

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C13-0001-SC-26-F.B
APPLICATION BY TEXAS MUNICIPAL POWER AGENCY
FOR RELEASE OF RECLAMATION OBLIGATIONS
PERMIT NO. 26D, GIBBONS CREEK LIGNITE MINE
GRIMES COUNTY, TEXAS**

**ORDER APPROVING RELEASE
OF PHASE III RECLAMATION OBLIGATIONS FOR 111.0 ACRES**

Statement of the Case

Texas Municipal Power Agency (TMPA), P.O. Box 7000, Bryan, Texas 77805, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD or Staff), for Phase III release of reclamation obligations for 111.0 acres within Permit No. 26D, Gibbons Creek Mine, Grimes County, Texas. Permit No. 26D currently authorizes surface coal mining operations at TMPA's Gibbons Creek Mine within its approximate 10,999.0-acre permit area. No mining is ongoing; the mine is in reclamation. 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.

TMPA had initially applied for release on 148.1 acres. After Staff review and TMPA's supplementation, the original docket has been split into two dockets, C13-0001-SC-26-F.A, a request for release of Phases I-II reclamation obligations for 18 acres approved by the Commission by Order dated November 13, 2014, and Docket No. C13-0001-SC-26-F.B, the instant docket, encompassing 111.0 acres (Phase III for the 18 acres approved for Phase I and II release in the Commission Order, and Phase III for the remaining 93 acres. Of the initial 148.1 acres, TMPA withdrew 37.1 acres from consideration in the previous docket due to Staff concerns regarding surface water quality, soil quality, revegetation success, and completion of the extended responsibility period).

TMPA supplemented the instant docket, and Staff now recommends release of Phase III reclamation obligations for 111.0 acres. Both parties are in agreement with the order and have filed waivers of preparation and circulation of a proposal for decision.

The Commission approves the release of reclamation obligations. Although TMPA has not requested an adjustment to its accepted reclamation bond instrument at this time and no new bond has been submitted, an eligible bond reduction amount of \$120,634.80 may be determined by the Commission.

FINDINGS OF FACT

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

1. By letter dated September 14, 2012, Texas Municipal Power Agency (TMPA) filed its application with the Surface Mining and Reclamation Division for Phases I, II, and III release of reclamation liability on an aggregate 148.1 acres within the Gibbons Creek Lignite Mine, Permit No. 26D. The application was approved in part, a portion was withdrawn, and the remainder was split into a separate docket that is now requested for approval. Permit No. 26D currently authorizes surface coal mining operations at TMPA's Gibbons Creek Mine within its approximate 10,999.0-acre permit area. No mining is ongoing; the mine is in reclamation. The application is processed pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2015) (Act), and the Coal Mining Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2015) (Regulations). The application, as supplemented, was properly certified in accordance with § 12.312(a)(3).
2. The acreage initially requested for release was made up of a request for Phases I-III release for 55.1 acres (18 acres requested for Phases I-III release and 37.1 acres requested for Phases I-III) and Phase III release on 93 acres. The application was declared administratively complete on March 28, 2013. Staff's technical analysis (TA) and inspection report for the subject application was filed with the Hearings Division on April 26, 2013.
3. The 148.1 acres was made up of a contiguous parcel that Staff designated and reviewed as Areas 1, 2, and 3. Staff's TA recommended release of Phases I and II release and denial of Phase III release for 18 acres referred to as Area 2. Staff recommended denial of Phase III release for 93 acres (Area 1) and denial of Phases I-III release for 37.1 acres

