

Brooke T. Paup, *Chairwoman*
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Kelly Keel, *Executive Director*



Garrett T. Arthur, *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 26, 2025

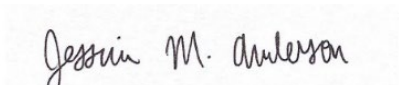
Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

RE: **IN THE MATTER OF THE APPLICATION BY SL ENERGY POWER
PLANT I, LLC FOR AIR PERMIT NOS. 177380, PSDTX1650, AND
GHGPSDTX244
TCEQ DOCKET NO. 2025-1310-AIR**

Dear Ms. Gharis:

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

Sincerely,


Jessica M. Anderson, Attorney
Assistant Public Interest Counsel

cc: Mailing List

DOCKET NO. 2025-1310-AIR

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

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

To the Members of the Texas Commission on Environmental Quality:

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

I. INTRODUCTION

A. Summary of Position

Before the Commission is an application by SL Energy Power Plant I, LLC (Applicant) for a New Source Review (NSR) Authorization under Texas Clean Air Act (TCAA) § 382.0518 to authorize the construction of a natural gas-fired turbine power plant. The Commission received several hearing requests and requests for reconsideration. For the reasons stated herein, OPIC respectfully recommends the Commission find that Move the Gas Plant (MTGP) and Brian Dickey are affected persons and further recommends that the Commission grant their hearing requests. Further, OPIC recommends the Commission deny all pending requests for reconsideration.

B. Description of Application and Facility

SL Energy Power Plant I, LLC applied to the TCEQ for a New Source Review Authorization under TCAA § 382.0518, which would authorize the construction of a new facility that may emit air contaminants. The proposed facility would be located at the following driving directions: from Lexington head west on Farm-to-Market Road 112/Farm-to-Market Road 696 West for 1.1 miles. Turn left onto Farm-to-Market Road 696 West and travel 10.4 miles. Turn right on County Road 306 and travel 1.6 miles. Take a slight right to stay on County Road 306 and travel 0.8 miles to the site in Lexington, Lee County. Contaminants authorized under this permit would include carbon monoxide, hazardous air pollutants (HAPs), nitrogen oxides, volatile organic compounds, particulate matter, including particulate matter with diameters of 10 microns or less and 2.5 microns or less, sulfur dioxide, and sulfuric acid mist. The proposed facility would also emit greenhouse gases.

C. Procedural Background

Before work begins on the construction of a new facility that may emit air contaminants, the person planning the construction must obtain an authorization from the Commission. This permit application is for an initial issuance of Air Quality Permit Number 177380, Prevention of Significant Deterioration Permit Number PSDTX1650, and Greenhouse Gas Permit Number GHGPSDTX244.

The permit application was received on August 29, 2024, and declared administratively complete on September 4, 2024. The Notice of Receipt and Intent to Obtain an Air Quality Permit for this permit application was published

in English on September 12, 2024 in the *Austin-American Statesman* and in Spanish on September 17, 2024 in *La Prensa Comunidad*. The Notice of Application and Preliminary Decision for Air Quality Permits was published in English on March 20, 2025 in the *Austin-American Statesman* and in Spanish on March 19, 2025 in *La Prensa Comunidad*. The notice of public meeting was mailed on March 21, 2025. A public meeting was held on April 24, 2025 at the American Legion Hall Post 6 in Lexington. The public comment period ended on April 24, 2025. The Executive Director's (ED) Response to Comments (RTC) was mailed on July 24, 2025. The deadline for filing requests for a contested case hearing and requests for reconsideration of the ED's decision was August 25, 2025.

II. APPLICABLE LAW

A. Hearing Requests

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

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

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;

- (2) identify the requestor's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised by the requestor during the public comment period and that are the basis of the hearing request. To facilitate the Commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the ED's responses to the requestor's comments that the requestor disputes, the factual basis of the dispute, and list any disputed issues of law; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

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

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person;
- (6) for a hearing request on an application filed on or after September 1, 2015, whether the requestor timely submitted comments on the application that were not withdrawn; and
- (7) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

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

- (1) the merits of the underlying application and supporting documentation in the administrative record, including whether the application meets the requirements for permit issuance;
- (2) the analysis and opinions of the executive director; and
- (3) any other expert reports, affidavits, opinions, or data submitted by the executive director, the applicant, or hearing requestor.

