

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SMRD DOCKET No. C14-0014-SC-38-E, TEXAS MUNICIPAL POWER AGENCY  
APPLICATION FOR ACCEPTANCE OF REPLACEMENT SELF-BOND  
AND REPLACEMENT COLLATERAL BOND AND AMENDED LETTER OF CREDIT (AMENDMENT No. 9)  
PERMIT NO. 38D, GIBBONS CREEK LIGNITE MINE V, GRIMES COUNTY, TEXAS**

**ORDER ACCEPTING REPLACEMENT SELF-BOND AND REPLACEMENT  
COLLATERAL BOND AND AMENDED LETTER OF CREDIT FOR PERMIT NO. 38D**

Statement of the Case

The Texas Municipal Power Agency (TMPA) operates the Gibbons Creek Lignite Mine V in Grimes County, Texas under Permit No. 38D. The permit area is currently bonded by a self-bond in the amount of \$12,700,000 and a collateral bond with irrevocable Amended and Restated Letter of Credit (LOC) No. NZS564257 reduced by Amendment No. 9 to the letter of credit issued by Wells Fargo Bank, N.A. in the amount of \$6,600,000 and an escrow account in the amount of \$600,000. TMPA filed an application for acceptance of a replacement self-bond and a replacement collateral bond and amended LOC (Amendment No. 9) to increase the self-bond from \$12,700,000 to \$13,500,000 and to decrease the collateral bond and letter of credit from \$13,500,000 to \$6,600,000. The proffered LOC was issued December 20, 2013, with a provision that the decreased amount would be effective April 14, 2014, the date of the expiration of the approved amended letter of credit (Amendment No. 8). The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2013) and the "Coal Mining Regulations," TEX. ADMIN. CODE Ch. 12 (West 2013).

The replacement self-bond and collateral bond and Amendment to LOC together are in an amount in excess of the most recently accepted Staff reclamation cost estimate. However, upon the effective date of the proffered amendment to LOC, the current self-bond with the newly effective LOC, were not in an amount equal to

or greater than the Staff's most recent estimate of reclamation costs. Upon an examination of the bonds and all other materials filed, the examiner indicated that there was a shortfall in the reclamation bonds, whereupon TMPA immediately submitted an escrow account agreement pursuant to §12.309(i) of the Coal Mining Regulations, to make up the difference. The escrow account agreement was approved by the Commission by Order dated May 6, 2014 and was funded. Upon Commission approval of the proffered bond documents and the proffered self-bond and collateral bond, the amount of the bonds, \$20,100,000 will be in excess of the Staff's reclamation cost estimate. The escrowed funds may then be returned to TMPA according to the terms of the escrow agreement. Based upon the Staff estimate, the application for acceptance of the replacement bonds and amended letter of credit, associated documents, and Staff legal and financial review, the Commission finds that the proffered self-bond and collateral bond with Amended and Restated LOC No. NZS564257 (Amendment No. 9) may be accepted in accordance with the terms of this Order and the escrowed funds returned to TMPA.

#### FINDINGS OF FACT

Based upon the evidence in the record, the Commission makes the following Findings of Fact:

1. Texas Municipal Power Agency (TMPA) is a municipal power agency created by concurrent ordinances adopted by the Cities of Bryan, Denton, Garland, and Greenville, Texas in 1975 that holds Permit No. 38D for the Gibbons Creek Lignite Mine V in Grimes County. Permit No. 38 was issued on August 5, 1991 for construction preliminary to mining. The permit was revised by the Commission as Permit No. 38A on April 13, 1992 to allow mining. Several revisions and renewals have been approved by the Commission. Portions of the permit area were mined or otherwise disturbed, and mining ended in 1996. The permit area is currently in reclamation.
2. The last Commission-approved performance bonds for Permit No. 38D, including supplemental security filed by TMPA and approved by the Commission by Order dated May 6, 2014 are made up of a self-bond

in the amount of \$12,700,000 and a collateral bond with LOC in the amount of \$6,600,000 (as amended by Amendment No. 9) issued by a California branch of Wells Fargo Bank, N.A., in San Leandro, California (Bank) providing bond coverage required for Permit No. 38D, that went into effect April 14, 2014 to reduce Amendment No. 8, and the approved escrow account in the amount of \$600,000 approved May 6, 2014. These amounts total \$19,900,000. By letter dated December 27, 2013, TMPA timely submitted the replacement self-bond in the amount of \$13,500,000 and the collateral bond, with Amended and Restated Letter of Credit (LOC) No. NZS564257 (Amendment No. 9) in the amount of \$6,600,000 for total proposed performance bonding of \$20,100,000 for Permit No. 38D and documentation relating to the bond and amended LOC to the Commission's Surface Mining and Reclamation Division. After review by Staff counsel dated January 30, 2014 and Staff request, TMPA supplemented the application by letter dated April 14, 2013 to provide an updated Wells Fargo Secretary's Certificate for the Bank officer signing the letter of credit. The proffered LOC carried an expiration date of April 14, 2014. By letter dated April 18, 2013, the Surface Mining and Reclamation Division (Staff) filed the replacement self-bond, collateral bond, and Amendment No. 9 to the LOC with the Hearings Division, along with the remainder of the bond materials filed by TMPA (Bond Package), the Staff attorney's legal review and the review by the financial services section. After review by the examiner and communication with the parties by the examiner by letters dated April 23 and April 25, 2014, TMPA also supplemented the application with the escrow agreement approved by the Commission on an emergency basis in that the current amended LOC No. NZS564257 (Amendment No. 9) went into effect when sent to the Commission according to its terms that provided an effective date of April 14, 2014 for a reduction in the amended LOC. After review by the examiner, TMPA subsequently supplemented its submittal with an escrow account funding in the amount of \$600,000 approved by the Commission on May 6, 2014 to cover a shortfall due to the date of the reduction of the amended LOC.