- (Area 3). By letter dated May 8, 2013, TMPA requested that the docket be held in abeyance until TMPA met with Staff to discuss the TA, particularly regarding surface water as an area of review critical to the application and future release applications.
4. The docket was placed in abeyance by the examiner's letter dated May 24, 2013. TMPA met with Staff on May 14, 2013, and by letter dated June 4, 2013, TMPA indicated that it had follow-up discussions with Staff and would supplement the application perhaps by the end of June 2013. By letter dated August 23, 2013, TMPA supplemented its application with surface water information and indicated that it would not object to Staff's recommendation of denial of release for 37.1 acres (Area 3). Staff filed its review of this information in its Addendum No. 1 to the TA dated January 17, 2014. The addendum recommended approval of Phases I and II release for 18 acres, denial of Phase III release for the 18 acres, and denial of Phase III release for the remaining 93 acres (after TMPA withdrew its request for 37.1 acres). By letter dated February 20, 2014, the examiner inquired regarding TMPA's position following the TA recommendation. By letter dated March 13, 2014, TMPA requested additional time to allow TMPA to file a response package by April 30, 2014. The examiner granted TMPA's request. No additional filing had been received by August 22, 2014; therefore, the examiner requested that TMPA consider whether it wished to pursue Phases I and II release for the 18 acres and request that the remainder be held in abeyance until further discussion with Staff and supplementation occurred. By letter dated October 8, 2014, TMPA requested that the examiner process the request for release of 18 acres (Area 2) and place the remainder of the acreage requested for release (except the withdrawn 37.1 acres) in abeyance. The docket was split into two separate dockets for processing, Docket Nos. C13-0001-SC-26-F.A. and C13-0001-SC-26-F.B.
5. The request for release of Phases I-II reclamation obligations for 18 acres was approved by the Commission by Order dated November 13, 2014. This Order addresses the request for Phase III release of reclamation obligations for 111.0 acres (the remainder of the 148.1 acres excluding the withdrawn 37.1 acres designated as Area 3). The

Commission previously approved Phases I and II release of reclamation obligations for the 93 acres.

6. TMPA supplemented this request by letter dated December 23, 2014 with a revised and updated surface water hydrology report prepared by its consultant and a revised and updated map entitled *Permit 26D Phase III Bond Release, Exhibit 4 – Structures and Ground and Surface Water Monitoring* to replace the original Exhibit 4 in the September 14, 2012 application. Staff's Addendum No. 2 to its TA was filed on July 6, 2015. Addendum No. 2 recommends Phase III release for both Area 1 and Area 2.
7. Permit No. 26D was issued by Commission Order dated July 24, 2001. By order dated March 10, 2015, the Commission accepted the current bond, a collateral bond in the amount of \$12,000,000, and irrevocable Amended and Restated LOC No. NZS564256 (Amendment No. 9) in the same amount issued by Wells Fargo Bank, N.A.
8. All required public notice was accomplished in the docket prior to its being split into two dockets, and no changes were made to the proposals for release initially noticed. Copies of the initial application for release were filed in the required county and Commission offices and distributed to applicable agencies for review and comment. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are TMPA and the Commission's Surface Mining and Reclamation Division (Staff). By letter dated November 27, 2012, TMPA provided an affidavit of publication and tear sheets showing publication of notice of application. Notice of the application was published once each week for four consecutive weeks in the *Navasota Examiner*, a newspaper of general circulation in the vicinity of the Gibbons Creek Mine in Grimes County, the locality of the permitted acreage. Dates of publication were October 24 and 31, 2012 and November 7 and 14, 2012. The notice of application contains all information required by § 134.129 of the Act and § 12.312(a)(2) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. The published notice is adequate notification of the request for release. The notice included the name of the permittee, the

precise location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of approved bond, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notices contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection, and the address to which comments should be sent. The notice included a map showing sufficient notice of the boundaries of the areas requested for release.