30 TAC § 55.203(d).

Under 30 TAC § 55.205(b), a hearing request by 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.

Under 30 TAC § 55.211(c)(2)(A)(ii), for an application filed on or after September 1, 2015, the Commission must grant a hearing request made by an affected person if the request raises disputed issues of fact that were raised by the affected person during the comment period, that were not withdrawn by filing a withdrawal letter with the Chief Clerk prior to the filing of the ED's RTC, and that are relevant and material to the Commission's decision on the application.

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

B. Requests for Reconsideration

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

III. ANALYSIS OF HEARING REQUESTS

A. Whether the requestors are affected persons

Withdrawn Requests

The Commission received hearing requests from Judge Frank Malinak III, Michele G. Ganges, Donna Westbrook, Blake Jirasek, and Kourtney Jirasek, all of which were subsequently withdrawn. OPIC therefore did not consider these requests for referral to a contested case hearing.

Move the Gas Plant (MTGP)

Eric Allmon submitted timely comments and hearing requests on behalf of Move the Gas Plant (MTGP). MTGP is a community membership organization based in Lexington and dedicated to protecting its community and its members' interests from the harmful effects on air quality that could be caused by the proposed plant. For these reasons, OPIC finds that MTGP's stated purposes are germane to the interests it seeks to protect.

In order for an association's hearing request to be granted, the request must identify one or more members, by name and physical address, that would otherwise have standing in their own right. This request asserts that many MTGP members reside in close proximity to the proposed site and have personal justiciable interests that are not common to the general public. MTGP's request identified several individuals who may have standing to request a hearing in their own right.

First, the request identified Trish Siler. According to the request, Ms. Siler owns 10 acres of property that is located within one mile of the proposed plant site. This proximity is reiterated on the ED's map, which indicates that Ms. Siler's property is 0.98 miles from the facility point. MTGP's request states that Ms. Siler is concerned about the proposed facility's effect on human health and animal life, as well as recreation, use and enjoyment of property, and air quality.

Second, the request identified Dr. Rachel Cain Bailey. According to the request, Dr. Bailey owns approximately 420 acres of ranchland that are located within one mile of the proposed plant site. This proximity is reiterated on the ED's map, which indicates that Dr. Bailey's property is 0.73 miles from the facility point. MTGP's request states that Dr. Bailey is concerned about the proposed facility's effect on recreation, animal life, plant life, human health, use and enjoyment of property, and air quality.

Third, the request identified Julie and Kevin Drake. According to the request, the Drakes own and reside on 10 acres of property located within one mile of the proposed plant site. This proximity is reiterated on the ED's map, which indicates that the Drakes' property is 0.96 miles from the facility point. MTGP's request states that the Drakes are concerned about the proposed facility's effect on animal life, recreation, human health, use and enjoyment of property, and air quality.

Fourth, the request identified Tonya and Tim Leslie. According to the request, the Leslies own and reside on 10 acres of property located within one mile of the proposed plant site. This proximity is reiterated on the ED's map,

which indicates that the Leslie's property is 0.87 miles from the facility point. MTGP's request states that the Leslies are concerned about animal life, recreation, use and enjoyment of property, and air quality.

Fifth, the request identified Hugh Brown. According to the request, Mr. Brown owns and resides on 15 acres within close proximity to the proposed plant site. This proximity is reiterated on the ED's map, which indicates that Mr. Brown's property is 1.70 miles from the facility point. MTGP's request states that Mr. Brown is concerned about animal life, human health, use and enjoyment of property, and air quality.

Sixth, the request identified Susan and William Davis. According to the request, the Davises own and reside on 68 acres within close proximity to the proposed plant site. This proximity is reiterated on the ED's map, which indicates that the Davises' property is 2.02 miles from the facility point. MTGP's request states that the Davises are concerned about recreation, animal life, human health, use and enjoyment of property, and air quality.

Seventh, the request identified Brian Dickey and his wife, Heidi Graham. According to the request, they own and reside on two tracts of land located within one mile of the proposed plant site. This proximity is reiterated on the ED's map, which indicates that their property is 1.11 miles from the facility point. MTGP's request states that they are concerned about human health, plant life, animal life, recreation, use and enjoyment of property, and air quality.

