

RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

SURFACE MINING DOCKET NO. C12-0020-SC-52-F

**APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
FOR PHASE I RELEASE OF RECLAMATION OBLIGATIONS
FOR 274.5 ACRES OF ITS SURFACE COAL MINING OPERATIONS
FOR PERMIT NO. 52, SAN MIGUEL C-AREA MINE, ATASCOSA COUNTY, TEXAS**

**ORDER APPROVING PHASE I RELEASE
OF RECLAMATION OBLIGATIONS FOR 274.5 ACRES**

STATEMENT OF THE CASE

San Miguel Electric Cooperative, Inc. (SMECI), P.O. Box 280, Jourdanton, Texas 78026, has applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division, for Phase I (backfilling, regrading, and drainage control) release of reclamation obligations for 274.5 acres. Staff of the Surface Mining and Reclamation Division has reviewed the request for release of the acreage located within Permit No. 52A, San Miguel C-Area Mine. The permit area is located approximately 50 miles south of San Antonio, sixteen miles southeast of Jourdanton, Texas and six miles east of Christine on County Road 140. SMECI does not currently request a reduction in the amount of the approved reclamation bond. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ANN. CH. 12 (West 2012) (Regulations).

Permit No. 52, issued by Order dated April 28, 2008 (Docket C7-0008-SC-00-A) and renewed by Order dated April 9, 2012 (Docket C12-0007-SC-52-C) currently authorizes surface mining operations at SMECI's San Miguel C-Area Mine, located within Atascosa County, Texas. The permit area includes approximately 4,444-acres. The only parties to the proceeding

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are SMECI and the Commission's Surface Mining and Reclamation Division (SMRD or Staff). Copies of the application were filed in the required county and Commission offices, and notices were mailed to landowners and adjoining landowners of the area requested for release. No comments were made following public notice and mailed notice, and no public hearing was requested. Additionally, only SMECI personnel attended the inspection conducted by Staff.

Based on the record in this docket including the application and, Staff review the examiner recommends the application for Phase I release should be approved for all 274.5 requested acres, as set out in the Findings of Fact and Conclusions of Law. There remain no outstanding issues between the parties.

FINDINGS OF FACT

1. By letter dated February 1, 2012, San Miguel Electric Cooperative Inc. (SMECI) filed its initial request for Phase I release of reclamation requirements (backfilling, regrading, and drainage control) for 274.5 acres, located within the 4,444-acre permit area of the San Miguel C-Area Mine in Atascosa County, Texas, Permit No. 52A.
2. No filing fee is required. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. CH. 134 (Vernon Supp. 2012) (Act), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2012) (Regulations). The application was properly certified in accordance with §12.312(a)(3) of the Regulations.
3. SMECI submitted the bondrelease application on February 1, 2012. At that time, the minimum bond amount was based on an area-bond calculation. The release application included calculations for reduction amounts based on this area-bond scenario. The Permit No. 52A minimum bond amount is now based on the worst-case pit method of

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reclamation cost calculation. This change was initially approved with Revision No. 22 on February 14, 2012 in Permit No. 52, and has since been updated with the approval of Revision No. 28 on April 5, 2013 in Permit No. 52A. This revision has resulted in the release application being evaluated by Staff based on the current requirements of a worst-case pit reclamation cost calculation.

4. The SMRD approved the most recent bond map approved April 5, 2013. The approved reclamation cost estimate is \$26,594,024. The current \$30,000,000 bond was accepted by Order dated March 22, 2011. The referenced \$26,594,024 reclamation cost estimate is based on the worst-case pit reclamation cost calculation method, which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times. No reduction in the required bond amount is recommended for Phase I release based on the method of bonding (i.e., Staff's reclamation cost estimate does not change). In this application, SMECI does not seek an adjustment to the currently held bond.
5. The area proposed for release is detailed in the Staff Evaluation, Attachment I and Appendix I (Location Map), Attachment III (Staff Inspection Report), and Appendix IV (Photographs and Photograph Location Map.) The application, photographic evidence, Staff Inspection Report and Evaluation provide support for release of Phase I reclamation obligations.
6. Copies of the application were filed for public review in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas and in the office of the Atascosa County Clerk, Jourdanton, Texas.