9. Copies of the application were filed for public review in the offices of the County Clerk of Grimes County, Texas and in the offices of the Surface Mining and Reclamation Division, Railroad Commission of Texas at 1701 North Congress Avenue, William B. Travis Building, Austin, Texas.
10. By letter dated March 22, 2013, TMPA submitted copies of letters notifying owners and adjoining landowners, lessees, utilities, and governmental agencies of the application for release. The letters were dated October 18, 2012 and were sent to owners of interests within and adjacent to the areas requested for release, the District Conservationist, USDA Natural Resources Conservation Service in Temple, Texas, the Texas State Soil and Water Conservation Board, the Environmental Protection Agency, the Texas Commission on Environmental Quality (TCEQ), the Navasota Soil and Water Conservation District, the Brazos River Authority, the Grimes County Judge and Commissioners Court, Grimes County, the sewage and water treatment authority in the county, and the Wickson Water Supply. Adequate evidence exists in the record that adequate notice of the request for release was sent to owners of property and other interests within and adjoining the area requested for release and to local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality of the surface mining and reclamation operations [§ 12.312(a)(2), Regulations]. The areas requested for release are not located within the territorial boundaries of any municipality that must be notified pursuant to § 12.313(c) of the

Regulations. The Staff sent notice by letter dated December 7, 2012 to the Grimes County Judge by certified mail as required by § 134.133 of the Act.

11. The Commission's Inspection and Enforcement Section mailed letters dated September 26 and 27, 2012 to the landowners and owners of other interests within the areas requested for release and adjacent to the areas requested for release and to the U.S.D.I. Office of Surface Mining Reclamation and Enforcement (OSM), Tulsa Field Office, notifying them that a release had been requested and advising them of the opportunity to participate in the on-site inspection scheduled for October 9, 2012 [§ 12.312(b)(1)]. The inspection was conducted as scheduled. Three Commission inspectors, three representatives of the applicant, and eight landowners attended the inspection. No others attended. The inspection report dated April 17, 2013 is included as Attachment III to the Staff's letter dated April 26, 2013 filing the TA and inspection report.
12. No persons filed written comments, objections, or requests for hearing [§ 12.313(d)]. During the inspection, two landowners made comments regarding their tracts (Tracts 134 and 141) that were considered in Docket No. C13-0001-SC-26-F.A.
13. Pond B2P-5, a portion of Pond B2P-3 with B2P-3 Channel Extension, Tract 141 Access Road, and culvert group approved as permanent structures are located within the 111 acres requested for Phase III release; the approval dates for these structures are April 28, 1995, September 1, 1998 and September 1, 2010, August 18, 2005, and August 18, 2005, respectively. Photographs from the inspection depict the permanent structures, the areas requested for release, and the vegetation present on the areas requested for release. The photographs support TMPA's request.
14. The areas requested for release were disturbed as a result of mining-related activities between 1986 and 2005, and final grading occurred from 1991 to 2005. Vegetation was planted within the entire 148.1 acres initially requested for release from 1991 to 2005. The postmine land uses of the 111.0 acres are pastureland and developed water resources. Pastureland grasses observed within the proposed release areas appears healthy and self-sustaining (§§ 12.390-12.395). The acreage is a part of Land Management Unit (LMU)

B2-4. The 18-acre area was added to the B2-4 Extended Responsibility Area (ERA) (Application, Exhibit 1, Extended Responsibility Areas) initiated on October 27, 1994. The 18 acres was approved for addition to the ERA by the Director's letter dated March 23, 2012; the area was given the same ERP initiation date (October 27, 1994) as the adjacent acreage. The ERP is five years for this area that receives 26 or more inches of rainfall annually. The 111.0 acres have met the five-year ERP required for Phase III release. Photographs contained in the Staff's TA depict the condition of the vegetation. Photographs 5, 6, and 8 are not within the 111.0-acre area requested for release.

