

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**DOCKET No. C15-0008-SC-26-E, TEXAS MUNICIPAL POWER AGENCY
APPLICATION FOR ACCEPTANCE OF REPLACEMENT COLLATERAL BOND AND LETTER OF CREDIT
(AMENDMENT NO. 9), PERMIT NO. 26D, GIBBONS CREEK LIGNITE MINE, GRIMES COUNTY, TEXAS**

**ORDER ACCEPTING REPLACEMENT COLLATERAL BOND
AND LETTER OF CREDIT FOR PERMIT NO. 26D**

Statement of the Case

The Texas Municipal Power Agency (TMPA) operates the Gibbons Creek Lignite Mine in Grimes County, Texas under Permit No. 26D. TMPA has filed an application for acceptance of a replacement collateral bond in the amount of \$12,000,000 and irrevocable Amended and Restated LOC No. NZS564256 (Amendment No. 9) issued by Wells Fargo Bank, N.A. The letter (Amendment No. 9) of credit carries an expiration date of April 11, 2016 with a provision that the increased amount would be effective April 14, 2015. The currently accepted bond for the permit area is a collateral bond with an irrevocable Amended and Restated LOC No. NZS564256 (Amendment No. 8) issued by Wells Fargo Bank, N.A., in the amount of \$11,800,000 and escrowed funds in the amount of \$350,000. The letter (Amendment No. 8) of credit carries an expiration date of April 14, 2015. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2014) and the "Coal Mining Regulations," TEX. ADMIN. CODE Ch. 12 (West 2014).

Based upon the application for acceptance of the replacement bond, associated documents, and legal and financial review, the Commission finds that the collateral bond 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. By letter dated January 12, 2015 and supplemented January 14, 2015, TMPA timely submitted a replacement collateral bond, in the amount of \$12,000,000 and Amended and Restated LOC No. NZS564256 (Amendment No. 9) with a provision that the increased amount would be effective April 14, 2015 for performance bonding of its Permit No. 26D, Gibbons Creek Lignite Mine, and documentation relating to the bond and amended LOC to the Commission's Surface Mining and Reclamation Division. The currently approved collateral bond is in the amount of \$11,800,000 with amended LOC No. NZS564256 (Amendment No. 8) issued by Wells Fargo Bank, N.A., San Leandro, California and escrowed funds in the amount of \$350,000. Mining has ceased within the permit area, and the permit area is currently in reclamation.

2. By letter dated January 14, 2015, the Surface Mining and Reclamation Division (Staff) filed the replacement bond and amended LOC with the Hearings Division, along with other review documents. Staff included in letter of January 14, 2015 a copy of staff's December 8, 2014 letter to TMPA regarding Revision No. 21, Bond Map Revision and Reclamation Cost Calculation. Following Revision No. 21, Staff's revised reclamation cost estimate for Permit No. 26D is \$11,494,592. The initial legal review performed by the Office of General Counsel dated January 23, 2015 and the review by the financial services section found the General Certificate and Collateral Bond for the permit did not meet Commission requirements due to questions relating to the signatures of Bob Kahn, TMPA's General Manager. The initials "CJS" next to Bob Kahn's signature raised questions by SMRD that someone other than Bob Kahn signed the relevant documents. TMPA supplemented the application by letter dated February 4, 2015 to provide SMRD an explanation as to the initials "CJS" next to the signatures of Mr. Bob Kahn on the relevant documents signed by Bob Kahn.
3. On February 10, 2015, the Hearings Division received from staff a second legal review by the Office of General Counsel and Financial Service after their review of TMPA's February 4, 2015 letter explaining that documentation submitting by TMPA resolved the signature issue and that Bob Kahn's signature was an original signature on the General Certificate, Collateral Bond for Permit 26D, and all other relevant documents, thus meeting Commission rules.
4. TMPA now requests acceptance of the replacement existing collateral bond and Amendment No. 8 to the LOC, in the amount of \$11,800,000 and escrowed funds in the amount of \$350,000. The proffered LOC (Amendment 9) carries an expiration date of April 11, 2016. TMPA submitted the proffered collateral bond with amended letter of credit (Amendment 9) to increase the collateral bond to \$12,000,000. Using the reclamation cost estimate set out in Finding of Fact No. 2, \$11,494,592, the amount of the proffered collateral bond and Amendment No. 9, in the amount of \$12,000,000 is an amount in excess of calculated reclamation costs.
5. Based on the Findings of Fact, the Commission finds that the amount of the proffered replacement collateral bond and amended letter of credit in the amount of \$12,000,000 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.
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 collateral bond and Amended and Restated LOC (Amendment No. 9) are in forms acceptable under §12.309 of the Regulations and §134.121 of the Act.
8. 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.

