EPA is required to establish primary NAAQS at a level that is protective of public health with an adequate Margin of Safety (“**MOS**”). Secondary NAAQS are set to protect public welfare, including protection against decreased visibility, damage to animals, crops, vegetation, and buildings. NAAQS *de minimis* levels, otherwise known as Significant Impact Levels (“**SILs**”), are conservative screening levels that are set at a small fraction (i.e., $\leq 5\%$) of the health- and/or welfare-protective NAAQS by EPA for each criteria pollutant. The NAAQS *de minimis* levels or SILs are described in **Section 2** of the Air Dispersion Modeling Protocol (Attachment A of the Application). State Property Line Standards (“**SPLS**”) are established in Title 30 Texas Administrative Code [“**TAC**”] Chapter 112) for use in permitting and must be met at the Facility property line. TCEQ-derived Effects Screening Levels (“**ESLs**”) are also used in the TCEQ permitting process to perform Health and Welfare Effects Evaluations. ESLs are health and/or welfare-based screening levels (not promulgated standards, such as the NAAQS and SPLS) that TCEQ sets at concentrations corresponding to a “no significant risk level.” Because they are designed to be protective in nature, ESLs are set at levels: 1) below the threshold for health effects (i.e., sub-clinical levels corresponding to an insignificant risk); or 2) where odor nuisance or vegetative effects (welfare effects) are unlikely. Setting ESLs at these conservative levels ensures that public health and welfare are protected by incorporating a MOS.
10. **NAAQS Analyses.** First, TCEQ reviews constituents known as “criteria pollutants” (those for which the U.S. Environmental Protection Agency has established a NAAQS under the federal Clean Air Act). The *PSD NAAQS Analysis* consisted of modeling proposed emissions of criteria pollutants from the Project Facilities to estimate GLC_{max} with the objective of determining whether Project Facilities have the potential to cause or contribute to an exceedance of the NAAQS. This was done by comparing modeled GLC_{max} concentrations to NAAQS *de minimis* levels, or SILs, in a *Preliminary Impact Analysis*, which included air dispersion modeling for all project-related facilities (or emission sources) at the site. Since the facility has yet to be constructed, modeled emission rates reflect the post project PTE emission rates. If a *Preliminary Impact Analysis* indicates that an air contaminant subject to the NAAQS is above the SIL at any off-site locations, then additional review is required for the off-site locations where the model shows that the SIL will be exceeded. The NAAQS *de minimis* levels or SILs used in the *Preliminary Impact Analysis* represent changes in air quality concentrations below which EPA deems air quality degradation to be “insignificant.” The results of the NAAQS Analysis are shown in **Table 2**.

Table 2.
PSD NAAQS Analysis

Pollutant	Averaging Time	Concentration			NAAQS <i>De Minimis</i> Levels (SILs)		Primary NAAQS	Secondary NAAQS
		GLC _{max}	Background	Total (Background + GLC _{max})				
		(µg/m ³)			(µg/m ³)	% of NAAQS		
CO	1-hr	1251 ^a	--	--	2,000 ^b	5%	40,000 ^b	--
	8-hr	983 ^c	580 ^g	1549	500 ^b	5%	10,000 ^b	--
NO ₂	1-hr	109 ^{c,d,e}	41 ^g	150	7.5 ^c	4%	188 ^b	--
	Annual	2 ^{c,d}	4 ^g	6	1 ^b	1%	100 ^b	100 ^b
O ₃	8-hr	0.4 ^a	--	--	1 ppb ^b	1%	70 ppb ^b	70 ppb ^b
PM ₁₀	24-hr	7 ^c	86 ^g	93	5 ^b	3%	150 ^b	150 ^b
PM _{2.5}	24-hr	5 ^c	21 ^g	26	1.2 ^b	3.5%	35 ^b	35 ^b
	Annual	1.3 ^{c,f}	7.3 ^g	8.6	0.13 ^b	1.5%	9 ^b	15 ^b
SO ₂	1-hr	4.1 ^a	--	--	7.8 ^c	4%	196 ^b	--
	3-hr	4 ^a	--	--	25 ^b	2%	--	1,300 ^b

- a. The 1-hour CO, 8-hour O₃, 1- and 3-hour SO₂ GLC_{max} are based on all project related facilities/emission sources at the site and reflect post-Project PTE emission rates. As appropriate, modeled emission rates reflect both routine operations and/or planned maintenance, startup, and/or shutdown (MSS) activities. For CO, the maximum highest second high (H2H) concentration was used. For 1-hour SO₂, the GLC_{max} is based on the highest 5-year averages of the maximum predicted concentrations determined for each receptor, while the maximum highest second high (H2H) concentration modeled from five (5) years was used for 3-hour SO₂. The O₃ analysis was performed using the EPA's Tier 1 MERPs approach, as outlined in Appendix Q of the TCEQ's AQMG (TCEQ, 2020) and Section 7.5 of the Air Dispersion Modeling Protocol (Attachment A of Application).
- b. Table B-1 of TCEQ Air Quality Modeling Guidelines, APDG 6232) (TCEQ, 2024).
- c. The 8-hour CO, 1-hour and annual NO₂, 24-hour PM₁₀, and 24-hour and annual PM_{2.5} GLC_{max} are based on Project PTE combined with emissions from applicable off-property sources. Secondary PM_{2.5} formation from Project emissions was estimated based on precursor emissions (NO₂ and SO₂) using EPA's Tier 1 MERPs approach, as described in Section 7.4 of the Air Dispersion Modeling Protocol (Attachment A of Application). As appropriate, modeled emission rates reflect both routine operations and/or planned MSS activities. Refined NAAQS modeling was limited to receptors with modeled concentrations that exceeded a SIL in the *Preliminary Impact Determination*. For CO, the maximum highest second high (H2H) concentration predicted over 5 years was used. For 1-hour NO₂ and 24-hour PM_{2.5}, the highest 5-year average of the 98th percentile (i.e., highest-eighth-high (H8H)) was used, while the maximum concentration modeled from five (5) individual years was used for annual NO₂ and PM_{2.5}. For PM₁₀, the maximum highest-sixth-high (H6H) concentration from five (5) years was used.
- d. For NO₂ (1-Hour and annual), the Ambient Ratio Method (ARM) Adjustment Factor was used as incorporated into the AERMOD model (see Section 7.2 of the Air Dispersion Modeling Protocol [Attachment A of Application] for additional information on the ARM Adjustment Factor).
- e. Interim SIL. Justification for this value is provided in footnote 4 of Table 2-1 of the Air Dispersion Modeling Protocol (Attachment A of the Application).
- f. The GLC_{max} for PM_{2.5} reflects both directly emitted PM_{2.5} and secondary formation of PM_{2.5} (see Section 7.4 of the Air Dispersion Modeling Protocol [Attachment A of Application] for the screening procedure to estimate the potential impact of PM_{2.5} secondary formation).
- g. Representative background data obtained from EPA AIRS Monitor No.: 483091037, Waco Mazanec (C1037) for CO (the H2H value from 2021-2023 was used for the 8-hr value); 480271047, Kileen Skylark Field (C1047) for NO₂ (3-year average (2021-2023) of the 98th percentile of the annual distribution of daily maximum 1-hr concentrations for the 1-hr value and annual average from 2023 for the annual value); 484530020, Austin Audubon Society for PM₁₀ (H2H concentration from the three most recent complete years (2021-2023)); and 480271045, Temple Georgia (C1045) for PM_{2.5} (3-year average (2021-2023) of the annual concentrations).

As shown in **Table 2**:

- a. The GLC_{max} for CO (8-hour), NO₂ (1-hour and annual), PM₁₀ (24-hour), and PM_{2.5} (24-hour and annual, direct emissions of PM_{2.5} + secondary formation of PM_{2.5}) at one or more receptors in the modeling grid was greater than its NAAQS *de minimis* level or SIL, thereby requiring a *Full NAAQS Analysis* for these constituents.
 - b. The *Full NAAQS Analysis* requires emissions from Project Facilities to be evaluated in combination with off-property emissions sources, otherwise known as background. This is done by comparing the Total Concentration, consisting of background concentrations plus the combined GLC_{max} modeled from Project Facilities and off-property sources to the Full NAAQS (as opposed to NAAQS *de minimis* levels or SILs). Since this is a new Project, there are no existing SL Energy sources to be considered in the *Full NAAQS Analysis*.
 - i. To account for natural background and the impact of sources whose emissions are not explicitly modeled, CO (8-hour only), NO₂, PM₁₀, and PM_{2.5} background concentrations were combined with the predicted GLC_{max} from Project Facilities and off-property sources (applicable permitted stationary sources within 50 km of the Project Facilities).
 - ii. Representative background data were obtained from: 1) EPA AIRS Monitor No.: 483091037, Waco Mazanec (C1037) for CO; 2) EPA AIRS Monitor No. 480271047, Kileen Skylark Field (C1047) for NO₂; 3) EPA AIRS Monitor No. 484530020, Austin Audubon Society for PM₁₀; and 4) EPA AIRS Monitor No. 480271045, Temple Georgia (C1045) for PM_{2.5}. Use of these monitors for background concentrations is reasonable and/or conservative based on review of land use, county population, county emissions, and a quantitative review of emissions surrounding the areas of the monitoring sites relative to the Project site.
 - iii. The *Full NAAQS Analysis* for 8-hour CO, NO₂ (1-hour and annual), PM₁₀ (24-hour), and PM_{2.5} (24-hour and annual) indicates that total off-property concentrations for each of these constituents is less than the NAAQS. Since NAAQS are protective of health and welfare, emissions of CO (8-hour), NO₂ (1-hour and annual), PM₁₀ (24-hour), and PM_{2.5} (24-hour and annual) from the Project are not expected to pose a health threat.
11. **State Property Line Standard Analysis.** Second, in addition to the NAAQS Analysis, a TCEQ State Property Line Standard (“***SPLS***”) Analysis is conducted for sulfur compounds as part of the review of Texas air quality permits to demonstrate compliance of the Project with the SPLS. As shown in **Table 3** below, the SO₂ and H₂SO₄ GLC_{max} modeled from Project Facilities was less than the SPLS in Title 30 Texas Administrative Code Chapter 112. Therefore, no further analysis is required.