3. Additional materials were submitted pursuant to the examiner's requests dated April 23 and April 25,

2014, including TMPA's submittal dated May 6, 2014 of an updated original certificate of incumbency for the Bank officer Patrick Hennessey signing the collateral bond. Staff supplemented its filings for the docket by letter dated April 25, 2014 with the original certificates of incumbency provided by TMPA for the person signing the letter of credit and with replacement pages for the financial review to correct a discrepancy between the financial services memorandum that stated TMPA met the criterion for bond rating required by the Regulations and work pages attached to the memorandum that stated that TMPA failed the criterion for bond rating, and by letter dated April 28, 2014 with Staff's most recent reclamation cost estimate documents for Permit No. 38D.

4. TMPA submitted the proffered self-bond and collateral bond with amended letter of credit to increase the self-bond amount and to decrease the amount of the collateral bond and amended LOC. According to the terms of the amended LOC, it is irrevocable during its term as required by §12.309(g)(2) of the Regulations. The amended LOC states that it is to be considered a part of the original letter of credit and is to be attached thereto. TMPA did not provide an updated estimate of reclamation costs. Staff filed its estimate of reclamation costs to reclaim the permit area as a part of TMPA's Revision No. 14 approved administratively by letter dated July 31, 2013 based on disturbed acreage within the permit area as filed in that revision. Staff's estimate of reclamation costs was in the amount of \$19,873,359. This was administratively approved as the required bond amount, being in excess of TMPA's estimate, \$16,599,609. The administratively approved bond amount is a decrease from Staff's previous estimate of reclamation costs (\$25,849,410). As administratively approved, the Staff estimate of \$19,873,359 is the minimum bond amount required should a third party complete reclamation at the direction of the Commission in the event of forfeiture of the bond. Should the Commission approve the proffered bonds, the total amount of the proffered bonds (self-bond and collateral bond with amended LOC), \$20,100,000, will exceed the approved reclamation estimate.

5. The Commission finds that the amount of the proffered replacement self-bond and collateral bond with amended LOC will be sufficient to cover the costs of reclamation of the permit area should the Commission direct a third party to reclaim the permit area in the event of forfeiture. Upon approval of the bonds, the supplemental security escrow account in the amount of \$600,000 will no longer be needed and may be terminated, with the funds returned to TMPA in accordance with the terms of the agreement.
6. In the event that the approved reclamation plan is modified, the Commission will review the bond and amendment to the LOC for adequacy and, if necessary, will initiate a bond adjustment to conform to the modified plan [§12.307(c)].
7. The self-bond, collateral bond, and Amended and Restated LOC (Amendment No. 9) are on forms acceptable under §12.309 of the Regulations and §134.121 of the Act.
8. The Commission may accept a self-bond for a business or governmental entity when the conditions set out in §12.309(j)(2) are met. The self-bond meets requirements for acceptance of a self-bond from a business or governmental entity.
  - (a). The regulation requires that the applicant must designate a suitable agent to receive service of process in the state. Bob Kahn, TMPA's General Manager, is TMPA's agent for service of process, and he also signed the self-bond for TMPA. Documents that show the authorization for Mr. Kahn to act on behalf of TMPA have been filed with the Commission. TMPA filed a General Certificate providing a copy of the Rules and Regulations of Texas Municipal Power Agency that includes Article IV, Section 7, page 6 of 13, providing that the General Manager is authorized to execute reclamation bonds as well as other related documents (Exhibit 1) and an updated certificate of incumbency to show that Mr. Kahn held the position of General Manager

on the date he signed the bond (Exhibit 2) (Exhibit numbers refer to the Bond Package filed by TMPA).

- (b). TMPA has been in continuous operation for a period of not less than five years immediately preceding the date of application and has not been in bankruptcy proceedings during that time (Exhibit 1).
- (c). TMPA has submitted financial information in sufficient detail to show that TMPA meets one of the criteria for acceptance of self-bonding listed in §12.309(j)(2)(C). Meeting at least one of the criteria is a prerequisite for approval of self-bonding, in addition to meeting the requirement addressed in subsection (d) of this Finding of Fact (net worth requirement). TMPA meets the requirement set out in §12.309(j)(2)(C)(i): Staff financial review, as supplemented with corrected pages for its attachment, indicates that TMPA has a current rating for its most recent bond issuance of A or higher by Moody's Investor Service or Standard and Poor's Corporation. TMPA's rating by both Moody's Investor Service is "A2" and by Standard and Poor's is "A+" (financial review Exhibit 1).
- (d). Financial staff has reviewed TMPA's audited financial statements for TMPA's fiscal year ending September 30, 2013. Based on the review, as supplemented with corrected pages submitted by letter dated April 25, 2014 requested by the examiner's letter dated April 23, 2014, TMPA meets the requirement of Regulation §12.309(j)(4)(A) that its existing and proposed self-bonds must not total more than 25% of its tangible net worth. TMPA has no existing or proposed self-bonds other than the currently accepted bond and the proposed replacement self-bond proposed in this application. The amount of the proposed self-bond, \$13,500,000 is 24.89% of TMPA's tangible net worth in the United States, \$54,242,000, as reflected in the September 30, 2013 audited

financial statement. Pursuant to §12.309(j), TMPA must submit the next audited annual report no later than 90 days after the close of the fiscal year ending September 30, 2014.