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. Aurea C. Balenbin, Assistant 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 January 7, 2015 certifying the signing officers of TMPA and the General Certificate dated January 7, 2015 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 January 7, 2015 with extract from Resolutions of Wells Fargo Bank, N.A., that the bank officer, Patrick Hennessey, is authorized to sign a collateral bond for the Bank. A secretary's certificate was also filed certifying that Bryan T. O'Connell, Vice President and Aurea C. Balenbin, Assistant Vice President of the Bank, are among officers authorized to sign and amend letters of credit in any amount. Submitted documentation in the form of a Certificate of Corporate Existence from the Comptroller of the Currency, Administrator of National Banks, dated December 3, 2014, 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), §12.309(g) and §12.309(h) 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 expiration date drawn at sight on Bank mentioning thereon the Letter of Credit No. NZS564256. The draft must be accompanied by the irrevocable standby letter of credit 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 letter of credit carries an expiration date of April 11, 2016. The proposed collateral bond, upon acceptance by the Commission in

accordance with this Order, will remain in effect until released or replaced by the Commission. The Amended and Restated LOC is effective and enforceable against the issuer when the Commission received the amended LOC and is effective and enforceable against the issuer in the amount of \$12,000,000, in accordance with the terms of the amended with a provision that the increased amount would be effective April 14, 2015. LOC, and will remain effective, unless released or replaced, through its expiration date, April 11, 2016.

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)]. 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 [§12.309(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 the federal counterpart regulation 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 replacement bond documents were provided more than 30 days prior to the date by which forfeiture proceedings would occur. The amended LOC was submitted to the Commission by letter dated January 12, 2015, and the amended LOC was dated January 7, 2015. The amended LOC was effective according to its terms prior to the expiration date of the last amendment. A letter of credit is issued and becomes enforceable according to its terms when the issuer sends it to the beneficiary. The collateral bond and amended letter of

credit dated January 7, 2015 were received on January 12, 2015 in accordance with the previous Commission Order approving the current bond that provided that a replacement bond and LOC must be provided to the Commission no later than January 15, 2015.

- (c). Specific findings and ordering paragraphs are included in this Order 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 Tuesday January 12, 2016 (approximately 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. The Commission approves a date of January 12, 2016 (approximately 90 days prior to April 11, 2016) for submittal of the bond instrument and related documents. The Commission must initiate bond forfeiture proceedings by Friday, March 11, 2016 if such documents are not submitted (30 days prior to expiration of the collateral).

16. All documentation required by the Act and Regulations for the bond with amended 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 the Commission'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 the 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 collateral bond and 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.
19. The parties filed no exceptions to the proposed order. Staff filed comments regarding the proposed ordering paragraphs.

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. 2014).
2. All requirements of the Act and the Regulations for acceptance of the proffered 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 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 as long as procedures are in place to ensure timely replacement of collateral [§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.
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 \$350,000. With the 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 \$350,000 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 12, 2016, is reasonable and will ensure that a replacement bond and replacement collateral will be submitted and processed in a timely manner so that required bonding may be maintained. [Finding of Fact No. 14(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 bond documents and 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. 18) §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 proffered collateral bond and irrevocable Amended and Restated LOC No. NZS564256 (Amendment No. 9) issued by Wells Fargo Bank, N.A., in the amount of \$12,000,000 are accepted and the amended and restated LOC is enforceable against the issuer according to its term;

IT IS FURTHER ORDERED that the collateral bond and amended LOC along with the approved will together provide reclamation bonding in a sufficient amount;

IT IS FURTHER ORDERED that the collateral bond in the amount of \$11,800,000 and escrow account with funds in the amount of \$350,000 are 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 terms of the amended LOC and must be retained by the Commission until replaced;

IT IS FURTHER ORDERED that the collateral bond with amended LOC No. NZS564256 (Amendment No. 9) provides for continuation of sufficient bonding for the permit 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 12, 2016;

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 \$350,000 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. 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 IN AUSTIN, TEXAS, on March 10, 2015.

RAILROAD COMMISSION OF TEXAS

Christi Craddick

CHAIRMAN CHRISTI CRADDICK

David Porter

COMMISSIONER DAVID PORTER

Ryan Sitton

COMMISSIONER RYAN SITTON

ATTEST:

Kathryn Way

Secretary
Railroad Commission of Texas

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

Permit No.: 26D

Mine Name: Gibbons Creek Lignite Mine

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

This instrument replaces (i) an existing bond, described as Collateral Bond, dated December 20, 2013, and accepted by the Railroad Commission of Texas on May 22, 2014, in the amount of \$11,800,000.00 and (ii) an Escrow Account Agreement and cash escrow in the amount of \$350,000.00, effective and accepted by the Railroad Commission of Texas on May 6, 2014 (the "Escrow Account Bond").