Table 3.
Site-Wide Modeling for State Property Line Analysis

Pollutant	Averaging Time	GLC _{max}	State Property Line Standard
		µg/m ³	
SO ₂	1-hr	4	1021
H ₂ SO ₄	1-hr	6	50
	24-hr	4	15

12. **Health and Welfare Effects Evaluation.** Third, a TCEQ Health and Welfare Effects Evaluation is conducted for constituents lacking a NAAQS or TCEQ SPLS. The purpose of the Health and Welfare Effects Evaluation is to evaluate whether emissions of constituents that do not have a NAAQS or SPLS from the Project will be protective of the public's health and welfare. In a Health and Welfare Effects Evaluation, modeled GLC_{max} are compared to TCEQ-derived ESLs. Since they are not statutory standards, if a predicted GLC_{max} exceeds the relevant ESL, adverse health or welfare effects are not necessarily expected to occur. Instead, a more in-depth review is triggered.

The TCEQ Air Permits Division has developed and requires permit applicants to use the MERA guidance document in properly conducting a Health and Welfare Effects Evaluation. The steps outlined in the MERA represent TCEQ screening procedures by which TCEQ expects a permit applicant to demonstrate that emissions of compounds from a project will be protective of the public's health and welfare. In accordance with the MERA, short-term (1-hour) and long-term (annual) GLC_{max} were modeled for each compound emitted by Project Facilities lacking a NAAQS or SPLS. Because the Project entails construction of a new Facility, the AQA Analysis proceeded directly to the final step of the MERA process, Step 7 (site-wide modeling) for all 22 compounds evaluated in the Health and Welfare Effects Evaluation.

Modeled GLC_{max} for all compounds evaluated in the Health and Welfare Effects Evaluation were below their respective ESLs, and most (~ 75%) were less than 10 percent of the ESL. Although there are additional steps outlined in the MERA guidance, because the GLC_{max} for each of the 22 compounds is less than its respective ESL, the MERA guidance requires no further evaluation. Since ESLs are set below the threshold for health effects, at an insignificant risk level, or a level at which welfare effects (i.e., odor nuisance or vegetative effects) are unlikely, the compounds proposed to be emitted from Project Facilities and evaluated in the Health and Welfare Effects Evaluation are not expected to pose a health or welfare threat. The results of the Health and Welfare Effects Evaluation are summarized in **Table 4**.

Table 4.
Health and Welfare Effects Evaluation

Pollutant	Averaging Time	ESL			Basis
		GLC _{max} µg/m ³	µg/m ³	Safety Factor	
Acetaldehyde	1-hr	1	120	NA	Odor: Pungent/Sharp/Irritating
Acrolein	1-hr	1	3.2	63	Health: Eye/Nose/Throat Irritation; ↓ Respiratory Rate (humans)
Alcohol, Ethoxylated	1-hr	511	600		Health: Generic Surfactant ESL
Ammonia	1-hr	68	180	6	Health: Mild/Transient Upper Respiratory; Central Nervous System (CNS) Effects (eye discomfort, smell, headache, dizziness, feeling intoxicated [humans])
Benzene	1-hr	25	170	100	Health: Immunosuppression (↓ lymphocytes [mice])
	Annual	0.1	4.5	NA	Health: Leukemia (workers)
Benzotriazole Derivative	1-hr	17	120	NA	Health: LC ₅₀ using N-L approach (rat)
1,3-Butadiene	1-hr	6	510	NA	Odor: Mild/Aromatic
	Annual	0.01	9.9	30	Health: Reproductive Toxicity (mice)
n-Butane	1-hr	1758	66000	100	Health: No Observed Adverse Effect Level (NOAEL), Systemic
Cumene	1-hr	30	650	NA	Odor: Aromatic/Sweet/Gasoline or Solvent-Like
Diesel Fuel	1-hr	586	1000	100	Health: TLV, CNS/Liver Damage (rodents)
Ethylbenzene	1-hr	25	26000	30	Health: Eye Toxicity (rats)
	Annual	0.1	570	30	Health: Kidney Toxicity (rats)
Formaldehyde	1-hr	1	15	10	Health: Eye/Nose Irritation (humans)
n-Hexane	1-hr	24	5600	100	Health: Neuroendocrine Effects (mice)
	Annual	0.1	200	300	Health: Peripheral Neuropathy (workers)
Lubricating Oils	1-hr	511	1000	100	Health: TLV, CNS/Liver Damage (rodents)
Naphthalene	1-hr	1	440	NA	Odor: Strong/Mothball-Like
Oleoyl Sarcosine	1-hr	85	1000	NA	Health: Generic Fatty Acid Ester ESL
Polycyclic Aromatic Hydrocarbon (PAH)	1-hr	0.3	0.5	200	Health: Generic PAH ESL (< 10% Benzo(a)Pyrene)
	1-hr	85	730	NA	Health: Generic Alcohol ESL
2-Propanol, 1-Butoxy	1-hr				Health: Unknown (RfC = 30 µg/m ³ ; Acute Exposure Guideline Level (AEG-L) = 170,000 µg/m ³)
Propylene Oxide	1-hr	6	70	NA	Health: TLV, Asphyxiation (rats)
Sulfur Hexafluoride	1-hr	1	60000	100	Health: Eye/Nose Irritation, Headache, Dizziness, Intoxication (humans)
Toluene	1-hr	25	4500	10	Health: Mild Respiratory/Subjective Neurological Effects (workers)
Xylene	1-hr	25	2200	30	Health: Mild Respiratory/Subjective Neurological Effects (workers)
	Annual	0.1	180	100	Health: Mild Respiratory/Subjective Neurological Effects (workers)

13. **Conservatism of Evaluations.** The NAAQS Analyses, SPLS Analyses, and the public Health and Welfare Effects Evaluation, are each highly conservative.
14. The first layer of conservatism in determining potential health and welfare effects is in the emissions estimates and a second layer of conservatism occurs in the air dispersion modeling. As a result, the modeled air concentrations used in the evaluation are highly conservative for several reasons, including but not limited to the following:
- a. Modeled emission rates for all pollutants were based on the post-Project maximum PTE (i.e., *worst-case*) for Project Facilities, which is conservative because these *worst-case* emissions will not occur continuously.
 - i. Maximum throughput at each emission point was assumed to ensure maximum hourly and annual emission estimates.
 - ii. For each continuous source, the modeled emission rate was based on the maximum, hourly PTE (for sulfur compounds and non-criteria, modeling from the worst-case year (2020) of meteorological data was used).
 - iii. The maximum hourly PTE for NO₂ and SO₂ was used for both gas turbines, even though they are non-continuous sources.
 - iv. *Worst-case* MERP values were used to estimate GLC_{max} for O₃ and secondary PM_{2.5}.
 1. Use of a Guadalupe County source with estimated NO_x emissions of 500 tpy and VOC emissions of 1000 tpy (compared to Project estimates of 254 tpy and 93 tpy, respectively), resulted in highly conservative estimates of O₃ and secondary PM_{2.5}.
 - v. Ninety percent of modeled NO_x was assumed to be converted to NO₂, which is conservative (observed NO₂/NO_x ratios are often around 10–30% and even further downwind, the NO₂/NO_x ratios are usually less than 90%) tends to overestimate NO₂ concentrations.
 - vi. For criteria pollutants and sulfur compounds regulated under 30 TAC §112, the proposed PTE rates will be limited by enforceable permit conditions and/or operational limitations.
 - vii. Modeled emission rates incorporated both routine operations and/or planned maintenance, startup, and/or shutdown (“*MSS*”) activities.
 1. Startup and shutdown scenarios are estimated to last less than one hour but emissions were extrapolated to a full hour to ensure a conservative estimate of the emission rates.
 2. It was conservatively assumed that the facilities or activities at the site will occur 24 hours per day.