Eighth, the request identified Lucia Dodson. According to the request, Ms. Dodson owns and resides on 10.5 acres located within one mile of the proposed

plant site. This proximity is reiterated on the ED's map, which indicates that Ms. Dodson's property is 1.05 miles from the proposed plant site. MTGP's request states that Ms. Dodson is concerned about recreation, animal life, human health, use and enjoyment of property, and air quality.

The hearing request raised concerns regarding air quality, human health, recreation, animal life, plant life, exemptions for periods of startup, nonattainment, BACT, the emission limits associated with 30 TAC § 111.153(c), the adequacy of the provided modeling data, and use and enjoyment of property.

While many of the concerns raised by MTGP are protected by the law under which this application will be considered, a reasonable relationship must exist between those interests and the regulation of emissions under the permit. As required for group standing under 30 TAC § 55.205, MTGP submitted timely comments; the interests the group seeks to protect are germane to their stated purpose; neither the claim asserted nor the relief requested requires the participation of individual members; and the hearing request identifies members of the group that would otherwise have standing to request a hearing in their own right. Given the proximity of the proposed facility to the residences of several of the member individuals, the fact that MTGP's concerns are specific and protected by the law under which this application will be considered, and a reasonable relationship exists between the concerns and the regulation of this facility, OPIC finds that one or more members of MTGP has a personal justiciable interest in this matter. Therefore, MTGP qualifies as an affected person.

Brian Dickey

The Commission received timely comments and a hearing request from Brian Dickey on behalf of him and his wife, Heidi Graham. In his request, Mr. Dickey indicated that, according to the application, his home is fewer than 3,000 feet from the proposed power plant site and that his property boundary is even closer to the Applicant's property boundary. His proximity is reiterated by the ED's map, which indicates that Mr. Dickey's property is 1.11 miles from the facility point. Mr. Dickey articulated his general opposition to the facility as well as his concerns about air quality, nonattainment, human health, plant and animal life, endangered species, application completeness and accuracy, acid rain, water quality and usage, traffic, noise and light pollution, use and enjoyment of property, and property values. Some of these interests are protected by the law under which this application will be considered. *See* 30 TAC § 55.203(c)(1). Because of Mr. Dickey's proximity to the proposed facility, a reasonable relationship exists between the interests he seeks to protect and the Applicant's regulated activity—a relevant factor under 30 TAC § 55.201(c)(3). Further, the requestor's proximity increases the likelihood that the regulated activity will impact their health, safety, use of property, and use of the impacted natural resource. *See* 30 TAC § 55.203(c)(4)-(5). Given his relevant concerns and proximity, OPIC finds that Mr. Dickey has demonstrated that he would be affected by the application in a way not common to members of the general public as required by 30 TAC § 55.203(a). Therefore, OPIC recommends that the Commission find that Brian Dickey is an affected person.

B. Which issues raised in the hearing requests are disputed

The affected requestors raised the following disputed issues:

1. Whether the draft permit is adequately protective of air quality.
2. Whether the draft permit is adequately protective of human health.
3. Whether the draft permit is adequately protective of plant and animal life, including endangered species.
4. Whether the draft permit is adequately protective of recreational uses.
5. Whether the draft permit allows for indeterminate exemptions for periods of startup.
6. Whether the draft permit adequately considers potential nonattainment issues.
7. Whether the draft permit adequately incorporates BACT requirements.
8. Whether the draft permit adequately considers the emission limits associated with 30 TAC § 111.153(c).
9. Whether the draft permit's modeling data is adequate.
10. Whether the application was complete and accurate.
11. Whether the draft permit is adequately protective of use and enjoyment of property.
12. Whether the draft permit is adequately protective against acid rain.
13. Whether the draft permit is adequately protective of water quality and usage.
14. Whether the draft permit is adequately protective against traffic.
15. Whether the draft permit is adequately protective against noise and light pollution.
16. Whether the draft permit is adequately protective of property values.

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

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

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

Issues No. 1-16 in Section III.B. were specifically raised by the affected requestors during the public comment period.

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

While some hearing requests were withdrawn, the remaining hearing requests are not based on any withdrawn comments or requests. Therefore, the hearing requests are not based on issues raised in withdrawn public comments.

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

The hearing requests raised some issues that are relevant and material to the Commission's decision under the requirements of 30 TAC §§ 55.201(d)(4)(B) and 55.211(c)(2)(A)(ii). To refer an issue to the State Office of Administrative Hearings, the Commission must find that the issue is relevant and material to the Commission's decision to issue or deny the permit. Relevant and material issues are those governed by the substantive law under which the permit is to be issued. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-51 (1986).