9. Authorized persons for TMPA and for the issuing Bank signed the proffered collateral bond, and an authorized person for the Bank signed the LOC. An officer of the Bank who is authorized to execute bonds on behalf of the Bank, Patrick Hennessey, Senior Vice President, signed the bond. Bob Kahn, General Manager, TMPA, signed the bond for TMPA. Brian T. O'Connell, a Vice President of the Bank, signed the LOC for the Bank. Documents that show the authorization for the signatories to act on behalf of TMPA and the Bank on the date of signature have been filed with the Commission. For TMPA, these are the Certificate of Incumbency dated December 20, 2013 certifying the signing officers of TMPA and the General Certificate dated December 20, 2013 with a copy of TMPA's Agency Rules and Regulations, Article IV, Section VII, page 6, providing that TMPA'S General Manager is authorized to execute reclamation bonds and to execute agreements associated with the collateral supporting reclamation bonds, including letters of credit and reimbursement agreements. Documents that show the authorization for signatories to act on behalf of the Bank include: Assistant Secretary's Certificate dated November 13, 2013 with extract from Resolutions of Wells Fargo Bank, N.A., that the bank officer, Patrick Hennessey, is authorized to sign bonds for the Bank. The exhibit indicates that any Senior Vice President, although not authorized to sign letters of credit, is authorized to sign "bonds of indemnity" among other instruments. This exhibit was updated on May 6, 2014 to cover the date of signature by Mr. Patrick Hennessey, Senior Vice President of the Bank, who signed the bond on December 20, 2013. A secretary's certificate was also filed and updated by letter dated April 11, 2014 (received by the Commission April 14, 2014) certifying that Bryan T. O'Connell, Vice President of the Bank, is among officers authorized to sign letters of credit. Submitted documentation in the form of a Certificate of Corporate Existence from the Comptroller of the Currency, Administrator of National Banks, dated October 2, 2013, demonstrates that Wells Fargo Bank, N.A., is a bank authorized to do business in the

United States (Exhibit 7, Bond Package). This meets the requirement of §12.309(g)(1) of the Regulations that the issuer of an acceptable LOC must be a bank authorized to do business in Texas. The replacement collateral bond and amended LOC are in forms acceptable pursuant to §12.308(a)(2) and §12.309(g) of the Regulations and §134.121(a) of the Act and authorized persons have signed the documents.

10. TMPA's request for acceptance of the proffered replacement collateral bond and amended LOC is made pursuant to §134.127 of the Act and §12.307 of the Regulations.
11. The proffered amendment to the LOC is payable to the Commission as required by §12.309(g)(3) of the Regulations in part or in full on demand at the bank's office in San Leandro, California by payment of a draft on or before the Expiry Date drawn at sight on the Bank mentioning thereon the Letter of Credit No. NZS564257. The draft must be accompanied by the irrevocable standby letter of credit and amendments or a copy, and the Commission's signed and dated statement reading: "The undersigned, an authorized representative of the Railroad Commission of Texas hereby certifies that the amount drawn is due to us pursuant to the terms of 16 TAC Sec. 12.314." The Regulations, §12.314 provide for Commission forfeiture proceedings on bonds.
12. The proffered collateral bond will remain in effect until all reclamation requirements are met or the bond is replaced, and the amended LOC will remain in effect according to its terms, unless released or replaced by Commission Order. The proffered amended LOC states that drawings as of the effective date, April 14, 2014 may not exceed the amount of the LOC amendment, \$6,600,000. The proffered letter of credit carries an expiration date of April 14, 2015. The proffered LOC is decreased in amount according to the terms of the Amended and Restated LOC as of April 14, 2014; any demand for payment subsequent to April 14, 2014 and prior to the expiration of the LOC on April 14, 2014 may be in an amount up to \$6,600,000. The Amended and Restated LOC was effective and enforceable against the issuer when the



Commission received the amended LOC and is effective and enforceable against the issuer in the decreased amount of \$6,600,000, in accordance with the terms of the LOC, as of April 14, 2014 through April 14, 2015 and will remain effective, unless released or replaced, through the expiration date, April 15, 2015.

13. The replacement collateral bond provides a mechanism for the permittee to give prompt notice to the Commission of any notice received or action filed alleging the insolvency or bankruptcy of the Bank or which could result in suspension or revocation of the Bank's authority to do business, in compliance with §12.309(e) of the Regulations.
14. The Commission may adjust the amount of the required performance bond applicable to the permit area when the cost of reclamation changes [§12.307(a)]. Regulation §12.307(b) states that an applicant may apply for reduction of the amount of bond when it shows proof that the costs of reclamation have been reduced; Regulation §§12.307(a) and (d) uses text that an adjustment may be made when the cost of reclamation "changes." Bonds amounts may be reduced or increased when the cost of reclamation changes.
15. Although the amended LOC carries a term of approximately one year, the collateral for the bond is sufficient. This Order contains an ordering paragraph that is needed to ensure timely replacement of the collateral as set out in subparagraph (b) of this Finding of Fact.
  - (a). The Regulations at §12.306(a) require that the collateral bond itself must be in effect for the duration of the reclamation obligations on the affected lands; however, for letters of credit, the letter must be irrevocable during its term [§12.306(g)(2)]. No specific term is prescribed for the letter of credit by the Regulations, other than that it be irrevocable during its term.