- b. AERMOD, the air dispersion model used, tends to overpredict GLC_{max} , especially for short-term averaging times (i.e., 1-hour, 3-hour, 8-hour, and 24-hour).
 - i. The elevated terrain option (conservative for the relatively flat area in which the Project will be constructed) and conservative stack parameters (lower height, gas velocity and temperature) were used, which generally reduces dispersion and increases predicted GLC_{max} .
 - ii. By design, dense receptor grids at fence lines and inclusion of building downwash maximizes predicted short-term peaks.
 - 1. No place within the receptor grid would have higher concentrations than those used in the Health and Welfare Effects Evaluation.
 - iii. Monitored background concentrations and modeled impacts from nearby sources were added to impacts from the proposed Project for pollutants with GLC_{max} that were greater than the NAAQS *de minimis* levels/SILs in screening modeling.
 - 1. This practice is explicitly recognized as conservative because high project-related GLC_{max} are stacked onto high monitored values and maximum modeled concentrations from off-property sources within 50 km, which results in some double-counting and assumes that all three sources of impacts are at their maximums and overlap;
 - 2. The monitors used as representing background concentrations for the Project *actually* resulted in conservative overestimates of background concentrations by comparison to those expected in the vicinity of the Project site, which is in a more rural area than the areas from which background monitoring data were obtained; and
 - 3. For all pollutants except PM_{10} , the background monitors are located in more suburban/light industrial areas relative to the rural area for the Project site.
- 15. By design, NAAQS are set at levels to protect public health and welfare and are conservative. In setting primary health-based NAAQS, EPA is obligated not only to consider relevant science, but also the requirement for a MOS, which is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting and to protect against hazards that research has not yet identified. In selecting a primary NAAQS that provides an adequate MOS, EPA not only seeks to prevent air concentrations that have been demonstrated to be harmful, but also to prevent lower-level concentrations that may pose an unacceptable risk of harm, even if the nature or degree of risk is not precisely known. Some common features of the primary NAAQS-setting process that ensure conservatism include:
 - a. Frequent reliance on epidemiological studies, which almost always involve exposure to more than just the constituent being studied and do not identify specific exposure levels that cause reported health effects;

- b. Use of animal studies in which laboratory animals are exposed to pollutant levels many times higher than those found in ambient air;
- c. Use of human exposure studies that expose sensitive individuals (e.g., asthmatics) to high levels of pollutants (much higher than those found in the atmosphere) under conditions that amplify exposure (e.g., while exercising, which increases ventilation rates and allows pollutants to reach deeper regions of the lungs, or via mouth exposure, which bypasses the protective capabilities of the nose);
- d. Reliance on results from studies in which responses to exposure were not statistically significant (i.e., the observed responses may have been due to chance alone); and
- e. Assumption that long-term exposures are continuous (24 hours/day, 7 days/week for a year or more).

Secondary welfare-based NAAQS are set at levels that reduce risk sufficiently to protect the public welfare from known or anticipated adverse welfare effects.

16. TCEQ's ESLs are highly conservative for many reasons as well, including:

- a. TCEQ identifies the level at which adverse health effects first occur in sensitive animals or humans as the lowest concentration observed in toxicology or epidemiology studies and then extrapolates to even lower exposure levels to ensure health protection or divides occupational limits (the level below which no worker harm is expected) by conservative safety factors (100 for short-term ESL and 1,000 for long-term ESL) in setting ESLs;
- b. TCEQ considers the possibility that exposure may occur to multiple airborne chemicals at the same time (cumulative exposure);
- c. TCEQ considers the possibility that short-term exposure may occur to a single airborne chemical multiple times or from different sources (short-term ESLs are designed to be protective of multiple 1-hour exposures);
- d. Health-based ESLs are set at levels that are either below the health effects threshold or that correspond to "no significant risk" of developing cancer;
- e. Annual health-based ESLs assume continuous exposure (24 hours/day, 7 days/week for a year or more);
- f. Welfare-based ESLs are set at conservative vegetative damage levels or odor detection/recognition thresholds; and

- g. The ESL used in permit reviews is the lowest of the health and welfare-based ESLs (i.e., the lowest ESL for all potential endpoints is used), making all ESLs protective of both health and welfare effects.
17. Without exception the maximum modeled concentrations of pollutants (i.e., GLC_{max}) proposed in the Application are less than relevant state and federal standards and ESLs. Based on these results and the conservatism of the proposed emission rates and air dispersion modeling coupled with the inherent conservatism in the NAAQS and ESLs to which maximum modeled concentrations are compared, it can easily be concluded that emissions from the Project do not pose adverse health or welfare threats.
18. **Hearing Requestor Analysis.** One organization (Neighbors for Neighbors, Inc. d/b/a Move the Gas Plant ("MTGP")) requested a contested case hearing based on affected party status they seek through its members cited in its hearing requests. These members have homes ranging from 0.704 miles to over two miles from the proposed Facility. I understand that the member living closest to the proposed Facility (0.229 miles) has withdrawn her request. I also understand that at least one party does not live at the property at issue. I understand that there are two current individual requestors with homes approximately 1.364 and 2.876 miles from the proposed Facility.
19. Commenters expressed concern that the proposed Project would cause adverse health effects or exacerbate existing medical symptoms.

The NAAQS Analysis and Health and Welfare Effects Evaluation are specifically designed to evaluate whether the operation of a proposed Facility (as represented in the air permit application via emission estimates and air modeling) will be protective of public health.

Primary NAAQS are set specifically to protect against the development or worsening of asthma (NO_2 , O_3 , PM_{10} , $PM_{2.5}$, SO_2), respiratory effects (NO_2 , O_3 , PM_{10} , $PM_{2.5}$, SO_2), chronic obstructive pulmonary disease ("**COPD**") (PM_{10}), lung and cardiovascular disease (CO , PM_{10} , $PM_{2.5}$), hospital admissions (CO , NO_2 , O_3 , PM_{10} , $PM_{2.5}$, SO_2) and premature death (O_3 , PM_{10} , $PM_{2.5}$). Health-based ESLs are established to prevent a variety of health effects, including but not limited to respiratory effects (Acrolein, Ammonia, Formaldehyde, Toluene, Xylenes), cancer (Benzene), immunosuppression (Benzene), reproductive toxicity (1,3-Butadiene), eye toxicity (Ethylbenzene, Toluene), CNS effects (Diesel Fuel, Lubricating Oils, Toluene, Xylenes), kidney toxicity (Ethylbenzene), and liver damage (Diesel Fuel, Lubricating Oils). All pollutants potentially emitted from the proposed Facility resulted in maximum off-property concentrations that are less than the health-protective primary NAAQS or health-based ESLs. Therefore, it is not expected that existing health conditions will worsen, or that there will be adverse health effects in the general public or sensitive subgroups as a result of proposed emission rates associated with the proposed Facility.

20. Commenters questioned whether the proposed project would protect public welfare and the environment, including animals, crops, vegetation, visibility, and buildings, and public property from any known or anticipated adverse effects from air contaminants.

Commenters also expressed concern about the effect of the proposed project on surrounding wildlife, including but not limited to pets, cattle, livestock, deer, cougars, turkeys, birds, farm animals, and endangered species.


The NAAQS Analysis and Health and Welfare Effects Evaluation are also designed to evaluate whether the operation of a proposed Facility (as represented in the air permit application via emissions estimates and air modeling) will be protective of public welfare. Secondary NAAQS are set to protect public welfare, including protection against decreased visibility (NO_2 , PM_{10} , $\text{PM}_{2.5}$, SO_2), damage to animals, crops, ecosystems (NO_2 , O_3 , PM_{10} , $\text{PM}_{2.5}$, SO_2), vegetation (O_3), and buildings (PM_{10} , $\text{PM}_{2.5}$, SO_2). Welfare-based ESLs are based on the prevention of odor nuisance from noxious chemicals (i.e., Acetaldehyde, Acrolein, Ammonia, 1,3-Butadiene, Formaldehyde) and damage to vegetation (Acrolein, Ammonia, 1,3-Butadiene, Formaldehyde, n-Hexane). In addition, protection of pets, livestock and wildlife is also indirectly ensured by health-based ESLs because they are typically based on “No Effect Levels” in the most sensitive animal species and are then ratcheted down to lower levels to ensure protection for humans. All pollutants potentially emitted from the proposed Facility are less than the welfare-protective secondary NAAQS and welfare-based ESLs. Therefore, odor nuisance, decreased visibility, and damage to animals (including livestock and wildlife), vegetation, the ecosystem, or buildings is not anticipated as a result of emissions from the proposed Facility.

21. One commenter expressed concern that background concentration values used are not from the project site and therefore cannot be assumed to be representative. Although the background monitors are not located in the vicinity of the proposed Facility, when monitors are not available in the same county as the proposed Facility, background monitors are intentionally selected from areas in which the relevant pollutant concentrations are expected to be higher than levels that would be found near a proposed Facility. For this Project, the background monitors used are from areas with higher populations, higher point-source and mobile emissions that are more urban and/or industrialized than Lee county. Appendix D – H of the AQA presents emission rate comparisons for Lee county and the counties in which the selected background monitors are located that demonstrate that the selected monitors used in the NAAQS Analysis are conservative for Lee county.
22. No location within the dense air dispersion model receptor grid, which extends 50 km (31 miles) in all directions from the proposed Facility, will have higher concentrations than those evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation. In other words, *worst-case* air concentrations for each pollutant was evaluated for their potential to cause adverse health and welfare effects. Given that all pollutant concentrations were less than their respective NAAQS and ESLs at maximum-modeled impact locations (i.e., GLC_{max}), combined with the fact that the primary NAAQS and health-based ESLs are set at concentrations below which negative health impacts in any member of the public are expected to occur (including the most sensitive members of the public [e.g., children, elderly, and the infirm]) or at insignificant risk levels, maximum allowable emissions from the Project are not expected to negatively affect the health of any member of the general public, including the hearing requestors. Similarly, since secondary NAAQS and welfare-

based ESLs are established at levels intended to mitigate visibility effects and damage to animals, crops, ecosystems, vegetation and buildings and prevent odor nuisances, maximum allowable emissions from the Project are not expected to negatively affect the welfare of any member of the general public, including the hearing requestors.