Air Quality, Human Health, Plant and Animal Life, and Recreation

Requestors articulated concerns about air quality as it relates to human health, as well as plant and animal life and recreation. Under the Texas Clean Air Act, the Commission may issue this permit only if it finds no indication that the emissions from the facility will contravene the intent of the TCAA, including protection of the public's health and physical property. TCAA § 382.0518(b)(2). Further, the purpose of the TCAA is to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property. TCAA § 382.002(a). Additionally, Applicant's proposed emissions must meet the secondary National Ambient Air Quality Standards (NAAQS), which provide public welfare protection, including protection against damage to animals, crops, vegetation, and buildings. Therefore, Issues No. 1-4 are relevant and material to the Commission's decision regarding this application.

Nonattainment

Requestors expressed concerns that emissions from this proposed facility could result in a nonattainment designation. The county where the facility is proposed to be located is currently designated as being in attainment or unclassifiable for all pollutants. Additionally, surrounding counties are also currently designated as being in attainment or unclassifiable for all pollutants. An impact analysis was conducted to determine whether this project will cause

or contribute to an exceedance of the NAAQS. Therefore, Issue No. 6 is relevant and material.

BACT

Under the Texas Clean Air Act, Applicant is required to use BACT. TCAA § 382.0518(b)(1). Therefore, Issue No. 7 regarding BACT analysis and the use of BACT is relevant and material to the Commission's decision on this application.

Application Accuracy Including Indeterminate Exemptions for Periods of Startup, Emission Limits, and Modeling Data

Requestors raised concerns about the application's accuracy, including the accuracy of the modeling data and a permit term regarding an indefinite period of exemption from application requirements without regard for the time period feasibly necessary for startup to be achieved, which could in turn exempt emissions which should be subject to control. Additionally, the requestor raised concerns about the exclusion of the emission limits codified in 30 TAC § 111.153(c), which requires that emissions from a gas fuel-fired steam generator with a heat input greater than 2,500 million British thermal units (Btu) per hour may not exceed 0.1 pound of total suspended particulate per million Btu averaged over a two-hour period. Special conditions have been included as part of the proposed permit to address this emission limitations issue. TCEQ rules require that if an applicant becomes aware that it failed to submit relevant facts or submitted incorrect information in a permit application, the applicant is required to promptly submit such facts and information. Additionally, Applicant is required to submit all plans and specifications necessary to determine if the

facility or source will comply with applicable federal and state air control statutes, rules, and regulations, as well as the intent of the TCAA. TCAA § 382.0515(2). Therefore, Issues No. 5, 8, 9, and 10 are relevant and material to the Commission's decision regarding this application and are appropriate for referral to SOAH.

Use and Enjoyment of Property

Requestors articulated concerns about use and enjoyment of their property. Under 30 TAC § 101.4, a discharge of air contaminants cannot interfere with the normal use and enjoyment of animal life, vegetation, or property. Therefore Issue No. 11 is relevant and material to the Commission's decision regarding this application.

Acid Rain

A requestor articulated concerns about acid rain as it relates to the proposed facility. Acid rain requirements are addressed through the Federal Acid Rain Program. The requirement to obtain an Acid Rain Permit is independent of the requirement to obtain a New Source Review permit. Therefore Issue No. 12 is not relevant and material to the Commission's decision regarding this application.

Water Quality and Usage

Water quality and usage fall outside of the scope of review of this application for an air permit. Therefore, Issue No. 13 is not relevant and material to the decision on this application.

Traffic, Noise Pollution, and Light Pollution

Requestors raised concerns about increased traffic and road use, as well as noise and light pollution. TCEQ does not have jurisdiction to consider traffic, road safety, or road repair costs when determining whether to approve or deny an air permit application. Further, the TCEQ is prohibited from regulating roads per TCAA § 382.003(6), which excludes roads from the definition of “facility.” Additionally, TCEQ does not have jurisdiction to consider noise or light pollution when evaluating an air quality permit application and determining whether to approve or deny an application. Therefore, Issues No. 14 and 15 are not relevant and material to the Commission’s decision regarding this application.

Property Values

The Texas Legislature, which establishes the jurisdiction of TCEQ, has not given the Commission the authority to consider property values when deciding whether to issue an air permit. Given that this concern falls outside of TCEQ’s jurisdiction when determining whether to grant an air permit application, Issue No. 16 is therefore not relevant and material to the Commission’s decision regarding this application.

