

**RAILROAD COMMISSION OF TEXAS**  
**HEARINGS DIVISION**

**SMRD DOCKET No. C14-0019-SC-42-D**  
**DOS REPÚBLICAS COAL PARTNERSHIP**  
**APPLICATION FOR ACCEPTANCE OF AMENDMENT**  
**No. 3 TO LETTER OF CREDIT**  
**FOR PERMIT No. 42B, EAGLE PASS MINE, MAVERICK COUNTY, TEXAS**

**ORDER ACCEPTING AMENDMENT TO LETTER OF CREDIT**

Statement of the Case

The Railroad Commission of Texas received an application by Dos Repúblicas Coal Partnership (DRCP), for acceptance of an amendment (Amendment No. 3) to its currently accepted letter of credit No. SB270572 issued by Sterling Bank in the amount of \$10,478,632 accepted by Commission Order dated September 2, 2009 in Docket No. C9-0024-SC-42-E and subsequently extended to October 4, 2014. The amendment provides that Comerica Bank is the successor by merger to Sterling Bank, extends the letter of credit to October 4, 2015, and provides that the letter of credit is now Comerica Bank LOC SB270572. The permit is also bonded with an additional bond in the amount of \$10,000,000, a collateral bond with Standby Letter of Credit No. SC 8030 by Amegy Bank that will not expire until the bonded areas are fully released. The two bonds currently provide required bonding for the Eagle Pass Mine in Maverick County, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2014-2015) and the "Coal Mining Regulations," TEX. ADMIN. CODE Ch. 12 (Thomson West 2014).

DRCP and Comerica Bank have submitted documentation required for approval of the amendment to the letter of credit. The Commission finds that the amendment to LOC SB270572 (Amendment No. 3) and documentation submitted meet requirements of the Act and Regulations for acceptance.

The Commission determines that the collateral bond and Comerica Bank Letter of Credit No. SB270572 is accepted and with the collateral bond and Amegy Bank LOC No. SC 8030 will provide required bonding in a sufficient amount as extended through October 4, 2015 for Permit No. 42B.

### FINDINGS OF FACT

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

1. The currently accepted bonds for Dos Repúblicas Coal Partnership's (DRCP) Permit No. 42B, Eagle Pass Mine, are made up of a collateral bond and amended letter of credit (LOC) No. SB270572 by Sterling Bank in the amount of \$10,478,632 as extended through October 4, 2014 and an additional bond, a collateral bond with letter of credit No. SC 8030 issued by Amegy Bank, N.A. (Amegy Bank) in the amount of \$10,000,000 for total bonding for the permit area in the amount of \$20,478,632.
2. DRCP now requests acceptance of an amendment to LOC No. SB270572 issued by Sterling Bank (Amendment No. 3). By cover letter dated August 7, 2014, DRCP filed its amendment to the LOC; the letter was signed by Andres Gonzalez-Saravia Coss, who is authorized to act on behalf of DRCP. The amendment to the LOC provides that Comerica Bank is the successor to Sterling Bank by result of a merger with Comerica Bank, provides that Sterling Bank's LOC No. SB270572 is now Comerica Bank's LOC SB270572, and provides that the expiration date is extended to October 4, 2015. DRCP has filed proof that Comerica Bank and Sterling Bank

have merged in the form of a certified copy of articles of merger. DRCP has provided evidence that Comerica Bank is authorized to do business in the United States, as required by §12.309(g)(1) of the Regulations for the issuer of an acceptable LOC. Comerica Bank is a bank organized in Texas; DRCP filed a certified copy of articles of merger of Sterling Bank into Comerica Bank, Charter No. 3187-26, merged July 28, 2011 issued by the Texas Department of Banking. The copy was certified on August 13, 2014. All evidence pertinent to the acceptance of the amendment to the LOC has been filed in this docket.

3. Neither the amounts of the collateral bonds nor the amounts of the LOCs issued by Comerica Bank and Amegy Bank are proposed to change. The latest approved reclamation cost estimate (\$20,306,609) for the Eagle Pass Mine is described in the January 29, 2013, Order issuing Permit No. 42B. This amount is less than the aggregate \$20,478,632 bond amount (collateral bonds of \$10,478,632 and \$10,000,000) currently accepted by the Commission. The cost estimate was contained in Staff's October 4, 2011, TA Addendum No. 4 document and is based on the reclamation cost analysis contained in Appendix II of TA Addendum No. 4. Because the approved cost estimate is almost three years old, Staff compared the per-hour costs for the major equipment used in its reclamation cost analysis with the equipment costs currently being used in reclamation cost estimates. Staff provided documentation that the per-hour equipment costs are currently lower for the major earthmoving equipment than those used in Staff's October 4, 2011, reclamation cost analysis; Staff concluded that the approved reclamation cost estimate is more conservative than would be calculated using current equipment costs.