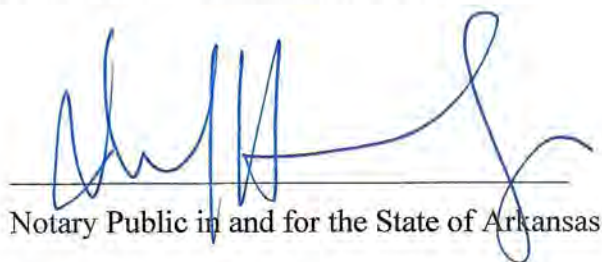
23. For the vast majority of pollutants, the GLC_{max} evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation occurred on the proposed Facility fence line. The few GLC_{max} that did not occur at the fence line, occurred very close to it (within 25 m or 82 ft). Members of the organization currently seeking party status have homes ranging from 0.704 miles to two miles from the proposed Facility. The member with the property closest to the proposed Facility (0.704 miles) is known to only use her property sporadically (i.e., not as a primary residence). Individual requestors with current hearing requests live 1.364 and 2.876 miles from the proposed Facility. Therefore, the hearing requestor's potential exposures are expected to be less than the exposures evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation. Given that all pollutant concentrations were less than their respective NAAQS and ESLs at maximum-modeled impact locations (i.e., GLC_{max}), combined with the fact that the primary NAAQS and health-based ESLs are set at levels below the concentrations at which health or welfare impacts are expected, the proposed maximum allowable emissions from the Project are not expected to negatively affect the health or welfare of the hearing requestors or any other member of the public.
24. For the reasons stated above, potential impacts of the air emissions from the proposed Project are expected to be indiscernible for members of the general public, including the hearing requestors. This is because: 1) No location within the dense air dispersion model receptor grid will have higher concentrations than those evaluated in the NAAQS Analysis and Health and Welfare Effects Evaluation; 2) Primary NAAQS incorporate a MOS as a built-in buffer to protect public health, even for vulnerable populations (children, the elderly, and people with preexisting health conditions) and secondary NAAQS protect against damage to visibility, animals, crops, vegetation, the ecosystem, and buildings; and 3) Health-based ESLs are set at levels below which adverse effects are observed in sensitive populations (e.g., asthmatics, the most sensitive animal species, etc.) or at insignificant risk levels, indirectly protect wildlife, and are designed to be protective of cumulative and aggregate exposures (i.e., simultaneous exposures to multiple chemicals and exposure to the same chemical from more than one source), while welfare-based ESLs protect against vegetative damage and nuisance odors. The application of these conservative procedures in setting NAAQS and ESLs ensures that the likelihood of adverse health and welfare effects below these levels is exceedingly small. In other words, no member of the general public, including anyone who owns property, resides, or regularly visits areas near the proposed Facility, is expected to be negatively impacted by the proposed Project emissions. Moreover, exposures at locations farther from the proposed Facility, or that occur on a more intermittent basis are unlikely to result in any negative impacts and would be even less discernible.
25. Based on the air modeling and on my evaluation as described above, the hearing requestors would not experience impacts from the proposed Facility any differently than anyone else.

Further affiant sayeth not.”


Lucy Fraiser
Fraiser Toxicology Consulting, LLC

This instrument was acknowledged before me, the undersigned authority, this 25th day of September 2025, by Lucy Fraiser, Fraiser Toxicology Consulting, LLC.




Notary Public in and for the State of Arkansas



LUCY H. FRAISER, PH.D., DABT PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

AREAS OF EXPERTISE

- Toxicological Evaluations
- Risk Assessments
- Risk Communication
- Nuisance Evaluations
- Litigation Support
- Development of Innovative Risk-Based Approaches
- Exposure Modeling

EDUCATION

Ph.D., Toxicology,
University of Texas at Austin,
1992

B.A. Psychology, *University*
of Texas at Austin, 1985

CERTIFICATIONS/AFFILIATIONS

Diplomate of the American
Board of Toxicology

American College of Toxicology

National Society of Toxicology

South Central Society of
Toxicology

Society for Risk Analysis

Northwest Arkansas Food Bank,
Volunteer

Rowing Club of Northwest
Arkansas, Treasurer

CONTACT

lucy@lucyfraiser-toxicology.com
512-636-8494
PO Box 1208
Fayetteville, Arkansas 72702

Dr. Lucy Fraiser is a board-certified toxicologist with over 35 years of experience in the areas of exposure and risk assessment, health effects and toxicology evaluations, development of quantitative toxicity criteria, development of risk-based air and water quality guidelines and soil cleanup criteria, and risk communication. Dr. Fraiser works with all environmental media, including soil, sediment, groundwater, surface water and air and is well versed in methods for evaluating exposure via all exposure routes (inhalation, dermal, ingestion). She has performed numerous air quality evaluations to determine whether pollutant emissions have caused or contributed to a condition of air pollution and the likelihood that air toxics will adversely impact health or welfare.

Dr. Fraiser has worked in both the public and private sectors. She has conducted and managed multi-pathway exposure assessments and human and ecological risk assessments for a wide variety of environmental pollutants and sources. Dr. Fraiser has, on many occasions, examined the scientific foundation on which exposure assumptions and toxicity criteria are based on behalf of private and public-sector clients and trade organizations. Her leading work on these issues has resulted in corrections to regulatory guidance and risk-based criteria on several occasions. She has conducted hundreds of exposure assessments for chemicals used in pharmaceutical laboratories and industrial processes, chemicals applied to control pests and unwanted vegetation, and chemicals released as unwanted by-products of chemical and product manufacturing, combustion of fossil and waste-derived fuels, operation of liquified natural gas (LNG) facilities, generation of electricity, petroleum refining, smelting, rock crushing, and activities at military installations.

Litigation Experience

Dr. Fraiser has been qualified as an expert, deposed, and has provided expert testimony in contested case hearings, criminal case hearings, Federal Civil suits, toxic tort litigation, and Class Action cases on many occasions. She has testified before the Texas and Illinois State Legislatures, in public meetings, and before numerous state regulatory agencies on behalf of commercial clients. Dr. Fraiser also conducted a televised press conference on behalf of a state and a national trade organization regarding mercury emissions from power plants.

Dr. Fraiser has developed opinions, produced reports, and been deposed in several Class Action lawsuits in false advertising cases involving "green washing". She has developed opinions and produced



LUCY H. FRAISER, PH.D., DABT
PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

numerous reports regarding the potential for chemicals used in the semiconductor industry to cause developmental toxicity in a multi-Plaintiff lawsuit. She has testified regarding the health protectiveness of air permits for multiple industries (chemical manufacturers, aggregate facilities, oil and gas companies, power plants) in Texas. In a lawsuit filed by the U.S. EPA seeking reimbursement costs incurred for response actions taken in connection with the release of cement kiln dust from a redeveloped site that was formerly a mine and cement plant, Dr. Fraiser developed opinions regarding when the site ceased posing an “imminent and substantial” threat to public health, welfare, and/or the environment under CERCLA.

Dr. Fraiser provided critical expert testimony in a high-profile toxic tort case involving a flaring event at a multi-national petrochemical company that resulted in a jury verdict for the defense. She also provided critical testimony in a citizen suit against a Texas energy company in which a judge from the Western District of Texas ruled from the bench that there were no violations of the Clean Air Act and later ordered the Plaintiff to pay \$6.4 million in defense attorneys’ fees. She has also provided critical expert testimony in a citizen suit against a Texas petrochemical company involving excess air emission and maintenance, startup, and shutdown events. The federal cases involved alleged violations of opacity standards, National Ambient Air Quality Standards (NAAQS), and effects screening levels (ESLs) for compounds considered to be hazardous air pollutants.

Dr. Fraiser has provided testimony on potential risks associated with permitting of rock crushers (silica, limestone, particulates [PM_{10/2.5}]), concrete batch plants (silica, PM_{10/2.5}), hazardous waste combustion units (polycyclic aromatic hydrocarbons, polychlorinated biphenyls (PCBs), dioxins, and other semi-volatile organic compounds [SVOCs]), petrochemical plants/refineries (PM_{10/2.5}, NO₂, sulfur dioxide [SO₂], sulfuric acid [H₂SO₄], hydrogen sulfide [H₂S], and a variety of volatile organic compounds [VOCs] and SVOCs, a copper smelter (PM_{10/2.5}, NO₂, SO₂, sulfuric acid [H₂SO₄], arsenic, lead, and cadmium). She has testified on potential H₂S/SO₂ health effects from a Sulfur Recovery Unit, health effects associated with relatively short-term exposure to benzene concentrations in drinking water above the Maximum Contaminant Level (MCL), and potential risks associated with lead and total petroleum hydrocarbon (TPH) levels detected in street sweepings.



LUCY H. FRAISER, PH.D., DABT PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

Air Quality Health Effects Evaluations

Several local governments with ethylene oxide sterilization facilities within their purview have considered imposing additional operating restrictions upon or complete prohibition of ethylene oxide emissions from these facilities. Dr. Fraiser was engaged by two of these communities to provide specialized toxicological expertise and advice to local Counsel on ethylene oxide health effects and to serve on their ethylene oxide task forces. Dr. Fraiser also testified before the Illinois House and Senate, and she has provided detailed presentations to community members, local regulators and EPA Region 7 on ethylene oxide health effects. Dr. Fraiser is helping one commercial sterilizer to communicate to the public and local officials about potential risks associated with ethylene oxide emissions.