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 24th day of July, 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;

WHEREAS, the bound Principal has previously submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, a collateral bond, in the amount of \$11,800,000.00 (the "Existing Collateral Bond") and the Escrow Account Bond, in the amount of \$350,000.00;

WHEREAS, this Collateral Bond (the "Collateral Bond"), in the amount of \$12,000,000.00, replaces the Existing Collateral Bond and the Escrow Account Bond;

THAT WE, Texas Municipal Power Agency, as Principal, are held and firmly bound to the State of Texas in the full sum of Twelve Million and No/100 United States Dollars (\$12,000,000.00 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 which 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 7th Day of January, 2015.

Texas Municipal Power Agency
Principal

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

CBS By: [Signature]
Signature

[FOR LETTER OF CREDIT OPTION]

Wells Fargo Bank, N.A.
Bank

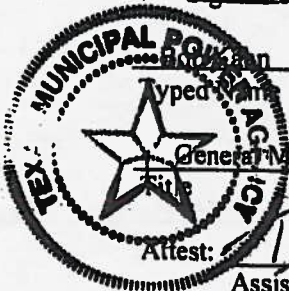
3000 Briarcrest, Bryan, Texas 77802
Address

By: [Signature]
Signature

Patrick Hennessey
Typed Name

Senior Vice President
Title

Attest: [Signature]



[Signature]
Typed Name
General Manager
Title

Attest: [Signature]
Assistant Secretary to the Board of Directors

Accepted 3-10-15

Christi Caddick
CHAIRMAN, Railroad Commission of Texas

David Peter
COMMISSIONER, Railroad Commission of Texas

[Signature]
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.

Schedule of Collateral¹

<u>Description</u>	<u>Value²</u>
Wells Fargo Bank, N.A. Irrevocable Standby Letter of Credit No. NZS564256, 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 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, the Amended and Restated Letter of Credit, dated December 20, 2013, and The Amended and Restated Letter of Credit, dated January 7, 2015.	\$12,000,000.00

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

² 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

**CERTIFICATE OF LETTER OF CREDIT DEPARTMENT OFFICER OF LETTER OF
CREDIT ISSUING BANK**

The undersigned, an authorized signatory of Wells Fargo Bank, N.A. (the "Bank"), issuer of amendment no. 010 under letter of credit number NZS564257 dated January 7, 2015 in favor of Railroad Commission of Texas, (the "L/C Amendment") hereby certifies the following:

1. The signature appearing on the L/C Amendment is the genuine signature of the person signing the same.

2. The person referred to in paragraph 1 above was at the time of execution and delivery of the L/C Amendment, and is now, the duly elected, qualified and acting incumbents of their respective offices, and, pursuant to authorization contained in the By-Laws and action by the Board of Directors of the Bank and their designees, such person in their official capacity have authority to execute the L/C Amendment and any and all documents that may be required in connection with the issuance and delivery of the L/C Amendment.

Dated this 7th day of January, 2015.

WELLS FARGO BANK, N.A.

By: _____

Authorized Signature

Name: BRIAN T. O'CONNELL
Title: VICE PRESIDENT

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

Together we'll go far





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

**Amendment To
Irrevocable Standby Letter Of Credit**

Number: NZS564257
Amendment Number: 010
Amend Date: January 7, 2015

AMENDED AND RESTATED LETTER OF CREDIT

LETTER OF CREDIT NO. NZS564257
DATE: JANUARY 7, 2015
APPLICANT: TEXAS MUNICIPAL POWER AGENCY
AMENDMENT NO. 10

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 78701

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 78701

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 SIX MILLION SIX HUNDRED THOUSAND NO/100 UNITED STATES DOLLARS (\$6,600,000.00 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 INCREASE AUTOMATICALLY, WITHOUT AMENDMENT OR BENEFICIARY'S PRIOR CONSENT, IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

DATE OF INCREASE	AMOUNT OF INCREASE
04/14/2015	USD 3,800,000.00

THIS LETTER OF CREDIT EXPIRES AT OUR ABOVE OFFICE ON APRIL 11, 2016 (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.

ALL DRAFTS, DEMANDS, OR DOCUMENTS PRESENTED UNDER THIS L/C AND ALL NOTICES AND COMMUNICATIONS MADE WITH RESPECT TO THIS L/C MUST 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

Together we'll go far



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.

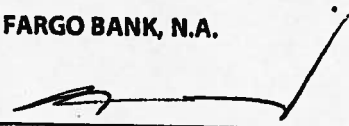
DOCUMENTATION FROM THE BANK ESTABLISHING THE AUTHORITY OF THE SIGNATORY TO THIS LETTER OF CREDIT TO BIND THE BANK IS ATTACHED. ALSO ATTACHED IS A COPY OF THE BANK'S CHARTER OR OTHER EVIDENCE OF THE BANK'S AUTHORITY TO DO BUSINESS IN THE UNITED STATES.

UNQUOTE

Very Truly Yours,

WELLS FARGO BANK, N.A.

By:


Authorized Signature

AUREA C. BALENBIN
ASSISTANT VICE PRESIDENT

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, 2nd Floor
MAC A0283-023,
San Leandro, CA 94577-6922

or 401 Linden Street, 1st Floor
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)