- (b). The proffered LOC is payable to the Commission as required by §12.309(g)(3) of the Regulations in part or in full on demand and receipt from the Commission of a notice of forfeiture pursuant to the Regulations. Although the proffered LOC carries a term of approximately one year, the collateral for the bond is sufficient. The Commission has recognized that letters of credit have terms that are shorter than the period of reclamation liability on the bond. In rulemaking SMRD 1-07, §12.309(g)(2) was revised to adopt language included in its federal counterpart to ensure continuous bond coverage. According to revised §12.309(g)(2), effective November 12, 2007, a letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Commission if not replaced by another suitable bond or letter of credit at least 30 days before its expiration date. In this case, the amended LOC was submitted to the Commission and received by the Commission by letter dated December 27, 2013, and the amended LOC was dated December 20, 2013 and was effective according to its terms prior to the expiration date of the currently accepted LOC. A letter of credit is issued and becomes enforceable according to its terms when the issuer sends it to the beneficiary. The Commission received the amended LOC on December 27, 2013. The amended letter of credit was received in accordance with the previous Commission Order approving the current bonds and providing that a replacement bond and LOC be provided to the Commission no later than January 14, 2014.
- (c). Specific findings and ordering paragraphs are included to require the filing of replacement collateral with sufficient time for review and acceptance by the Commission prior to the expiration of existing collateral (the amended LOC). Due to the presence of a stated expiration date of the collateral and in order to maintain required bonding in a timely manner, the Commission finds that it is reasonable to require that TMPA file any replacement bond and

collateral required in a manner that will allow adequate time for review and determination by the Commission. The Commission finds that for orderly processing, review by Staff, and determination by the Commission of replacement bond instruments for the permit area to ensure reclamation, it is appropriate to require that TMPA file an extension to the LOC or otherwise request the initiation of processing materials to replace the bond instrument and collateral no later than January 15, 2015 (90 days prior to the expiration date) to provide for 60 days of review and adjustment of documents prior to the date the Commission must initiate forfeiture proceedings. Thirty days prior to the expiration date of April 14, 2015 is March 16, 2015; therefore, the Commission would need to initiate forfeiture proceedings no later than Monday, March 16, 2015. The Commission approves a date of January 15, 2015 (90 days prior to April 14, 2015) for the submittal of amended or replacement bond documents.

16. All documentation required by the Act and Regulations for the self-bond and collateral bond with LOC has been submitted.
17. With letters of credit that contain a specified effective date, it is reasonable to provide an additional mechanism to ensure that bonds that reduce the amount of bonding or do not increase the amount of bonding in a sufficient amount based on Staff's latest reclamation cost estimate are replaced, reviewed, and acted upon prior to or on the effective date of the change in amount of the letter of credit. The Commission approves the following additional mechanism: If a bond application or application for replacement of bond is filed with the Commission containing a letter of credit as collateral that either reduces the amount of bond or does not increase the amount of bond in at least the amount of Staff's latest reclamation cost estimate, and it has not been previously filed with the Hearings Division for docketing at least 30 days prior to the expiration date of the letter of credit whether all documents have been received or not, the Surface Mining and Reclamation Division shall send to the Hearings Division a request for a

show cause hearing pursuant to §1.47 of the Commission's "Practice and Procedure" rules no later than 30 days prior to the expiration date of the currently approved letter of credit, along with all documents that have been filed or prepared relevant to the application. This mechanism will allow the Hearings Division to determine whether to immediately schedule a show cause hearing or a prehearing conference to determine appropriate steps to ensure timely approval of the bond or replacement bond or other security.

18. Acceptance of the proffered self-bond and collateral bond with Amended and Restated LOC is not a bond release or a release of any reclamation obligations for which public notice would be required. The required public posting of Commission consideration of this application has occurred. The Staff, TMPA, and the Bank have been sent notice of the Commission's consideration of this matter.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the following Conclusions of Law are made:

1. All required notice for consideration of this matter has been provided in accordance with the Act, Regulations, and the Open Meetings Act, TEX.GOV'T CODE Ch.551 (Vernon Supp. 2013).
2. All requirements of the Act and the Regulations for acceptance of the proffered self-bond and collateral bond and Amended and Restated LOC (Amendment No. 9) have been met.
3. The Commission is authorized by the Act and Regulations to accept the proffered self-bond and collateral bond and Amended and Restated LOC (Amendment No. 9).
4. A letter of credit may be accepted for a lesser term than the length of completion of reclamation when procedures are in place to ensure that the bond and collateral are timely replaced [§12.309(g)(2)].
5. A branch of Wells Fargo, N.A. in San Leandro, California issued the proffered LOC. According to both California law [California Commercial Code (UCC) §5116(b)] and Texas law [Business and Commercial Code, Title 1, Uniform Commercial Code, Chapter 5, Letters of Credit, §5.116(b)], the branch of a bank

is treated as a separate bank for purposes of applicable law: if the instrument does not specify the agreed upon forum, the applicable forum is the location of the issuing bank, in this case, California. Pursuant to both laws of the State of California [§5106(a), California Commercial Code] and of the State of Texas [TEX. BUS. & COMM. CODE §5.106(a)], the proffered LOC is enforceable between the issuer (Bank) and beneficiary (Commission) as an obligation of the Bank on the date sent to the beneficiary according to its terms; such terms provide that if presented for payment prior to its expiration, the amount that may be drawn is \$6,600,000, and that this decrease in amount occurred April 14, 2014.

6. TMPA provided additional security for the collateral bond by its escrow account provided to the Commission on May 6, 2014 in the amount of \$600,000. With the reduced accepted cost of reclamation accepted by the Commission, on this date, the additional security is no longer needed for this permit and the escrowed funds in the amount of \$600,000 shall be returned to the permittee.
7. In accordance with the authority of the Commission in §134.011(4) of the Act to issue orders requiring a permittee to take actions that are necessary to comply with the Act and Regulations, the Commission may make reasonable provisions to ensure that replacement bonds are submitted in a timely manner. A requirement that the permittee submit a replacement collateral bond and LOC (or amendment) or other replacement bond no later than January 15, 2015, is reasonable and will ensure that a replacement bond and replacement collateral should be submitted and processed in a timely manner so that required bonding may be maintained. [Finding of Fact No. 15(c)]. In addition, the Commission may make a reasonable provision to ensure that bonds containing letters of credit are acted upon promptly. Requiring the filing of a show cause hearing request by the Surface Mining and Reclamation Division no later than 30 days prior to the expiration date of a currently effective letter of credit will assist in orderly processing of a letter of credit that reduces the amount of bond or does not increase the amount of bond in at least the amount of the approved reclamation bond estimate (Finding of Fact No. 17) §1.47, "Practice and Procedure."