Dr. Fraiser has recently performed inhalation risk assessments for two liquified natural gas (LNG) facilities for the Federal Energy Regulatory Commission ("FERC"). She was the health risk assessment advisor for a study completed on behalf of the Electric Power Research Institute (EPRI) that evaluated the potential health risk from emissions of coal fired power plants throughout the U.S. using EPA's TRIM (Total Risk Integrated Methodology) model. She served as project manager responsible for multi-pathway risk assessment updates for a specialty chemical company to support permitting activity that reflected the installation of new SO₂ abatement equipment, served as the risk assessment team lead for a vapor intrusion evaluation using crawl-space soil vapor and ambient air samples collected beneath and near a house in the vicinity of a crude oil release and performed a health risk assessment using indoor and ambient air samples from a manufacturing facility.

Dr. Fraiser has conducted or served as task leader on more than two dozen human health risk assessments conducted in support of applications for hazardous waste combustion units at chemical plants, waste management facilities, army depots, and cement kilns.

Nuisance Evaluations

Dr. Fraiser has been engaged on numerous occasions to evaluate alleged nuisance odors and to determine whether odorous emissions could be accompanied by health effects. She has also evaluated other nuisance impacts as well (i.e., aesthetic and recreational impacts and vegetative damage). She evaluates the potential impact of alleged



LUCY H. FRAISER, PH.D., DABT PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

nuisances by: 1) obtaining local meteorological data for the time of the alleged event 2) documenting the frequency, intensity, duration and offensiveness (odor only) of episodes based on reports from first-hand observers; and 3) noting any physical effects experienced by first-hand observers. A critical step in determining whether odors are likely to be accompanied by adverse health effects is establishing whether the threshold for odor detection is above or below the health effects threshold for the chemicals involved. Dr. Fraiser has substantial knowledge regarding the way in which odor thresholds and health-based levels are established, as well as the potential toxicological and psychological mechanisms by which odors may result in actual or perceived health effects. Even if the odors do not rise to the level of

causing adverse health effects by known toxicological mechanisms, they can in some cases adversely affect welfare if they are frequent/recurring. Determining aesthetic nuisances often entails evaluating visibility impairment via opacity (airborne material that obscures the visual background) violations and/or computer-assisted stack visibility assessment.

Regulatory Experience

Dr. Fraiser advised a trade association that represents medical device manufacturers regarding potential health effects of sterilizer plant ethylene oxide emissions on workers and neighboring communities in the midst of EPA rule development for controlling emissions of ethylene oxide.

She provided comments to EPA on behalf of several commercial clients and a trade organization questioning the extent to which health research studies supported the need for a tighter ozone NAAQS during the 2015 review. Dr. Fraiser also provided comments on the Second External Review Draft of the Integrated Science Assessment For Oxides Of Nitrogen (NO₂)–Health Criteria in 2014 and the Boiler MACT Health-Based Emissions Limitations on behalf of a trade organizations. In the past, she has developed technical comments on EPA Risk Assessment Protocols for Hazardous Waste Combustion Facilities on behalf of the Louisiana Chemical Association and the Cement Kiln Recycling Coalition and completed formal technical comments on behalf of a power generation client on a risk-based program intended to significantly reduce levels of toxic air contaminants in Kentucky.



LUCY H. FRAISER, PH.D., DABT PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

As a Senior Toxicologist with the Texas Natural Resource Conservation Commission (TNRCC), the predecessor agency to the Texas Commission on Environmental Quality (TCEQ), Dr. Fraiser conducted and managed risk assessments for incinerators and industrial boilers seeking permits to burn hazardous waste. These risk assessments involved using air deposition modeling to estimate uptake into agricultural products (i.e., produce and livestock) and estimating risk to livestock as well as humans that consumed livestock and produce. Dr. Fraiser provided support to the U.S. EPA as they formulated national policies related to combustion risk assessment, provided critical input into the development of protective concentrations levels (PCLs) under the Texas Risk Reduction Program (TRRP), served as an external peer reviewer for risk assessment guidance documents developed by EPA Region 6 and adopted as national guidance and represented the Agency on EPA workgroups and in contested case hearings.

Risk-Based Corrective Action and Risk Assessment

Dr. Fraiser has conducted and/or served as task leader for over 75 human health risk assessments and/or risk-based corrective action (RBCA) evaluations in support of Resource Conservation Recovery Act (RCRA) closures or under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for both commercial companies and government clients.

Dr. Fraiser has substantial experience performing human health and ecological risk evaluations under the Texas Risk Reduction Rule and the Texas Risk Reduction Program (TRRP), as well as other state RBCA programs. She has completed and received Texas Commission on Environmental Quality (TCEQ) approval for several Affected Property Assessment Reports and has provided support on the successful completion of several Response Action Completion Reports.

Dr. Fraiser completed a multi-media human health risk assessment for a high school at which placement of fill material to build up the area for sports fields resulted in PCB contamination. She also assisted with a toxicity assessment and fish cooking loss study for dioxins and PCBs for a contaminated river segment in the northeast.



LUCY H. FRAISER, PH.D., DABT
PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

Toxicological Evaluations and Risk-Based Regulatory Criteria Development

Dr. Fraiser evaluated the potential health and nuisance (odor) impacts of Concentrated Animal Farming Operations (CAFOs) at the request of a law firm filing an appeal against the citing of a proposed CAFO near an existing CAFO in Texas.

She has developed numerous health-based criteria for compounds lacking published values using toxicity studies, structure activity relationships, and her knowledge of pharmacokinetics. She has developed risk-based regulatory criteria including emergency response planning guidelines (ERPGs), inhalation reference concentrations (RfCs), water quality criteria, and acceptable ambient air levels, including Effects Screening Levels (ESLs), for several compounds. Based on her understanding of the human health underpinnings of federal regulations and state corrective action and air quality guidelines, Dr. Fraiser has assisted many clients wishing to challenge health-based criteria during public comment periods and in identifying adjustments to existing criteria.

Publications, Presentations and Training Courses

Fraiser L. Trends in Setting National Ambient Air Quality Standards. Earth Day Legal Symposium. Dallas, TX. April 21, 2017

Fraiser L. In Chemical Litigation, Toxicology Fundamentals Matter. American Bar Association Newsletter. August 2016.

Fraiser L. EPA May Go Beyond Law and Science in Setting NAAQS. Natural Gas & Electricity, 30(3):1-8. October 2014.

Fraiser L., and Karen Olson. Ozone NAAQS – Where is it Headed? Texas Association of Business, Austin TX. July 24, 2014.

Fraiser L. Ozone NAAQS – Where is it Headed? Houston Regional Monitoring Association, Houston, TX. July 9, 2014.

Fraiser L., and Davis B. Ozone NAAQS – Where is it Headed? Clean Air Force of Central Texas, Austin TX. April 24, 2014.

Fraiser L., and Karen Olson. Ozone NAAQS – Where is it Headed? Winstead PC, Austin TX. May 27, 2014.



LUCY H. FRAISER, PH.D., DABT
PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

Fraiser L., and Sullivan, T. Ozone NAAQS – Where is it Headed? Texas Pipeline Association, Austin TX. April 9, 2014.

Fraiser, L. Recent Reductions in NAAQS – Good Science or Perpetuation of Dogma on Health Consequences of Low-Level Air Pollutants? Energy Utility Environment Conference, Phoenix AZ. February 3 -5, 2014.

Fraiser, L.H. and Bradley, L.J.N. Key Decisions in Establishing National Ambient Air Quality Standards. 52nd Annual Meeting of the Society of Toxicology. San Antonio, Texas. March 10 – 14, 2013.

Fraiser, L.H. Health Basis for EPA's 1-Hr SO₂ NAAQS. Alamo Chapter AWMA Meeting, January 10, 2013.

Ruffle, B., Fraiser, L., Kaczmar, S., Schew, W. Update on Cooking Loss Factors for PCDD/PCDFs, PCBs and Chlorinated Pesticides. Passaic River Symposium V. Passaic River Institute of Montclair State University. October 19, 2012.

Fraiser, L.H. and Vosnakis, K.A.S. Evolution of PCB Regulations and Toxicity Assessment: Impact on Environmental Management. 27th Annual International Conference on Soils, Sediments, Water and Energy, Amherst, Massachusetts. October 17 – 19, 2011.

Fraiser, L. Toxicology & Risk Assessment in the News: Recent EPA Proposals with Broad Implications. Invited Presented at the Gulf Coast Air & Waste Management Association Meeting. Houston, Texas. June 08, 2010.

Quintin, A. and Fraiser, L. Comparison of International Risk-Based Screening Levels. Proceedings of the Annual International Conference on Soils, Sediments, Water and Energy. Vol. 15, Article 24. June 2010.

Fraiser, L.H. Toxicology & Risk Assessment in the News: Recent EPA Proposals with Broad Implications. Houston Air & Waste Management Association. June 2010.

Fraiser, L.H., Quintin, A. Durocher, K. Szembek, C. Heinold, D. EPRI Human Health and Environmental Risk Assessment Process. February 18, 2010.