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7. Publication of notice of application occurred once each week for four consecutive weeks in the *Pleasanton Express*, a newspaper of general circulation in Atascosa County, Texas. The newspaper is in the locality of the surface mining and reclamation operations. The publications in the newspaper occurred on July 25, August 1, 8 and 15, 2012. The notice of application contains all information required by §134.129 of the Act and §12.312(a) of the Regulations for notice of application for release of Phase I reclamation obligations for backfilling, regrading, and drainage control. The notice is adequate notification of the request for release. The notice included the name of the permittee, the location of the land affected, the approximate number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments should be sent. The notice included a map showing sufficient notice of the boundaries of the area requested for release.
8. The Director, SMRD, determined the application to be administratively complete by letter dated September 25, 2012. The Staff's evaluation document was filed with the Hearings Division by letter dated December 20, 2012. The Technical Evaluation and inspection report indicated that SMECI had met all requirements for Phase I release of the full 274.5 acres identified in the application
9. The area of the permit requested for release is located in the C Mine Area, and is comprised of a single parcel of land within the permit area and is located approximately

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six (6) miles east of Christine, Texas, and also approximately sixteen (16) miles southeast of Jourdanton, Texas on County Road 140. The approved postmining land use is pastureland.

10. SMECI provided copies of letters of notification of the application for release to property owners, owners of leaseholds or other property interests, and adjoining property owners in accordance with §12.312(a)(2) of the Regulations. By letter dated July 18, 2012, SMECI submitted to the Commission copies of the letters to landowners and/or adjoining landowners, and holders of other property interests, and the following: the Atascosa County Judge, Atascosa County Clerk, Nueces River Authority, Natural Resources Conservation Service in Tilden, Texas, Natural Resources Conservation Service in, Pleasanton, Texas, Evergreen Underwater Conservation District, Texas General Land Office, Environmental Protection Agency, Texas Commission on Environmental Quality, Atascosa County Soil and Water Conservation District, and San Miguel Electric Cooperative, Inc., as required by §12.312(a)(2) of the “Coal Mining Regulations” and §134.129 of the Surface Coal Mining and Reclamation Act and as indicated in the application. The area requested for release is not located within the territorial boundaries of any other municipality that would be notified pursuant to §12.313(c) of the Regulations.
11. No adverse comments or written objections were filed regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
12. SMRD’s Inspection and Enforcement Section mailed letters dated February 21, 2012 to SMECI, landowners, holders of other interests within the area requested for release, and

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the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM), notifying them of the date scheduled for inspection, March 6, 2012, and the opportunity to participate in the inspection in accordance with §12.312(a)(2). The Staff sent an original notice by certified mail of the application to the Atascosa County Judge by letter dated July 12, 2012 that contained errors; Staff sent a corrected notice by certified mail of the application to the Atascosa County Judge by letter dated August 3, 2012 (Attachment II to Staff's inspection report) as required by the Act, §134.133.

13. The area requested for release was mined in 2009, and final grading was accomplished between 2009-2010. Routine monthly inspections of the reclamation work covering the proposed release area occurred from 2009 to the date of the inspection and have continued.
14. Based upon the application and Staff review in its Technical Evaluation Report, the acreages requested for release from Phase I reclamation obligations have met Phase I requirements for backfilling, regrading, and drainage control requirements as required by §12.313(a)(1) of the Regulations and may be approved for Phase I release.
15. The area requested for Phase I release have been backfilled and graded to approximate original contour, [§12.385(a)]. All highwalls and spoil piles were eliminated in accordance with §12.384(b)(1) of the Regulations, and suitable material was placed over the regraded spoil. No cut-and-fill terraces were constructed. Backfilled material has been placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land uses [§12.384(b)(2)]. Drainage patterns similar to premine drainage have been established. All area request for release meet Phase I release have been stabilized to control drainage and attendant potential erosion

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[(§12.389)]. Surfacewater from the reclaimed area flows through sedimentation ponds.

- (a). The area requested for release contain 58 soil-testing grids, and data provided by SMECI on October 18, 2010 and supplemental digital maps for this soils report were received by Staff on October 28, 2010. Staff approved SMECI's initial soils report on December 2, 2011. In its Technical Evaluation dated December 12, 2012, Staff determined that the northernmost corner of the proposed release area (found within grids CG-120, CG-125, CH-120 and CH-125), had no associated isopach data. All mined area, by definition, requires the removal of haulback and topsoil material and, in accordance with the approved soil-testing plan in Permit No. 52, an isopach map depicting haulback and topsoil replacement areas should be provided. SMECI's release application included a map, titled "Permit 52 274.5-Ac Phase 1 Bond Release Request Map." On this map, SMECI depicts the same area not having associated isopach data as having been previously mined. Staff notes this discrepancy but, because the postmine soil-testing data have not identified any problematic issues with this area, Staff finds that this small area has received satisfactory topsoil and subsoil replacement suitable for the proposed postmine land use.
- (b). According to the approved soil-testing plan (STP), a minimum of four feet of reconstructed native soil material is replaced on leveled spoil and allowed to settle. In a letter dated March 21, 2011, the Staff indicated that they were unable to make a finding that the top four feet had been reclaimed in accordance with the approved reclamation plan for the 58 grids because the map titled, Permit 52; 2010 Area C Haulback Replacement X-Sections, provided in the 2010 initial soil