**THEREFORE IT IS ORDERED** that the above Findings of Fact and Conclusions of Law are adopted;

**IT IS FURTHER ORDERED** that the self-bond in the amount of \$13,500,000 submitted by Texas Municipal Power Agency is accepted;

**IT IS FURTHER ORDERED** that the self-bond in the amount of \$12,700,000 is replaced;

**IT IS FURTHER ORDERED** that the proffered collateral bond and irrevocable Amended and Restated LOC No. NZS564257 (Amendment No. 8) issued by Wells Fargo Bank, N.A., in the amount of \$6,600,000 are accepted;

**IT IS FURTHER ORDERED** that the collateral bond in the amount of \$13 500,000 is hereby replaced;

**IT IS FURTHER ORDERED** that the amendments to the LOC shall be attached to the LOC as a part of the LOC in accordance with the amended LOC and must be retained by the Commission until replaced;

**IT IS FURTHER ORDERED** that the self-bond and collateral bond with amended LOC No. NZS564257 (Amendment No. 9) together will provide \$20,100,000 in bonding for continuation of sufficient bonding for Permit No. 38D in accordance with this Order;

**IT IS FURTHER ORDERED** that TMPA must timely file a substitute bond and collateral or other replacement bond in accordance with Finding of Fact No. 15(c) of this Order, no later than January 15, 2015;

**IT IS FURTHER ORDERED** that with letters of credit that contain a specified effective date, the additional mechanism shall be used to ensure that bonds that reduce the amount of bonding or do not increase the amount of bonding in a sufficient amount based on Staff's latest reclamation cost estimate are replaced, reviewed, and acted upon prior to or on the effective date of the change in amount of the letter of credit. If a bond application or application for replacement of bond is filed with the Commission containing a letter of credit as collateral that either reduces the amount of bond or does not increase the amount of bond in at least the amount of Staff's latest reclamation cost estimate, and it has not been previously filed with the Hearings Division for docketing at least 30 days prior to the expiration date of the letter of credit whether all documents have been received by the Commission or not, the Surface Mining and Reclamation Division shall send to the Hearings Division a request for a show cause hearing no later than 30 days prior to the expiration date of the currently approved letter of credit, along with all documents that have been filed or prepared relevant to the application. This mechanism will allow the Hearings Division to determine whether to immediately schedule a show cause hearing or a prehearing conference to determine appropriate steps to ensure timely approval of the bond or replacement bond or other security;

**IT IS FURTHER ORDERED** that the Commission may vary the total bond amount and the terms of

acceptance as affected land acreages are increased or decreased or where the cost of reclamation changes;

**IT IS FURTHER ORDERED** that the escrow account funds in the amount of \$600,000 may be returned to the permittee on the date this Order is final; 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 Commission action. In accordance with 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 IN AUSTIN, TEXAS, on May 22, 2014.**

**RAILROAD COMMISSION OF TEXAS**

  
CHAIRMAN BARRY T. SMITHERMAN

  
COMMISSIONER DAVID PORTER

  
COMMISSIONER CHRISTI CRADDICK

ATTEST:

  
Secretary  
Railroad Commission of Texas



**RAILROAD COMMISSION OF TEXAS**  
Surface Mining and Reclamation Division  
Self Bond for Surface Mining and Reclamation Permit

Permit No.: 38D

Mine Name: Gibbons Creek Lignite Mine

Permittee: (hereinafter referred to as the "Principal-Permittee") Texas Municipal Power Agency

This bond does replace an existing bond, described as Self-Bond, dated December 20, 2012, and accepted by the Railroad Commission of Texas on May 7, 2013, in the amount of \$12,700,000.00.

**KNOW ALL BY THESE PRESENTS** [Note: Recitals may be modified as necessary to address permit revisions, renewals, consolidations]:

**WHEREAS**, as the above bound Principal-Permittee submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, an application for a permit to engage in surface mining, which application included a proposed reclamation plan; and

**WHEREAS**, said permit application (including the proposed reclamation plan) was approved on the 21st day of August, 2001; and

**WHEREAS**, the granting of a permit is conditioned in part on the Principal-Permittee's posting bond to insure the faithful performance of all requirements of the Principal-Permittee under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, § 134.001 *et seq.*, (hereinafter referred to as the "Act"); regulations adopted under the Act, 16 TAC § 12.004 *et seq.*, (hereinafter referred to as the "Coal Mining Regulations"); and the Permit as amended, renewed, revised, or replaced;

**WHEREAS**, in order to provide bond coverage for Permit 38D in the amount of \$20,100,000.00, the Principal-Permittee has submitted to the Railroad Commission of Texas this self-bond in the amount of \$13,500,000.00, and a collateral bond in the amount of \$6,600,000.00;

**THAT** Texas Municipal Power Agency, as Principal-Permittee, is held and firmly bound unto the State of Texas in the full sum of Thirteen Million Five Hundred Thousand and No/100 United States Dollars (\$13,500,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and Principal-Permittee binds itself, its heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**NOW, THEREFORE**, the conditions of this obligation are such that if the above bound Principal-Permittee shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit as amended, renewed, revised, or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the Principal-Permittee, for value received, agrees that no amendment to existing laws, rules, or regulations, no adoption of new laws, rules, or regulations, and no amendment, renewal, revision, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this



bond, and it does hereby waive notice of any such amendment, adoption, renewal, revision, or replacement.