Fraiser, L.H. Trends in International Risk-Based Screening Levels (RBSLs). Society of Toxicology and Chemistry, New Orleans, Louisiana. November 19 – 23, 2009.



LUCY H. FRAISER, PH.D., DABT
PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

Fraiser, L.H. Risk Assessment: How it Can Inform Site Closure Decisions. Invited Short Course presented to the Department of Environment Malaysia, Kuala Lumpur. March 4 – 5, 2009.

Fraiser, L.H. Incinerator Risk Assessment: Principles and Practices, Hong Kong. Regional Conference on Sustainable Waste Management in Carbon-Conscious Cities. December 2008.

Fraiser, L.H. Site-Specific Risk Assessments, RCRA Omnibus Provision and Combining Risk Burns and Comprehensive Performance Tests. MACT EEE EPA Training Workshop, Dallas, TX. November 3 – 8, 2008.

Fraiser, L.H. Involvement of Local Governments in Air Toxics Regulation. Texas Chemical Council/ Association of Chemical

Industry of Texas's EH&S Seminar Moody Gardens Hotel, Galveston Texas. June 10, 2008.

Fraiser, L.H., and Chaudhuri, I. Short-Term Toxicity Benchmark for Nickel Oxide. 42nd Annual Society of Toxicology Meeting. March 9 – 14, 2002. Salt Lake City, Utah.

Fraiser, L.H., and Ruffle, B. "Chemical Regulations with Business Implications." Environmental Protection. June 2002.

Fraiser, L.H., and Chaudhuri, I. Short-Term Toxicity Benchmark for Nickel Oxide. International Conference on Incineration & Thermal Treatment Technologies Proceedings. May 13 -17, 2002. New Orleans, Louisiana.

Fraiser, L.H., and Chaudhuri, I. Short-Term Toxicity Benchmark for Nickel Oxide. Proceedings of the Air & Waste Management Association. April 16 - 19, 2002. St. Louis, Missouri.

Fraiser, L.H., Chaudhuri, I, and Smith, D. EPA's Dioxin Reassessment – Potential Impacts to the Regulated Community. Proceedings of the Air & Waste Management Association. June 24 - 28, 2001. Orlando, Florida.

Fraiser, L.H., Roeck, D., and Smith, D. New Developments in Dioxin Regulation – Potential Impacts on the Regulated Community. International Conference on Incineration & Thermal Treatment Technologies Proceedings. May 14 -18, 2001. Philadelphia, Pennsylvania.



LUCY H. FRAISER, PH.D., DABT
PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

Fraiser, L.H., Roeck, D., and Smith, D. Current Environment of Hazardous Waste Combustion. International Conference on Incineration & Thermal Treatment Technologies Proceedings. May 14-18, 2001. Philadelphia, Pennsylvania.

Fraiser, L.H., and Pope, P.G. Hazardous Waste Combustion Risk Assessment — Artifact or True Risk? International Conference on Incineration & Thermal Treatment Technologies Proceedings. May 8-12, 2000. Portland, Oregon.

Fraiser, L.H., and Lewis, D. Detection Limits: Practical Implications for Risk Assessments Conducted on Hazardous Waste Combustion Units. Presented before the Louisiana Chemical Association. September 9, 1999. Baton Rouge, Louisiana.

Fraiser, L.H., Tachovsky, J.A., King, M.L., McCoy, J.T., and Haws, L.C. Hazardous Waste Combustion Risk Assessment Experience in the State of Texas. International Conference on Incineration & Thermal Treatment Technologies Proceedings. pp. 189-196. May 11-15, 1998. Salt Lake City, Utah.

Fraiser, L., McCoy, J.T., Perry, C., King, M., and Haws, L.C. Screening Risk Analysis for the Bayer Corporation Facility in Baytown, Texas. TNRCC publication number AS-120, AS-120A, and AS-120B. November 1996.

Fraiser, L., Lund, L., Tyndall, K., King, M., Schultz, D., and Haws, L. Case Studies in Risk Assessment for Hazardous Waste Burning Cement Kilns in Waste Combustion in Boilers and Industrial Furnaces Proceedings. pp.208-225. March 26-27, 1996. Kansas City, Missouri.

Fraiser, L., Lund, L., Hueske, K., and Haws, L.C. Indirect Risk Assessment: Case Studies of Hazardous Waste Combustors. Toxicologist 30:6, 1996.

Fraiser, L., Lund, L., Hueske, K., King, M., and Haws, L.C. Screening Risk Analysis for the North Texas Cement Company (NTCC) Facility in Midlothian, Texas. TNRCC publication number AS-71, AS-71A, and AS-71B. January 31, 1996.

Fraiser, L., Lund, L., Hueske, K., King, M., and Haws, L.C. Screening Risk Analysis for the Texas Industries (TXI) Facility in Midlothian, Texas. TNRCC publication number AS-72, AS-72A, and AS-72B. November 2, 1995.

Ramu, K., Fraiser, L., Mamiya, B., Ahmed, T., and Kehrer, J.P. Acrolein Mercapturates: Synthesis, Characterization, and Assessment



LUCY H. FRAISER, PH.D., DABT
PRINCIPAL SCIENTIST

Lucy Fraiser Toxicology Consulting LLC

of Their Role in the Bladder Toxicity of Cyclophosphamide. Chem. Res. Toxicol. 8:515-524, 1995.

Fraiser, L., and Kehrer, J.P. Effect of Indomethacin, Aspirin, Nordihydroguaiaretic Acid, and Piperonyl Butoxide on Cyclophosphamide-Induced Bladder Damage. Drug Chem. Toxicol. 16(2):117-133, 1993.

Fraiser, L., Barnett, J.W., and Hixson, E.J. 'Toxicity Equivalents for Chlorinated Hydrocarbon Pesticides Lacking EPA-Verified Toxicity Values.' Toxicologist 14: 1540, 1994.

Kanekal, S., Fraiser, L., and Kehrer, J.P. Pharmacokinetics, Metabolism, and Lung Toxicity of Cyclophosphamide in C57/Bl6 and ICR Mice. Toxicol. Appl. Pharmacol. 114:1-8, 1992.

Fraiser, L., and Kehrer, J.P. Murine Strain Differences in Bladder Toxicity of Cyclophosphamide. Toxicol. 75:257-272, 1992.

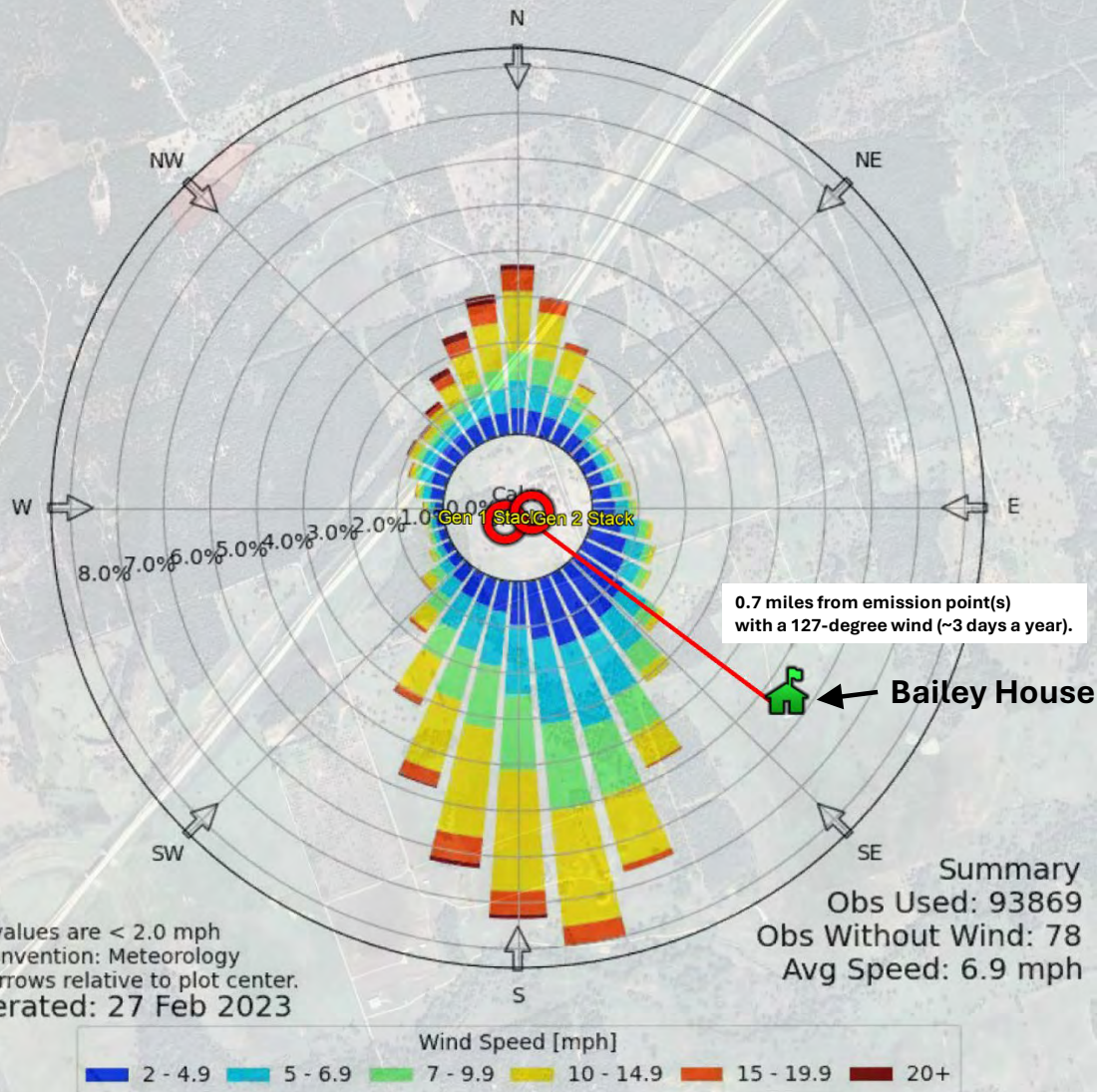
Fraiser, L., Kanekal, S., and Kehrer, J.P. Cyclophosphamide Toxicity: Characterizing and Avoiding the Problem. Drugs. 42(5):781 -795, 1991.