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analysis report indicated that many areas had a haulback replacement thickness of less than 4 feet. He indicated that further investigation of this situation would be conducted by the Division's Inspection and Enforcement (I&E) Staff. In the inspection report dated April 4, 2011, I&E's Mr. Schlimgen and Mr. Englemann indicated that two samples were collected at Site C140-12 and C140-C in Area C. Because there was no visual indications of pyrite appearing in either sample, no chemical analysis was conducted by the Commission RCT on the samples. By letter dated April 7, 2011, SMECI indicated that the procedures used to generate the cross-sections were not accurate and that it had developed a plan to generate more representative cross-sections for future submittals. By letter dated June 13, 2011, SMECI submitted soil analytical results for the two samples (C140-12 and C140-C) in the C area collected by the Commission in the March 24, 2011, inspection. The results did not indicate the presence of pyritic sulfur in these two samples. The soil analysis report forms from Energy Labs Inc. include the signature of a qualified QC person. All pH values in both intervals are between 6.8 and 7.9, which fall within the statewide standards.

- (c). All proposed release areas must, as a prerequisite, be covered by satisfactory haulback data and initial soil monitoring data. SMECI's initial soil monitoring report, received by SMRD on October 18, 2010, did not indicate the acreage covered; however, Staff's final approval letter, dated December 2, 2011, indicates that the initial soil monitoring data was provided for 274.1 acres. SMECI's release application requests release on 274.5 acres. Staff determined that the reference to 274.1 acres was an internal error in calculation and 274.5 acres is, in

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- fact, the correct acreage for both the initial soil monitoring report and the release application.
- (d). There are no temporary or permanent diversions located in the area proposed for Phase I release of reclamation liability. [§12.341]
 - (e). There are no temporary or permanent impoundments located in the area requested for Phase I release. [§12.347(b)]. No sediment ponds are located within the area requested for release.
 - (f). The area proposed for Phase I release contains no permanent roads. [§12.400(f)]
 - (g). The area requested for Phase I release contains three erosion-control sediment ponds. Surface water runoff from the proposed Phase I release area will flow through Sediment ponds 29C, 37C and 38C. [§12.344].
16. The area proposed for Phase I release does not contain any area approved for disposal of non-coal waste. [§12.375]
17. There is no prime farmland located in the area proposed for Phase I release for which specific soil reconstruction standards would apply. [§12.624]
18. The area requested for Phase I release has been marked in the field with permanent boundary markers to distinguish the area from active mining and reclamation areas. Clear identification of this area will assist future inspection of this area and adjacent areas by field office staff.
19. SMECI and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment. Finally, the matter has been posted for Commission consideration.

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20. The 274.5 acres are recommended for Phase I release of reclamation obligations, which include backfilling, regrading, and drainage control by Staff.

CONCLUSIONS OF LAW

1. Proper notice was provided for this request for release of reclamation obligations.
2. No public hearing was requested, and none is warranted.
3. SMECI has complied with all applicable provisions of the Act and Regulations regarding notice for jurisdiction to attach to allow the Commission to consider this matter.
4. SMECI has met all requirements for Phase I release for 274.5 acres within the San Miguel C-Area Mine.
5. The Commission may approve a release of Phase I reclamation obligations for the 274.5 acres as set out in the above Findings of Fact and Conclusions of Law.
6. Pursuant to the Commission's authority for inspection and evaluation of release applications, the Commission may order that SMECI effectively mark the area approved for release so that Staff mapping and tracking will be efficient.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS

that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that Phase I release of reclamation obligations is approved for 274.5 acres as set out in the Findings of Fact and Conclusions of Law;

IT IS FURTHER ORDERED that there is no eligible bond reduction amount;

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED that all area released from reclamation obligations shall

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be clearly marked in the field with permanent boundary markers to distinguish these areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required from time to time as reclamation costs change; and

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED AT AUSTIN, TEXAS, on September 10, 2013.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN BARRY T. SMITHERMAN



COMMISSIONER DAVID PORTER



COMMISSIONER CHRISTI CRADDICK

ATTEST:



Secretary, Railroad Commission of Texas

