

**RAILROAD COMMISSION OF TEXAS
SURFACE MINING AND RECLAMATION
HEARINGS DIVISION**

SURFACE MINING AND RECLAMATION DOCKET NO. C14-0011-SC-26-F

**TEXAS MUNICIPAL POWER AGENCY (TMPA) PERMIT NO. 26D;
GIBBONS CREEK LIGNITE MINE, APPEAL OF 2013 ANNUAL FEES**

ORDER FINDING IN FAVOR OF TEXAS MUNICIPAL POWER AGENCY

STATEMENT OF THE CASE

This case concerns the payment of annual bonded acreage fees pursuant to 16 Texas Administrative Code (TAC) § 12.108(b)(2) by Texas Municipal Power Agency (TMPA), P. O. Box 7000, Bryan, Texas 77805. 16 TAC § 12.108(b)(2) imposes “a fee of \$12 for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans).”

On January 15, 2013, the Railroad Commission of Texas (Commission) entered a final Order (January 2013 Order) for the Phase III release of the reclamation obligations for 904.4 acres (904.4 Acres) under permit No. 26D at TMPA’s Gibbons Creek Lignite Mine. On February 13, 2014, TMPA submitted a payment of \$102,404.40 for all fees relating to Permits 26D and 38D at the Gibbons Creek Lignite Mine. This included a payment of \$65,774.40, which represents the required annual \$12 per acre bonded acreage fees for 5,481.2 acres under Permit No. 26D. Payment was not included for fees relating to the 904.4 Acres which had been granted Phase III release under the January 2013 Order. On February 21, 2014, Surface Mining and Reclamation Division (SMRD) Director John Caudle sent a letter to TMPA disputing the payment amount, alleging that TMPA was required to submit an additional payment of \$10,852.80 for the 904.4 Acres. On February 27, 2014, TMPA requested an informal conference and possible hearing to address Director Caudle’s decision. The same February 27, 2014, letter included TMPA’s payment of \$10,852.80 for the 904.4 Acres “under protest and without waiver of TMPA’s legal position” and included a request that the payment be held in escrow until a final decision was rendered on the matter. The payment was not held in escrow and has since been deposited by SMRD.

On March 21, 2014, a Prehearing Conference was held at the request of TMPA in an effort to resolve the dispute. TMPA and SMRD were not able to reach a resolution and, on April 10, 2014, a Hearing on the Merits was held to consider TMPA’s appeal of Director Caudle’s decision. During the Hearing both parties presented witnesses and submitted documents as evidence. Additionally, both parties filed written closing arguments and reply briefs.

After reviewing the evidence presented and the written briefs and replies, the examiner finds that 16 TAC § 12.108(b)(2), 16 TAC § 12.226(d), and 16 TAC § 12.142(2)(C) are inconsistent with methodology of calculating the amount of an Annual Fee for a permit that includes acreage previously released from reclamation obligations. 16 TAC § 12.108(b)(2) states in part:

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees for calendar years 2013 and 2014 due and payable not later than March 15th of the year following the year for which these fees are applicable:

(2) a fee of \$12 for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by § 12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans);

In 16 TAC § 12.226(d) permit revisions are addressed when it requires,

(d) Proposed revisions must be approved by the Commission prior to commencement of the proposed change.

As to the requirements of the bond map, 16 TAC § 12.142(2)(C) states in part:

(2) The following shall be shown for the proposed permit area unless specifically required for the permit and adjacent area by the requirements of this section:

(C) each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J of this chapter (relating to Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations).

The sole issue before the examiner was a question of law. Should the payment of annual bonded acreage fees pursuant to 16 Texas Administrative Code (TAC) § 12.108(b)(2) include acreage previously released by the Commission in cases where the released acreage remains on the most recently approved bond map?

FINDINGS OF FACT

Based on the evidence in the record, the following Findings of Fact are made:

1. On January 15, 2013, the Railroad Commission of Texas entered a final Order for the Phase III release of the reclamation obligations for 904.4 acres under Permit No. 26D at TMPA's Gibbons Creek Lignite Mine. The 904.4 acres released from reclamation liability on January 15, 2013 were no longer covered by the reclamation bond on Permit 26D on December 31, 2013.

2. On August 12, 2013 TMPA filed with SMRD a revised map for Permit 26D as part of Revision 21 to the permit. As of December 31, 2013 TMPA Revision 21 had not been administratively approved by the Director of SMRD. Since Revision 21 to the permit was still pending approval by staff, the proposed bond map associated with the revision application had not been approved.
3. On February 13, 2014, TMPA submitted a payment of \$102,404.40 for all fees relating to Permits 26D and 38D at the Gibbons Creek Lignite Mine. This included a payment of \$65,774.40 to cover the required annual \$12 per acre bonded acreage fees for 5,481.2 acres under Permit No. 26D. Payment was not included for fees relating to the 904.4 Acres which had been granted Phase III release under the January 2013 Order.
4. In response to SMRD's request for payment of annual bonded acreage fees for the 904.4 Acres, on February 27, 2014, TMPA submitted a payment of \$10,852.80 for the 904.4 Acres "under protest and without waiver of TMPA's legal position." TMPA requested that the payment be held in escrow until a final decision was rendered on the matter. The payment was not held in escrow and was deposited by SMRD into the Commission's account.
5. Notice of the March 21, 2014, Prehearing Conference was issued by the Hearings Division on March 6, 2014.
6. Notice of the April 10, 2014, Hearing on the Merits was issued by the Hearings Division on March 27, 2014.

CONCLUSIONS OF LAW

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

1. Required public notice was issued for the March 21, 2014, Prehearing Conference, the April 10, 2014, Hearing on the Merits, and the Commission properly posted the docket for consideration.
2. 16 TAC § 12.108(b)(2) provides that annual bonded acreage fees are not required for acres of a mine which have obtained Phase III release by Order of the Commission before December 31st of a given year.
3. The Commission's January 15, 2013, Order for the Phase III release of 904.4 acres from reclamation obligations under Permit No. 26D removed from TMPA any obligation to pay 16 TAC § 12.108(b)(2) annual bonded acreage fees on those 904.4 Acres.

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 TMPA has paid all 16 TAC § 12.108(b)(2) fees for the Gibbons Creek Lignite Mine for the 2013 year.

IT IS FURTHER ORDERED that the Commission shall, as expeditiously as possible, reimburse to TMPA the \$10,852.80 payment submitted under protest by TMPA for the 904.4 Acres in dispute.

SIGNED this 12th day of August.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN BARRY T. SMITHERMAN

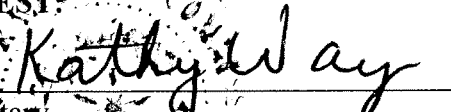


COMMISSIONER DAVID PORTER



COMMISSIONER CHRISTI CRADDICK

ATTEST:



Secretary
Railroad Commission of Texas