15. For the Phase III release now requested for the 18-acre area and the 93-acre area (111.0 acres), data provided by TMPA and information provided by Staff demonstrate that Phase III requirements for protection of surface water and groundwater have been met. The acreage drains to Gibbons Creek and its tributary, Rock Creek, thence to the Navasota River (TCEQ Stream Segment No. 1209), thence to the Brazos River (TCEQ Stream Segment No. 1202). TMPA's consultant's *Surface Water Hydrology Report* was provided. Based upon a review of this report, Commission records, data included from two TCEQ Clean Rivers Program monitor stations (TCEQ and regional water authorities' coordination and water quality monitoring and assessment) contained in the report, and Staff review, surface waters have been protected in accordance with § 12.313(a)(3). Six stream monitoring stations were used to compile data used to characterize and compare the water quality at these upstream and downstream stations based on pH, total dissolved solids (TDS), and manganese (Mn) concentrations. The downstream water quality was also compared to the stream segment standards for these parameters for Stream Segments 1209 for the Navasota River and Steam Segment 1202 for the Brazos River.

- (a). The areas are drained by Rock Lake Creek and Gibbons Creek which flow into the Navasota River and thence to the Brazos River. Stream monitoring stations were used to compile data to characterize and compare the water quality at these upstream and downstream stations based on pH, total dissolved solids (TDS), and manganese (Mn) concentrations. The downstream water quality was also compared to the stream segment standards for these parameters for Stream

Segments 1209 for the Navasota River and Steam Segment 1202 for the Brazos River. Average concentrations of TDS and Mn were lower at the downstream baseline station, Gibbons Creek II, than the upstream baseline station, Rock Lake Creek North. Average pH concentrations were higher at downstream stations as compared to upstream stations; however, they meet the stream segment criteria for both segments. Average and flow-weighted TDS and average Mn were higher at downstream station SWRL4 on Rock Lake Creek as compared to the upstream station SWRL3; however, Staff analysis indicates that these levels should be diluted prior to the runoff reaching Station SWGC2 and Gibbons Creek in that the average and flow-weighted TDS concentrations for Station SWGC2 for the period of record 2012-2015 (TMPA's consultant's report, "Surface Water Hydrology Report") are 541.4 mg/L and 385.2 mg/L, respectively. Average pH levels at upstream station SWRL3 (Rock Lake Creek) and downstream station SWRL4 (Rock Lake Creek) were similar based on the study performed by TMPA's consultant covering the period of record 2012-2015. Staff had reviewed the update to the Cumulative Hydrologic Impact Assessment (CHIA) prepared for the Kosse Mine that included Permit No. 26D and others. The mass-balance point reviewed is located at the confluence of the Brazos and Navasota. Considering TDS as the indicator parameter, TDS concentrations at the mass-balance point were projected to increase to 426 mg/L after surface mining operations. This TDS concentration is lower than that at Station SWGC2, 541.4mg/L. Both concentrations meet the Stream Segment criteria for TDS: 600 mg/L for Stream Segment 1209 of the Navasota River, and 750 mg/L for Stream Segment 1202 of the Brazos River.

- (b). Water quantity may be slightly affected due to attenuation of storm runoff in ponds; however an increase in sustained flows is expected in the Navasota River Basin. Both effects are expected to be insignificant due to the large levels of storm runoff within the cumulative hydrologic impact area (Navasota River Basin).