The Principal-Permittee further agrees to give prompt notice to the Railroad Commission: (1) of any notice received or action filed alleging its insolvency or bankruptcy; or (2) if it becomes unable, or unwilling, to fulfill its obligation under this bond.

It is agreed that this bond shall be in full force and effect for the duration of the reclamation obligation on the land affected by the Permit as amended, renewed, revised, or replaced or until the Principal-Permittee is otherwise relieved of its obligation by order of the Railroad Commission of Texas.

If this is a replacement bond, Principal Permittee further agrees that any liability which has accrued against it under the Act, the Coal Mining Regulation, or the Permit as originally issued, amended, revised, reviewed, or replaced, is transferred to this Bond.

It is further agreed that upon incapacity of the Principal-Permittee, or the Third-Party Guarantor if this bond is guaranteed, by reason of bankruptcy or incapacity, or for any other reason, Principal-Permittee shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal-Permittee shall discontinue surface coal mining operations until new performance bond coverage is approved. Notwithstanding the foregoing, however, nothing in this instrument shall be construed as a waiver of the Commission's ability to enforce the Act, the Coal Mining Regulations, or the Permit, or to seek bond forfeiture in accordance with the provisions of the Act, the Coal Mining Regulations, or this instrument.

**IN WITNESS WHEREOF**, the Principal-Permittee has caused these presents to be duly signed and sealed this 20th Day of December, 2013.

Texas Municipal Power Agency  
PRINCIPAL-PERMITTEE

P.O. Box 7000, Bryan, Texas 77805  
Address

By: Bob Kahn

Signature

Bob Kahn  
Typed Name

General Manager  
Title

Attest: Kerry Stinner

Assistant Secretary to the Board of Directors



Self Bond of Texas Municipal Power Agency (Principal-Permittee)

Accepted: May 22, 2014

Bryant Smith  
CHAIRMAN, Railroad Commission of Texas

David A. [Signature]  
COMMISSIONER, Railroad Commission of Texas

Christi Claddick  
COMMISSIONER, Railroad Commission of Texas

ATTEST

Kathy Way

NOTE: The following documents should be submitted to the Commission along with the original self-bond: (1) original certified corporate resolution and certificate of incumbency, and (2) affidavit certifying that this instrument is valid under all applicable State and Federal laws.



**RAILROAD COMMISSION OF TEXAS**  
Surface Mining and Reclamation Division  
Collateral Bond for Surface Mining and Reclamation Permit

Permit No.: 38D

Mine Name: Gibbons Creek Lignite Mine

Permittee (hereinafter referred to as the "Principal"): Texas Municipal Power Agency

This instrument replaces an existing bond, described as Collateral Bond, dated December 20, 2012, and accepted by the Railroad Commission of Texas on May 7, 2013, in the amount of \$13,500,000.00.

**KNOW ALL BY THESE PRESENTS** [Note: Recitals may be modified as necessary to address permit revisions, renewals, consolidations]:

**WHEREAS**, the above bound Principal submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, an application for a permit to engage in surface mining, which application included a proposed reclamation plan; and

**WHEREAS**, the Principal's permit renewal/revision application (including the proposed reclamation plan) was approved on the 21st day of August, 2001; and

**WHEREAS**, issuance of a permit pursuant to such approved application (the "Permit") and retention of the Permit are conditioned on the Principal's posting bond to insure faithful performance of all requirements of the Principal under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, §134.001 *et seq.*, (hereinafter referred to as the "Act"); regulations adopted under the Act, 16 TAC § 12.1 *et seq.*, (hereinafter referred to as the "Coal Mining Regulations"); and the Permit as amended, renewed, revised, or replaced; and

**WHEREAS**, the bound Principal has previously submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, a collateral bond for Permit 38D in the amount of \$13,500,000.00 (the "Existing Collateral Bond") and a Self-Bond in the amount of \$12,700,000.00 (the "Existing Self-Bond"); and

**WHEREAS**, in order to provide bond coverage for Permit 38D in the amount of \$20,100,000.00 and in order to replace the Existing Collateral Bond, the bound Principal has submitted to the Railroad Commission of Texas this collateral bond (this "Collateral Bond") in the amount of \$6,600,000.00, and a new Self-Bond, to replace the Existing Self-Bond, in the amount of \$13,500,000.00 (the "New Self-Bond"); and

**WHEREAS**, the New Self-Bond and this Collateral Bond, in the aggregate, provide bond coverage for Permit 38D in the amount of Twenty Million One Hundred Thousand and No/100 Dollars (\$20,100,000.00);

**THAT WE**, Texas Municipal Power Agency, as Principal, are held and firmly bound to the State of Texas in the full sum of Six Million Six Hundred Thousand and No/100 United States Dollars (\$6,600,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**NOW, THEREFORE**, the conditions of this obligation are such that if the above bound

Principal shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit, as now or hereafter amended, renewed, revised, or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect. And the Principal, for value received, agrees that no amendment to existing law, rules, or regulations, no adoption of new laws, rules, or regulations, and no amendment, renewal, revision, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond.

To secure performance and payment in accordance with this bond, Principal has provided to the Railroad Commission of Texas (hereinafter referred to as the "Commission") an irrevocable Letter of Credit issued by Wells Fargo Bank, N.A. (hereinafter referred to as the "Bank"), in the amount of this bond. Such letter is attached to this bond and fully incorporated herein.

The Principal and Bank agree that the letter of credit is irrevocable during its term and is payable in part or in full upon demand and receipt from the Commission of a notice of forfeiture issued in accordance with the Act and Regulations.

