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SOAH DOCKET NO. 582-23-10368
TCEQ DOCKET NO. 2022-1731-MWD

APPLICATION BY	§	BEFORE THE STATE OFFICE
R040062, LP	§	
FOR	§	OF
TPDES PERMIT NO. WQ0016008001	§	ADMINISTRATIVE HEARING

APPLICANT'S RESPONSE TO CLOSING STATEMENTS

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE

COMES NOW, R040062, LP ("R040062" or "Applicant") and files its Response to Closing Statements, and in support thereof would show the following:

I. SUMMARY

Protestant has identified nothing in its closing argument that suggests the Applicant, Commission Staff, and the Office of Public Interest Counsel are all incorrect in their conclusion that the draft permit meets all state and federal legal and technical requirements relating to the issuance of the permit. Accordingly, Applicant re-urges that the Administrative Law Judge ("ALJ") issue a Proposal for Decision ("PFD") recommending issuance of the draft permit without changes.

II. PROTESTANT'S ARGUMENT

In its Closing Statement Protestant offers two novel arguments to sidestep the fact the evidentiary record conclusively demonstrates the Applicant has met its burden of proof in establishing the draft permit meets all requirements. First, Protestant argues the Applicant failed to seek and secure Jonah's consent to provide service in accordance with TWC §13.044(c). Second, Protestant argues the ED and Applicant failed to conduct any analysis of whether an integrated area-wide wastewater collection, treatment, and disposal system for the area can be reasonably provided as reflected in TWC § 49.230. Both arguments require the ALJ to ignore the plain meaning of 30 TAC § 80.17(c), which provides that "the filing of the administrative record . . . establishes a prima facie demonstration that the executive director's draft permit **meets all state and federal legal and technical requirements**, and, if issued consistent with the executive director's draft permit, would protect human health and safety, the environment, and physical

property.” Protestants did not present any evidence rebutting Applicant’s prima facie demonstration. As such, Applicant’s burden of proof has been satisfied.

Further, in direct conflict with Protestant’s assertion (“Protestant asserts neither the Application, nor any supplemental documentation, evidence, or testimony address Applicant’s failure to obtain Jonah’s consent” (Protestant Closing at p. 4)), Applicant’s witness David Tuckfield explained why Protestant’s position on the first argument conflicts with the requirements relating to regionalization. Specifically, Mr. Tuckfield testified, consistent with the ED’s witnesses, that “[t]he question to be addressed is whether there is a wastewater treatment facility or collection system within three miles of the proposed facility.” App. Ex. 1 at 12:28-13:4. He further confirmed that the regionalization inquiry in this application “deals with wastewater, not water.” App. Ex. 1 at 19:14-21. Mr. Tuckfield further noted the Commission’s decision in the AIR-W application, in which the Commission deleted the proposed finding of fact relating to Jonah as “an established political subdivision that provides water [as opposed to wastewater] service.” App. Ex. 1 at 19:15-20:5. Protestant’s position that the draft permit is defective because Applicant failed to obtain Jonah’s consent is without legal support and the evidence presented fully supports Applicant’s position, which is consistent with the position espoused by the ED and OPIC.

Protestant’s second argument is that Applicant’s regionalization demonstration is incomplete. Again, Applicant established its prima facie demonstration that it had, in fact established a complete regionalization demonstration. Instead of presenting evidence rebutting Applicant’s prima facie demonstration, Protestant argues that the prima facie demonstration itself is inadequate. Its position is that because the ED and Applicant declined to consider the “area-wide wastewater treatment” analysis under TWC § 49.230, the prima facie demonstration must fail. That is an incorrect interpretation of the law. As confirmed by both Applicant’s and the ED’s witnesses: (1) the TWC § 49.230 analysis is not relevant to regionalization; and (2) the draft permit satisfies all prerequisites of regionalization. Protestant offers no support for its position that TWC § 49.230 is a prerequisite for regionalization. Protestant seeks to install a round peg in a square hole in introducing TWC § 49.230 into the regionalization requirement.

III. CONCLUSION

The record establishes the draft permit meets all state and federal legal and technical requirements relating to the issuance of the permit. Protestant’s Closing Argument did not introduce

any argument based on the record that would call that conclusion into question. Accordingly, Applicant respectfully re-urges that the ALJ issue a PFD recommending that the TCEQ issue the draft permit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 25, 2023, a true and accurate copy of the foregoing document has been served on the following counsel electronically through an electronic filing manager or by email.


Peter T. Gregg

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Dina Dreifuerst on behalf of Peter Gregg

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Filing Code Description: Rebuttal/Closing Arguments

Filing Description: Applicant's Response to Closing Statements

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Dina Dreifuerst on behalf of Peter Gregg

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