4. By memorandum dated August 25, 2014, legal staff of the Office of General Counsel reviewed the proffered amendment to the letter of credit and related documents and Staff filed this review by letter dated August 26, 2014. Staff review indicates that DRCP has provided documentation to address all noted deficiencies or items requiring documentation in the application, as supplemented. Based on the Staff-estimated reclamation costs, the evidence submitted, the current bonds and the LOC, as amended, along with the accepted bond and LOC No. SC8030 by Amegy Bank, and Staff review, the two currently accepted bonds and LOCs as amended will ensure bonding in an amount sufficient to reclaim the permit area should a third party be required to reclaim the permit area at the direction of the Commission.
  
5. Two Comerica Bank officers signed the proffered amendment to the LOC, Laura T. Jordan, Assistant Vice President and Elizabeth Williams, Assistant Vice President, who are authorized to sign the document on behalf of the Bank. By letter dated August 22, 2014, DRCP submitted original corporate authorizations and proofs of incumbency of both Ms. Jordan and Ms. Williams; each is an assistant vice president of Comerica Bank. Each authorization was certified by the Assistant Secretary of the Bank; they were dated August 8, 2014, subsequent to the date of the signed amendment to the LOC; however, specimen signatures were included with the authorizations that match the signatures on the amendment to the LOC. Exhibit B, attached to each corporate authorization and incumbency certificate, is a copy of a resolution of the Bank indicating in paragraph 2(d) that any officer of the Bank is authorized to sign letters of credit on behalf of the Bank. Paragraph 13 of the exhibit also provides that any Assistant Secretary may sign certifications of resolutions and certificates of incumbency.

6. The proffered original Amendment No. 3 to the LOC was submitted by letter dated July 1, 2014, received by the Commission on July 7, 2014. This is in accordance with the Commission Order dated May 7, 2013 providing that DRCP provide an extension to the letter of credit or replacement bond on or before July 7, 2014.
  
7. The proffered amendment extends the expiration date to October 4, 2015. The additional Amegy LOC accepted for the permit states on its face that it will not expire until the Commission provides a letter stating that all obligations have been completed. With acceptance of Amendment No. 3 to the LOC and considering the term of the Amegy LOC, bonding will be provided through October 4, 2015 in a sufficient amount, unless revised activities are proposed and required to be bonded in an additional amount or reclamation costs increase.
  
8. An ordering paragraph is included in this Order to ensure timely replacement of the collateral as set out in subparagraph (b) of this Finding of Fact.
  - (a). The Regulations at §12.309(a) require that the collateral bond itself must be in effect for the duration of the reclamation obligations on the affected lands; however, for the letter of credit collateral, the letter must be irrevocable during its term [§12.309(g)(2)]. No specific term is prescribed for an LOC by the Regulations, other than that it be irrevocable during its term. §12.309(g)(2) further provides that an LOC 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 LOC at least 30 days before its expiration date. Both of the accepted LOCs and the proffered LOC are irrevocable during their terms. Because the proffered amendment to the LOC carries a term expiring October 4, 2015, it is necessary that the bond be replaced or extended at least 30 days before its expiration date of October 4, 2015.

- (b). In order to maintain required bonding in a timely manner, the Commission finds that it is reasonable to require that DRCP 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 that the Commission retain the approved requirement that DRCP file an extension to the amendment to the LOC issued by Comerica Bank or otherwise request the initiation of processing materials to replace the bond instruments and collateral on a date sufficient so that there will be at least 90 days for review and adjustment of documents prior to the date the Commission must initiate forfeiture proceedings (at least 30 days prior to the expiration date of October 4, 2015). An extension of the expiration date in 2015 or a replacement bond must be submitted on or before July 3, 2015, approximately 90 days prior to the expiration date. (October 4, 2015 falls on a Sunday, not a Commission business day. The last date prior to October 4, 2015 on which the Commission could act would be Friday, October 2, 2015 prior to Sunday, October 4, 2015. The 90 day period for submittal of documents from Friday,

October 2, 2015 back would be Saturday, July 4, 2015, a date on which documents cannot be filed; therefore, the 90-day period has been calculated beginning on Friday, July 3, 2015). The 30-day period by which forfeiture proceedings must begin if an extended or replacement bond has not been filed must begin on Wednesday, September 2, 2015. (This date has been calculated as 30 days prior to Friday, October 2, 2015, which is Wednesday, September 2, 2015). Requiring DRCP to file an extension to the letter of credit on or before Friday, July 3, 2015 should ensure that an extension or replacement is filed and processed to Commission acceptance prior to the expiration date of the LOC.

9. The amended LOC meets the three conditions set out in §12.309(g). The letter has been issued by a bank organized or authorized to do business in the United States [§12.309(g)(1)]. The letter is irrevocable during its term [§12.309(g)(2)]. The letter is payable to the Commission in part or in full upon demand and receipt of a notice of forfeiture issued in accordance with §12.314-317 of the Regulations [§12.309(g)(3)].
10. The Commission may adjust the amount of the performance bond applicable to the permit when the cost of reclamation changes [§12.307(a)].
11. Bond coverage has been continuous and with acceptance of the proffered amendment to the LOC will continue uninterrupted. The proffered amendment will continue to provide collateral for reclamation of the permit area until its expiration date. The approved Amegy letter of credit

renews automatically from year to year and will remain in effect until all reclamation within the permit area has been completed and the principal released from liability or until the bond is increased, decreased, or replaced.