The Bank represents that it is organized or authorized to do business in the United States. Further, the Bank, agrees to give prompt notice to the Principal and to the Commission: (1) of any notice received or action filed alleging the absolving or bankruptcy of the Bank or which could result in suspension or revocation of the Bank's license to do business; or (2) if it becomes unable, or unwilling, to fulfill its obligation under the letter of credit. It is further agreed that upon the incapacity of the Bank by reason of bankruptcy, insolvency, or suspension or revocation of its license, the Principal shall be deemed to be without bond coverage in violation of the permit and shall discontinue surface mining operations until a replacement or substitute bond is approved.

If this is a replacement bond, principal further agrees that any liability that has accrued against it under the Act, the Coal Mining Regulations, or the Permit as originally issued, amended, revised, renewed, or replaced, is transferred to this Bond.

It is further agreed that if at any time the fair market value of the collateral securing this bond does not equal or exceed the amount of this bond, or, in this case of a letter of credit, the amended face of the letter, the Principal shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal shall discontinue surface coal mining operations until new performance bond coverage is approved. Notwithstanding the foregoing, however, nothing in this instrument shall be construed as a waiver of the Commission's ability to enforce the Act, the Coal Mining Regulations, or the Permit, or to seek bond forfeiture in accordance with the provisions of the Act, the Coal Mining Regulations, or this instrument.

It is agreed that this bond shall be in full force and effect for the duration of the reclamation obligation on the land affected by the Permit, as now hereafter amended, renewed, revised, or replaced or until the Principal is otherwise relieved of its obligation hereunder by order of the Commission.

IN WITNESS WHEREOF, the Principal has caused these presents to be duly signed and sealed  
as of the 20th Day of December, 2013.

**FOR LETTER OF CREDIT OPTION**

Texas Municipal Power Agency  
Principal

Wells Fargo Bank, N.A.  
Bank

P.O. Box 7000, Bryan, Texas 77805  
Address

3000 Briarcrest, Bryan, Texas 77802  
Address

By: BVKh  
Signature

By: [Signature]  
Signature

Patrick Hennessey  
Typed Name

SRP  
Title

Attest: [Signature]



[Signature]  
Assistant Secretary of the Board of Directors

Accepted May 22, 2014

[Signature]  
CHAIRMAN, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

Christi Claddick  
COMMISSIONER, Railroad Commission of Texas

ATTEST: Kathy Way

NOTE: The following documentation should be submitted with the original bond: (1) Appropriate collateral documentation; (2) for Principal, (a) original power of attorney, or (b) certified corporate resolution and certificate of incumbency for signatory; (3) for Bank, evidence of authority for signatory to bind bank under the bond.

## EXHIBIT "A"

### Schedule of Collateral<sup>1</sup>

<u>Description</u>	<u>Value<sup>2</sup></u>
Wells Fargo Bank, N.A. Irrevocable Standby Letter of Credit No. NZS564257, dated February 8, 2006, as amended by the Amended and Restated Letter of Credit, dated February 8, 2007, the Amended and Restated Letter of Credit, dated January 15, 2008, the Amended and Restated Letter of Credit, dated January 15, 2009, the Amended and Restated Letter of Credit, dated January 13, 2010, the Amended and Restated Letter of Credit, dated April 30, 2010, the Amended and Restated Letter of Credit, dated January 11, 2011, the Amended and Restated Letter of Credit, dated January 10, 2012, the Amended and Restated Letter of Credit, dated December 20, 2012, and the Amended and Restated Letter of Credit, dated December 20, 2013.	\$6,600,000

---

<sup>1</sup> Collateral shall be cash, negotiable bonds of the United States, the State of Texas, negotiable certificates of deposit or irrevocable letters of credit.

<sup>2</sup> Value shall be fair market value.



Wells Fargo Bank, N.A.  
U.S. Trade Services  
Standby Letters of Credit  
MAC A0283-023  
794 Davis Street, 2nd Floor  
San Leandro, CA 94577-6922  
Phone: 1(800) 798-2815 Option 1  
E-Mail: sftrade@wellsfargo.com

**Amendment To  
Irrevocable Standby Letter Of Credit**

**Number:** NZS564257  
**Amendment Number:** 009  
**Amend Date:** December 20, 2013

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

NUMBER: NZS564257  
AMENDMENT NUMBER: 9  
AMEND DATE: DECEMBER 20, 2013

AMENDED AND RESTATED LETTER OF CREDIT

LETTER OF CREDIT NO. NZS564257  
DATE: DECEMBER 20, 2013  
APPLICANT: TEXAS MUNICIPAL POWER AGENCY  
AMENDMENT NO. 9

TO:  
RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
P.O. BOX 12967  
AUSTIN, TEXAS 78711-2967

OR

RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
1701 NORTH CONGRESS AVENUE, 11TH FLOOR  
AUSTIN, TEXAS 78711

LADIES AND GENTLEMEN:

THIS AMENDMENT IS TO BE CONSIDERED AS PART OF THE ABOVE LETTER OF CREDIT AND MUST BE ATTACHED THERETO.