EXHIBIT “C”

(Wind Rose)



Windrose Plot for [T35] Cameron
Obs Between: 17 Apr 2012 11:55 AM - 27 Feb 2023 04:55 AM America/Chicago



7/13/23, 9:44 AM

IEM :: Site Wind Roses

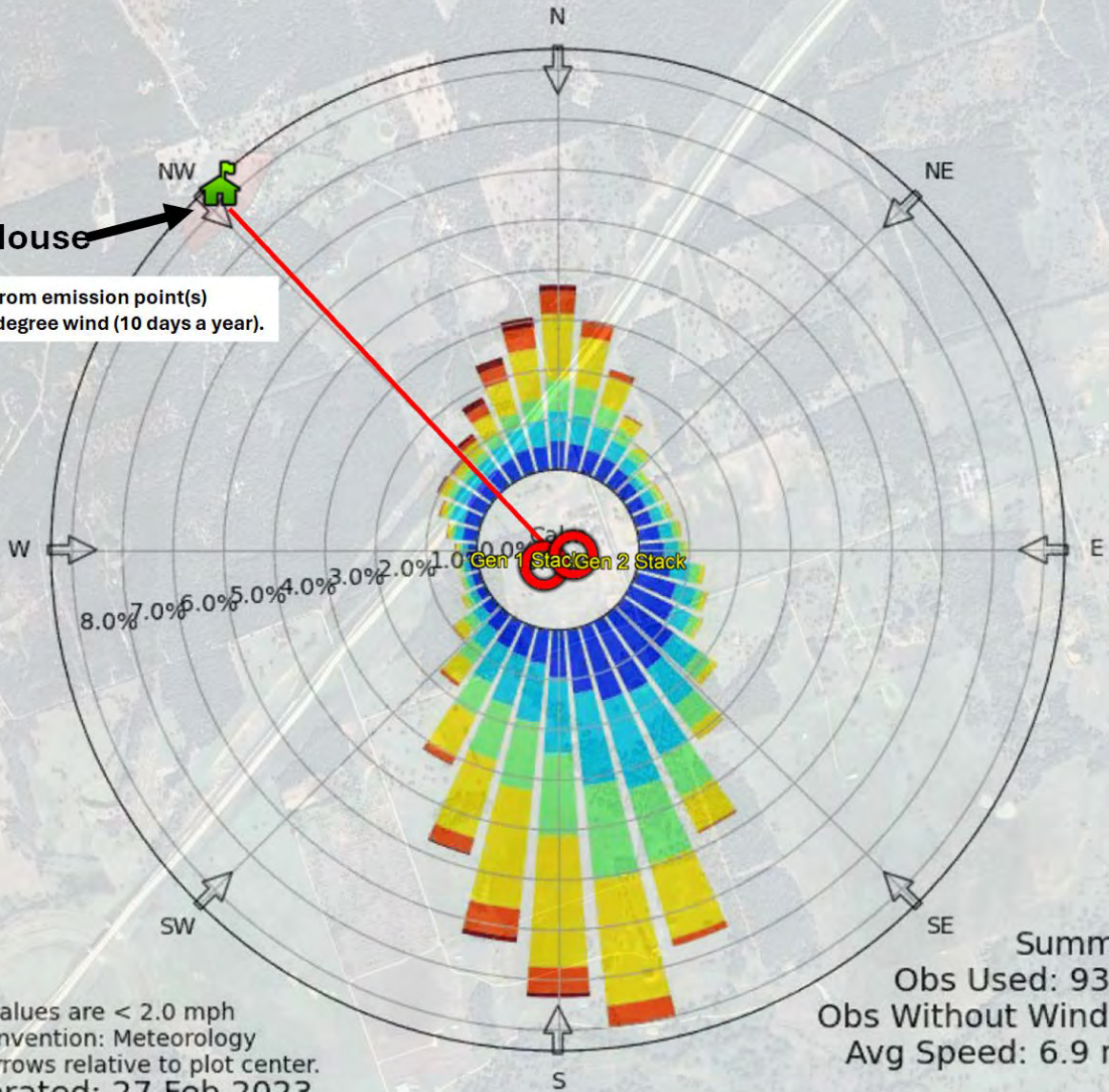


Windrose Plot for [T35] Cameron

Obs Between: 17 Apr 2012 11:55 AM - 27 Feb 2023 04:55 AM America/Chicago

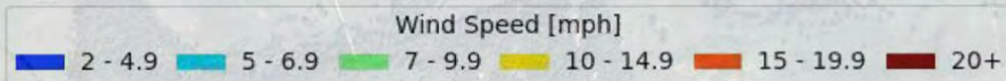
Siler House

0.98 miles from emission point(s)
with a 315-degree wind (10 days a year).



Calm values are < 2.0 mph
Bar Convention: Meteorology
Flow arrows relative to plot center.
Generated: 27 Feb 2023

Summary
Obs Used: 93869
Obs Without Wind: 78
Avg Speed: 6.9 mph





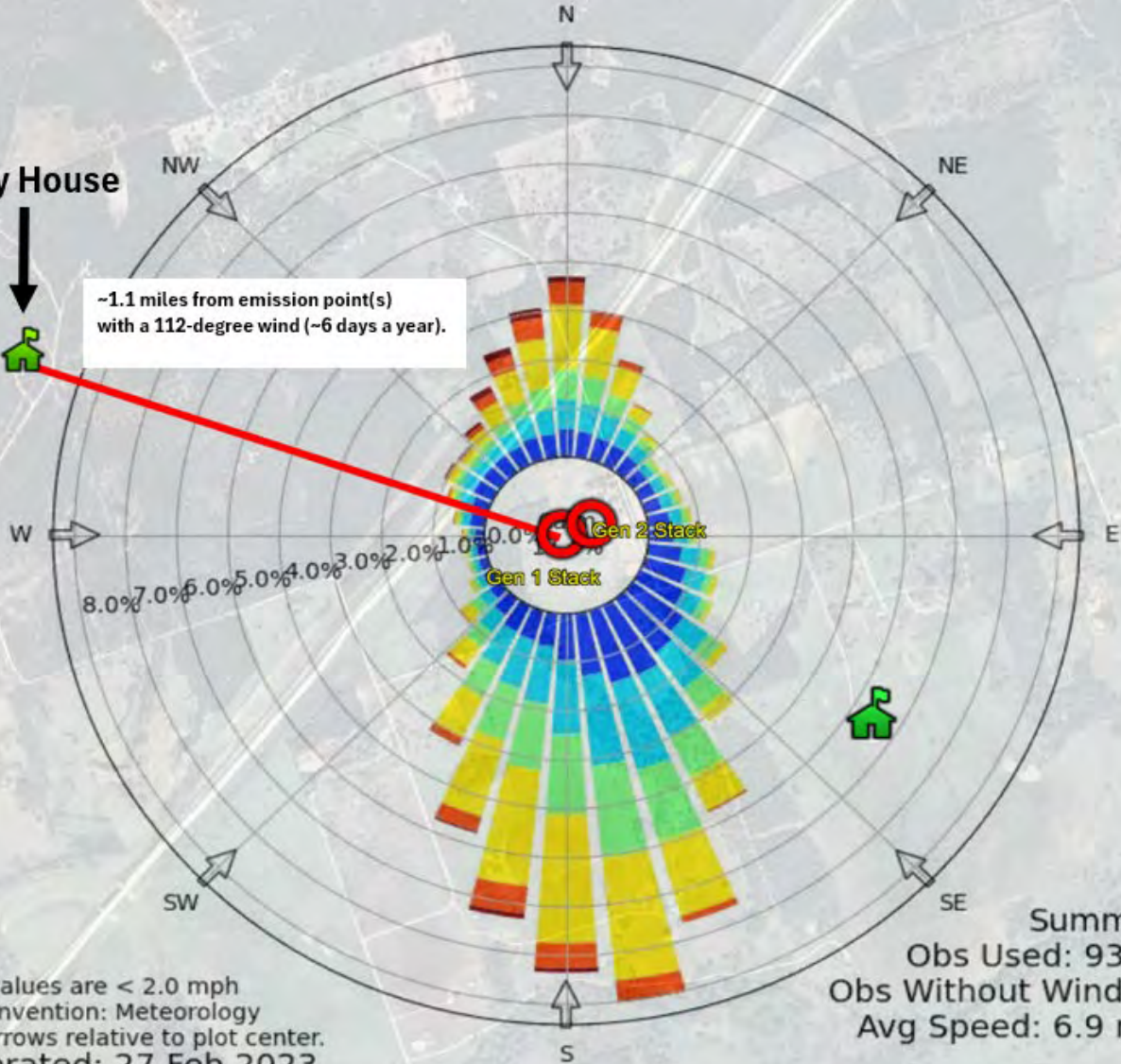
Windrose Plot for [T35] Cameron

Obs Between: 17 Apr 2012 11:55 AM - 27 Feb 2023 04:55 AM America/Chicago

Dickey House



~1.1 miles from emission point(s)
with a 112-degree wind (~6 days a year).