12. The bond provides a mechanism for the permittee to give prompt notice to the Commission in compliance with §12.309(e) of the Regulations 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. Comerica Bank is subject to the notice provision.
13. DRCP has submitted information that addresses all requirements set out in the Act and Regulations for the amendment to the LOC.
14. DRCP, a Texas general partnership, through its general partners Eagle Pass Coal Corporation and Maverick County Coal Corporation, Texas corporations, has complied with payment of corporate franchise taxes, as required by TAX CODE §§171.001 and 171.251 (Vernon Supp. 2014-2015), and are reflected as active corporations by the Texas Secretary of State.
15. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, GOV'T CODE §551.041 and written notice required by the APA has been provided.

#### 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.
2. The approved reclamation cost estimate is sufficient to demonstrate the adequacy of the currently-accepted performance bonds.
3. In accordance with §12.309(g)(2), DRCP has provided an amendment to the LOC on the date required by the Commission. The amendment meets all requirements of the Act and Regulations for acceptance. The Commission may accept the proffered amendment to the LOC.
4. Pursuant to TEX. BUS. & COMM. CODE CH. 5, §5.106(a), a letter of credit is enforceable according to its terms against the issuer (Comerica Bank) for money payment when it is sent to the beneficiary (Commission). Pursuant to TEX. BUS. & COMM. CODE CH. 5, §5.103(d), the issuer of a letter of credit is not responsible for the performance or nonperformance of the underlying contract (DRCP's reclamation performance). The bond is an agreement between the permittee and the Commission, and the letter of credit is independent of the underlying obligation between the permittee and the Commission under Texas law. The Bank's obligation is by way of the LOC should DRCP fail to meet its reclamation obligations to reclaim disturbed areas within the permit area or to provide funds for reclamation.
4. The existing collateral bond in the amount of \$10,478,632 and the proffered amendment to the

LOC by Comerica Bank, successor to Sterling Bank, along with the accepted collateral bond and LOC issued by Amegy Bank in the amount of \$10,000,000 that will remain in place are in a total amount of \$20,478,632 and are 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.

5. Commission Regulation §12.309(e)(1), “Bonding bank and surety company requirements,” states that the bond shall provide a mechanism for a bond or surety company to give prompt notice to the Commission and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company or the bank or alleging any violation which would result in suspension or revocation of the surety or bank’s charter or license to do business. The permittee has signed the approved collateral bond that contains this language, and Comerica Bank and Sterling Bank have merged with Comerica Bank as the survivor. The collateral on the bond is now the responsibility of Comerica Bank as the surviving bank, and it has executed an amendment specifying that Sterling Bank’s LOC No. SB270572 is now Comerica Bank’s LOC No. SB270572.
6. Pursuant to TEX. BUS. & COMM. CODE §5.106(a), the proffered amended LOC is enforceable between the issuer and beneficiary (Commission) according to its terms, including an expiration date of October 4, 2015. In accordance with the authority of the Commission in §134.011(4) of the Act to issue orders requiring that a permittee 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. DRCP must provide an extension to Comerica Bank LOC No. SB270572 or a replacement bond on or before July 3, 2015 to provide the Commission with sufficient time for review and action to ensure that appropriate bonding is maintained.

7. All requirements of the Act and the Regulations have been met for acceptance of the amendment with the LOC as Comerica Bank LOC No. SB270572. The Commission may accept the amendment.

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

IT IS FURTHER ORDERED that the existing collateral bond and the proffered Amendment No. 3 to LOC No. SB270572 in the amount of \$10,478,632, and the collateral bond and Amegy Bank LOC No. SC 8030 in the amount of \$10,000,000 are sufficient to cover the costs of reclamation;

IT IS FURTHER ORDERED that Amendment No. 3 to LOC No. SB270572 in the amount of \$10,478,632 is accepted;

IT IS FURTHER ORDERED that DRCP shall file an extension to the amended Comerica Bank LOC No. SB270572 or a replacement bond in a sufficient amount on or before July 3, 2015;

IT IS FURTHER ORDERED that the Commission may vary the total bond amount and the terms of acceptance from time to time as affected land acreages are increased or decreased or where the cost of reclamation changes; 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. As authorized by 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.

DONE AT AUSTIN, TEXAS, this 16th day of September, 2014.


**RAILROAD COMMISSION OF TEXAS**

  
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CHAIRMAN CHRISTI CRADDICK

  
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COMMISSIONER DAVID PORTER

  
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COMMISSIONER BARRY T. SMITHERMAN

ATTEST

  
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Secretary, Railroad Commission of Texas