THE TEXT OF THE ABOVE MENTIONED LETTER OF CREDIT IS DELETED IN ITS ENTIRETY AND REPLACED BY THE FOLLOWING:

QUOTE





IRREVOCABLE LETTER OF CREDIT

TO:

RAILROAD COMMISSION OF TEXAS:  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
P.O. BOX 12967  
AUSTIN, TEXAS 78711-2967

OR

RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
1701 NORTH CONGRESS AVENUE, 11TH FLOOR  
AUSTIN, TEXAS 78711

WE HAVE BEEN INFORMED BY THE TEXAS MUNICIPAL POWER AGENCY ("PERMITTEE"), BUT DO NOT INDEPENDENTLY VERIFY THAT THIS LETTER OF CREDIT IS ISSUED IN CONNECTION WITH SURFACE MINING AND RECLAMATION OPERATIONS CONDUCTED BY THE PERMITTEE IN THE AREA COVERED BY THE SURFACE MINING AND RECLAMATION PERMIT NO. 38D, AS NOW OR HEREAFTER AMENDED, REVISED OR REPLACED (THE "PERMIT") AND THAT THIS LETTER OF CREDIT IS TO SECURE PERMITTEE'S COLLATERAL BOND TO THE RAILROAD COMMISSION OF TEXAS FOR THE PERMIT. THE PRECEDING SENTENCE IS INSERTED IN THIS LETTER OF CREDIT FOR INFORMATIONAL PURPOSES ONLY AND WILL NOT AFFECT, OR BECOME A PART OF, THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

WE HEREBY REPRESENT TO THE RAILROAD COMMISSION OF TEXAS THAT WE ARE A BANK (WE MAY BE HEREINAFTER REFERRED TO AS THE "BANK") AUTHORIZED TO DO BUSINESS IN THE UNITED STATES OF AMERICA.

WE HEREBY ISSUE IN FAVOR OF THE RAILROAD COMMISSION OF TEXAS, AUSTIN, TEXAS OUR IRREVOCABLE STANDBY LETTER OF CREDIT FOR AN AMOUNT NOT TO EXCEED IN THE AGGREGATE THIRTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 UNITED STATES DOLLARS (\$13,500,000.00 U.S.) AVAILABLE WITH US AT OUR ABOVE OFFICE BY PAYMENT OF YOUR DRAFT(S) DRAWN AT SIGHT ON BANK MENTIONING THEREON THIS LETTER OF CREDIT NO. NZS564257. THE BANK AGREES THAT THE LETTER OF CREDIT SHALL BE IRREVOCABLE DURING ITS TERM.

THE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT WILL REDUCE AUTOMATICALLY, WITHOUT AMENDMENT OR BENEFICIARY'S PRIOR CONSENT, IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

DATE OF REDUCTION	AMOUNT OF REDUCTION
04/14/2014	USD 6,900,000.00

IN THE EVENT A COMPLIANT DRAWING IS RECEIVED PRIOR TO A SCHEDULED DECREASE, THE AMOUNTS OF THE SUCCEEDING SCHEDULED DECREASES SHALL BE REDUCED BY THE AMOUNT OF SUCH DRAWINGS IN THE ORDER OF OCCURRENCE OF SUCH SCHEDULED DECREASES UNTIL THE AMOUNT OF SUCH DRAWING HAS BEEN FULLY APPLIED.





THIS LETTER OF CREDIT EXPIRES AT OUR ABOVE OFFICE ON APRIL 14, 2015 (THE "EXPIRY DATE"). AMOUNTS DRAWN HEREUNDER WILL PERMANENTLY REDUCE THE AVAILABLE AMOUNT UNDER THIS LETTER OF CREDIT AND SUCH REDUCTIONS SHALL NOT BE SUBJECT TO REINSTATEMENT.

THE WELLS FARGO BANK, N.A. SAN FRANCISCO STANDBY LETTER OF CREDIT DEPARTMENT HAS MOVED TO SAN LEANDRO, CALIFORNIA. ON AND AFTER SEPTEMBER 16TH, 2013, ALL DRAFTS, DEMANDS, OR DOCUMENTS PRESENTED UNDER THIS L/C AND ALL NOTICES AND COMMUNICATIONS MADE WITH RESPECT TO THIS L/C THAT PREVIOUSLY WOULD HAVE BEEN DIRECTED TO SAN FRANCISCO, SHOULD NOW BE PRESENTED OR DELIVERED TO WELLS FARGO BANK, N.A., STANDBY LETTER OF CREDIT PROCESSING, 794 DAVIS STREET, 2ND FLOOR, SAN LEANDRO, CALIFORNIA 94577-6922.

DRAFT(S) MUST BE PRESENTED TO US ON OR ON OR BEFORE THE EXPIRY DATE AND MUST BE ACCOMPANIED BY:

A. THIS IRREVOCABLE STANDBY LETTER OF CREDIT OR A COPY THEREOF; AND

B. YOUR SIGNED AND DATED STATEMENT READING AS FOLLOWS:

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE RAILROAD COMMISSION OF TEXAS HEREBY CERTIFIES THAT THE AMOUNT DRAWN IS DUE TO US PURSUANT TO THE TERMS OF 16 TAC SEC. 12.314."

WE ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON PRESENTATION TO US AT OUR OFFICE AT THE ADDRESS SHOWN ABOVE ON OR BEFORE THE EXPIRY DATE.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION IN FORCE AS OF JULY 1, 2007), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

DOCUMENTATION FROM THE BANK ESTABLISHING THE AUTHORITY OF THE SIGNATORY TO THIS LETTER OF CREDIT TO BIND THE BANK IS ATTACHED. ALSO ATTACHED IS A COPY OF THE BANK'S CHARTER OR OTHER EVIDENCE OF THE BANK'S AUTHORITY TO DO BUSINESS IN THE UNITED STATES.

UNQUOTE

Very Truly Yours,

**WELLS FARGO BANK, N.A.**

By: \_\_\_\_\_

*Authorized Signature*

***The original of the Letter of Credit contains an embossed seal over the Authorized Signature.***



Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

*at either* 794 Davis Street  
MAC A0283-023,  
San Leandro, CA 94577-6922

*or* 401 Linden Street  
MAC D4004-017,  
Winston-Salem, NC 27101

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals

1-800-798-2815 Option 1  
(Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2  
(Hours of Operation: 8:00 a.m. EST to 5:30 p.m. EST)