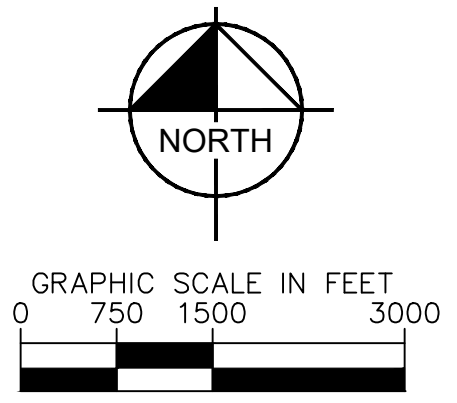
Calm values are < 2.0 mph
Bar Convention: Meteorology
Flow arrows relative to plot center.
Generated: 27 Feb 2023

Summary
Obs Used: 93869
Obs Without Wind: 78
Avg Speed: 6.9 mph

Wind Speed [mph]

2 - 4.9 5 - 6.9 7 - 9.9 10 - 14.9 15 - 19.9 20+

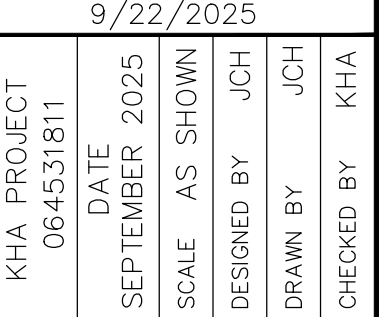
EXHIBIT “D”
(Requester Map)



NOTE: DISTANCE MEASURED FROM LOCATION OF RESIDENCE TO NEAREST POWER PLANT EXHAUST

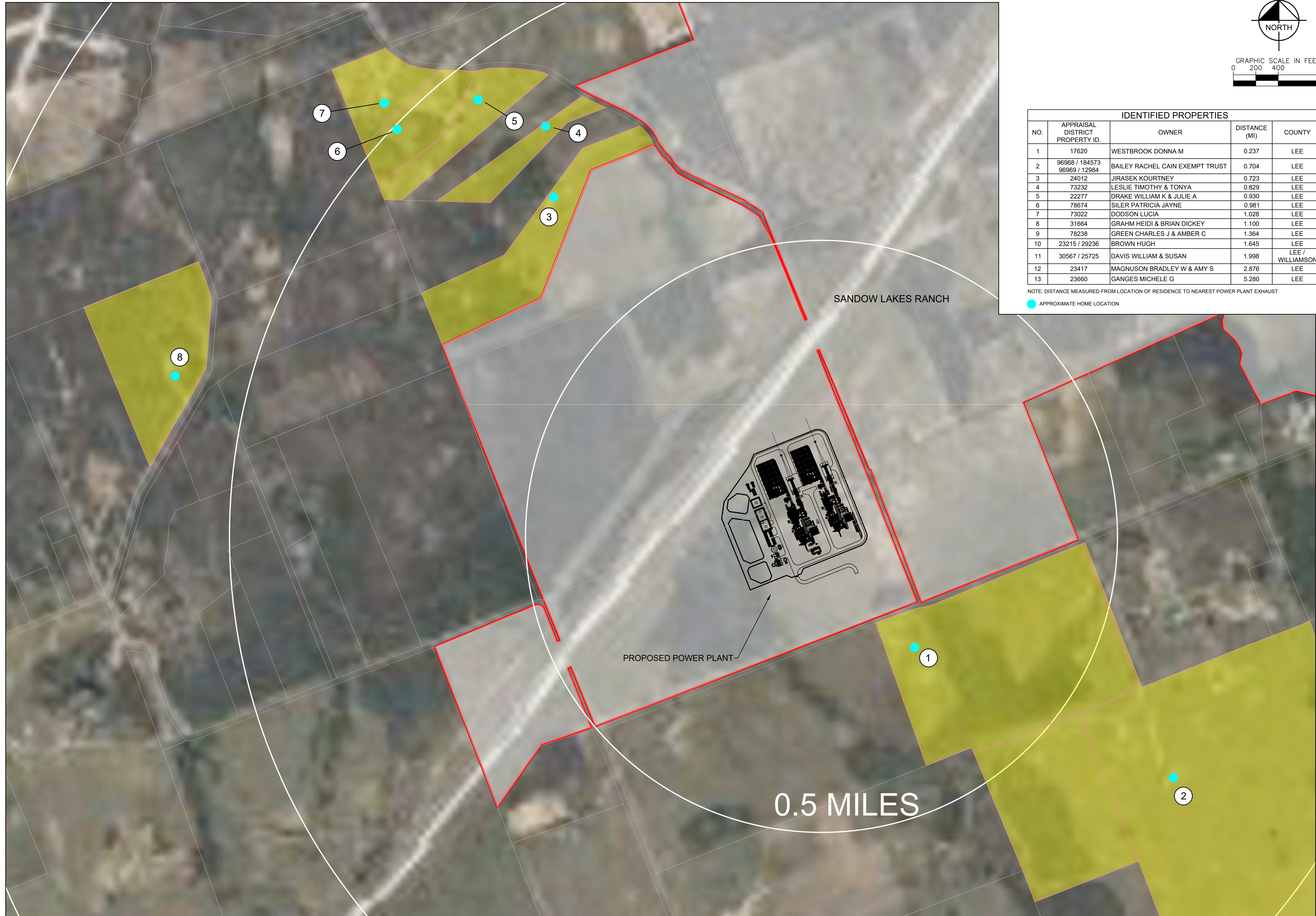
Kimley»»Horn

© 2025 KIMLEY-HORN AND ASSOCIATES, INC.
TEXAS REGISTERED ENGINEERING FIRM F-928
614 HOLLMAN DRIVE EAST, SUITE 1100
BRYAN, TX 77840
PHONE: 979-775-9595
WWW.KIMLEY-HORN.COM



LEE COUNTY POWER PLANT
 PREPARED FOR
 SANDOW LAKES
 ENERGY COMPANY
 ROCKDALE, TEXAS

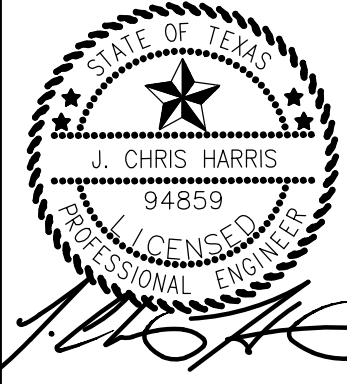
SHEET NUMBER
 EX -1



IDENTIFIED PROPERTIES				
NO.	APPRAISAL DISTRICT PROPERTY ID.	OWNER	DISTANCE (MI)	COUNTY
1	17620	WESTBROOK DONNA M	0.237	LEE
2	96968 / 184573 96969 / 12984	BAILEY RACHEL CAIN EXEMPT TRUST	0.704	LEE
3	24012	JIRASEK KOURTNEY	0.723	LEE
4	73232	LESLIE TIMOTHY & TONYA	0.829	LEE
5	22277	DRAKE WILLIAM K & JULIE A	0.930	LEE
6	78674	SILER PATRICIA JAYNE	0.981	LEE
7	73022	DODSON LUCIA	1.028	LEE
8	31664	GRAHM HEIDI & BRIAN DICKEY	1.100	LEE
9	78238	GREEN CHARLES J & AMBER C	1.364	LEE
10	23215 / 29236	BROWN HUGH	1.645	LEE
11	30567 / 25725	DAVIS WILLIAM & SUSAN	1.998	LEE / WILLIAMSON
12	23417	MAGNUSON BRADLEY W & AMY S	2.876	LEE
13	23660	GANGES MICHELE G	5.280	LEE

NOTE: DISTANCE MEASURED FROM LOCATION OF RESIDENCE TO NEAREST POWER PLANT EXHAUST.

● APPROXIMATE HOME LOCATION



9/22/2025

KHA PROJECT 064531811	DATE SEPTEMBER 2025	SCALE AS SHOWN	DESIGNED BY JCH	DRAWN BY JCH	CHECKED BY KHA
--------------------------	------------------------	----------------	-----------------	--------------	----------------

RESIDENTIAL LOCATION
MAP

COUNTY POWER PLANT
PREPARED FOR
SANDOW LAKES
ENERGY COMPANY
ROCKDALE, TEXAS

SHEET NUMBER

EX -2

[illegible]

Kimley»»Horn

© 2025 KIMLEY-HORN AND ASSOCIATES, INC.
TEXAS REGISTERED ENGINEERING FIRM F-928
514 HOLLEMAN DRIVE EAST SUITE 100

BRYAN, TX 77840
PHONE: 979-775-9595

HONE: 979-775-9595
WWW.KIMLEY-HORN.COM