- (c). Groundwater has been protected. The acreage requested for release is located at the far eastern edge of the B2 Mine Block. TMPA provided groundwater monitoring data from eight monitoring wells located to the southwest of the proposed bond release area, four to the southwest located in Permit No. 26D and four located in Permit No. 38D south of the proposed release area. The wells located in Permit No. 38D are not hydrologically connected to the affected sands in the B2 Mine Block. Three of the wells within Permit No. 26D do not capture any spoil water that may migrate from the proposed bond release area. Spoil monitoring well MAMA4, located in the B2 Mine Block almost two miles southwest of the proposed bond release area, attained resaturation by 1993, four years after mining ceased. TDS concentrations appear to have decreased since 1993. Underburden monitoring well MOBB2, located in the middle of the mine spoil within the B2 Mine Block since 1985 or 1986 monitored Sand Unit 2355. It was lowered by dewatering by approximately 14 feet. A full recovery of water level elevation by about eight years following dewatering is indicated. TDS concentrations vary, possibly due to a failed well seal. Staff indicates that from monitoring well MAMA4, resaturation of mine spoil is occurring as predicted in the CHIA. No water wells are located within the B2 Mine Block. Baseline data indicates that most of the sand units would be marginally suitable as a water supply for only limited agricultural and industrial purposes.
16. The latest accepted reclamation cost estimate contained in Revision No. 21 approved administratively by letter dated December 8, 2014 is \$11,494,592. No changes are requested to the approved bond, a collateral bond in the amount of \$12,000,000 with irrevocable Amended and Restated LOC No. NZS564256 (Amendment No. 9), issued by Wells Fargo Bank, N.A. and accepted March 10, 2015. An eligible bond reduction amount may be determined, however, for the acreage for which Phase III reclamation requirements have been met. The amount may equal the amount of the bond remaining on the acreage approved for Phase III release. The acreage is currently bonded in the amount of \$988 per acre (soil preparation, revegetation, and maintenance costs). The eligible bond reduction amount for the 111.0 acres requested for release is \$988/acre x

111.0 acres, or \$109,668.00, plus 10% of that amount for administrative costs (\$10,966.80), totaling \$120,634.80.

17. The areas requested for release have been marked in the field with boundary markers at corners and angle points so that these areas can be distinguished from other reclamation areas. Permanent markers shall be maintained; marking the area approved for release will appropriately identify them from other reclamation areas and will aid in inspection and enforcement. (§ 12.330)
18. TMPA and Commission Staff are in agreement regarding the 111.0 acres and have waived the preparation and circulation of a proposal for decision as provided for in § 2001.062(e) of the Administrative Procedure Act, TEX. GOV'T CODE Ch. 2001 (Vernon Supp. 2015). Open meeting notice of consideration of this application has been provided (§ 551.048, TEX. GOV'T CODE).

CONCLUSIONS OF LAW

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

1. Proper notice was provided for this request for release of reclamation obligations pursuant to the Act, the Regulations, the Administrative Procedure Act, TEX. GOV'T CODE Ch. 2001 and § 551.048 (Vernon Supp. 2015).
2. A public hearing on the request is not warranted.
3. TMPA has complied with all applicable provisions of the Act and the Regulations for Phase III release for 111.0 acres as required by § 12.313(a)(3) of the Regulations and § 134.131(f) of the Act, respectively, as demonstrated in this application as supplemented.
4. The Commission may determine an eligible bond reduction amount of \$120,634.80.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS
that the above Findings of Fact and Conclusions of Law are adopted;

IT IS FURTHER ORDERED that Phase III release of reclamation obligations pursuant to § 134.131(f) of the Act and § 12.312(a)(3) of the Regulations for 111.0 acres requested for release is hereby approved for the Gibbons Creek Mine, Permit No. 26D;

IT IS FURTHER ORDERED that the Commission approves an eligible bond reduction amount of \$120,634.80.

IT IS FURTHER ORDERED THAT the current bond remains in effect according to its terms;

IT IS FURTHER ORDERED that all areas released from Phase III reclamation obligations shall remain clearly marked in the field with permanent boundary markers to distinguish the released areas from active mining and reclamation areas;

IT IS FURTHER ORDERED that the Commission may vary the total bond amount required as affected land acreages are increased or decreased or when 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

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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.

SIGNED IN AUSTIN, TEXAS, this 25th day of August, 2015.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN DAVID PORTER

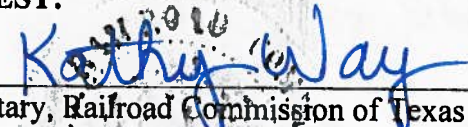


COMMISSIONER CHRISTI CRADDICK



COMMISSIONER RYAN SITTON

ATTEST:



Secretary, Railroad Commission of Texas