G. Maximum expected duration for the contested case hearing

Commission rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that, for applications filed on or after September 1,

2015, the administrative law judge must conclude the hearing and provide a proposal for decision by the 180th day after the first day of the preliminary hearing, or a date specified by the Commission, whichever is earlier. 30 TAC § 50.115(d)(2). To assist the Commission in setting a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(e)(7), OPIC estimates that the maximum expected duration of a hearing on this Application would be 180 days from the first date of the preliminary hearing until the proposal for decision is issued.

IV. REQUESTS FOR RECONSIDERATION

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

The Commission received requests for reconsideration from Brian Dickey, Rebecca Green, and Amy Magnuson. Mr. Dickey's request reiterated the concerns expressed in his comments and hearing request. Additionally, Mr. Dickey raised issues related to the Applicant's land ownership, existing unauthorized burning activities taking place on the proposed site, the potential existence of an unauthorized public water system on the property, the use of air monitors, and BACT. Ms. Green's request articulated concerns about site selection, detrimental

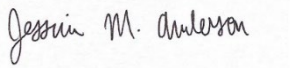
effects to the environment, and traffic. Ms. Magnuson's request articulated concerns about air quality and pollution, human health, and traffic. While OPIC notes that many of these concerns are relevant and material to the Commission's decision on this application, a record establishing the evidentiary basis for reconsidering the ED's decision based on these issues would be needed to recommend that the request for reconsideration be granted. At this time, OPIC is recommending a contested case hearing on the issues discussed in Section III.B, but prior to development of an evidentiary record, OPIC cannot recommend reversal of the ED's decision. Therefore, OPIC respectfully recommends denial of all pending requests for reconsideration.

V. CONCLUSION

Having found that Move the Gas Plant and Brian Dickey qualify as affected persons in this matter, OPIC respectfully recommends the Commission grant their hearing requests and refer Issues No. 1-11 specified in Section III.B for a contested case hearing at SOAH with a maximum duration of 180 days. OPIC further recommends the Commission deny the pending requests for reconsideration.

Respectfully submitted,

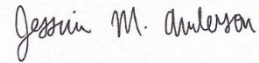
Garrett T. Arthur
Public Interest Counsel

By: 

Jessica M. Anderson
Assistant Public Interest Counsel
State Bar No. 24131226
P.O. Box 13087, MC 103
Austin, Texas 78711-3087
(512) 239-6823

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2025, the original of the Office of Public Interest Counsel's Response to Requests for Hearing and Requests for Reconsideration was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

A handwritten signature in cursive script that reads "Jessica M. Anderson". The signature is written in black ink on a light-colored background.

Jessica M. Anderson

MAILING LIST
SL ENERGY POWER PLANT I, LLC
TCEQ DOCKET NO. 2025-1310-AIR

FOR THE APPLICANT

via electronic mail:

Benjamin Rhem
Peter Wahl
Alisha Adams
Jackson Walker LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
brhem@jw.com

Tommy Hodges, Chief Operating Officer
SL Energy Power Plant I, LLC
2100 Ross Avenue, Suite 895
Dallas, Texas 75201
tommyh@slenergyco.com

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Elizabeth Black, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0600 Fax: 512/239-0606
elizabeth.black@tceq.texas.gov

Huy Pham, Technical Staff
Texas Commission on Environmental
Quality
Air Permits Division MC-163
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-1358 Fax: 512/239-1400
huy.pham@tceq.texas.gov

Ryan Vise, Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-4000 Fax: 512/239-5678
pep@tceq.texas.gov

FOR ALTERNATIVE DISPUTE

RESOLUTION

via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental
Quality
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-0687 Fax: 512/239-4015
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK

via eFiling:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: 512/239-3300 Fax: 512/239-3311
<https://www14.tceq.texas.gov/epic/eFiling/>

REQUESTER(S):

Eric Allmon
Perales, Allmon & Ice, PC
1206 San Antonio Street
Austin, Texas 78701

Brian David Dickey
1161 Private Road 3063
Lexington, Texas 78947

Rebecca Green
Attorneys of Texas Title, Inc.
1757 County Road 312
Thrall, Texas 76578

Amy Magnuson
5146 West FM 696
Lexington, Texas 78947