

**RAILROAD COMMISSION OF TEXAS
HEARINGS SECTION**

SMRD DOCKET NO. C13-0009-SC-11-F

SAN MIGUEL ELECTRIC COOPERATIVE, INC., APPLICATION FOR PHASE II RELEASE OF RECLAMATION OBLIGATIONS, 462.7 ACRES, REVISED TO 457 ACRES, SAN MIGUEL LIGNITE MINE, PERMIT NO. 11G, ATASCOSA AND McMULLEN COUNTIES, TEXAS

**ORDER APPROVING RELEASE
OF PHASE II RECLAMATION OBLIGATIONS FOR 457 ACRES**

Statement of the Case

San Miguel Electric Cooperative, Inc. (San Miguel), P.O. Box 280, Jourdanton, Texas 78026, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD), for Phase II release of reclamation obligation for 462.7 acres within Permit No. 11G, San Miguel Lignite Mine, Atascosa and McMullen, Counties, Texas. The application was later revised to exclude a 5.7-acre grid containing a portion of an unapproved ditch, revising the acreage requested for release to 457 acres. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2015) (Act), and the "Coal Mining Regulations," 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2015) (Regulations).

Copies of the application were filed in required county and Commission offices. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are San Miguel and the Commission's Surface Mining and Reclamation Division (Staff). There remain no outstanding issues between the parties. Based on the information provided by the applicant and its inspection of the area, the Staff first recommended a release of Phase II reclamation obligations for 228.24 acres of the 462.7 acres requested for release. After supplementation by the applicant, San Miguel has provided information sufficient for release of Phase II reclamation obligations for the acreage requested, as revised, 457 acres. The Commission determines that the 457 acres meet successful revegetation standards and have been reclaimed in a manner that will ensure that the proposed Phase II release areas are not contributing suspended solids to stream-flow or runoff in excess of the requirements set by §134.092(a)(10) of the Act and Subchapter K of TEX. ADMIN. CODE Ch. 12.

There is no eligible bond reduction amount; the current bond is calculated for the areas proposed for release by the worst-case bond method. The remaining reclamation costs, should revegetation fail, are for

for soil preparation, revegetation, and maintenance and may be released when the acreage is approved for Phase III release.

FINDINGS OF FACT

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

1. San Miguel Electric Cooperative, Inc. ("San Miguel") operates the San Miguel Lignite Mine, Permit No. 11G. The mine encompasses approximately 16,000 acres in Atascosa and McMullen Counties. The permit was issued as Permit No. 11G by Order dated October 22, 2013.
2. By letter dated September 28, 2012, received October 19, 2012, San Miguel filed its application for a Phase II release of reclamation liability on 462.7 acres. The application was supplemented to provide a revised proposed public notice on December 9, 2013 in response to examiner comments and by letters dated January 24, 2014, to provide proof of notice, and by letter dated April 14, 2015 that contained additional information to address Staff concerns.
3. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2015), and the "Coal Mining Regulations," 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2015) (Regulations). No filing fee is required. The application was properly certified in accordance with §12.312(a)(3), Regulations.
4. San Miguel does not request a reduction in the amount of the approved reclamation bond. The existing reclamation bond for the entire permit area, a self-bond with third-party guarantee by National Rural Utilities Cooperative Finance Corporation in the amount of \$70,000,000, was accepted by Commission Order dated March 22, 2011.
5. The areas proposed for release are detailed and depicted in Attachment I to Staff's memorandum of review submitted by letter dated October 2, 2014. Photographs of the proposed release areas and structures are also contained in Appendix IV to Attachment III (Staff Inspection Report) and in Attachment IV, Inspection Report Amendment, and provide support for the application and the inspection report.

6. The application included ownership and tract information for owners of interest in the areas proposed for release and adjacent lands. By letters dated January 21, 2014, San Miguel sent notice to three owners of interests in the areas requested for release. By letter dated January 24, 2014, San Miguel submitted proof of required publication of notice and copies of notification letters pursuant to §12.312(a)(2), Coal Mining Regulations. No proof was initially submitted that San Miguel sent a letter to an adjoining landowner, A.M. Peeler, Jr. Upon inquiry by the examiner, San Miguel acknowledged that inadvertently it had not sent the notification letter and then sent the notification by letter dated October 29, 2014; no comments were received from Mr. Peeler regarding the application.

7. The SMRD Director determined the application to be administratively complete by memorandum dated April 11, 2014. The Staff's evaluation document (Technical Analysis, or TA) was filed with the Hearings Division by memorandum dated October 2, 2014. The TA noted several deficiencies; San Miguel supplemented the application by letter dated October 31, 2014. By letter dated April 14, 2015, San Miguel also filed revised pages to the application, including Exhibit 142-ST, a map showing the structures in the proposed bond release areas. This filing was in response to Staff's TA. Staff reviewed the additional information and filed its Addendum No. 1 to the TA by letter dated July 1, 2015. Additional supplements were filed by letters dated July 20, 2015 and August 26, 2015 addressing concerns noted by Staff in its TA Addendum No. 1. After review of these materials, Staff filed its Addendum No. 2 to the TA by letter dated November 5, 2015.

8. Notice of application was published once each week for four consecutive weeks in the *Pleasanton Express*, a newspaper of general circulation in the locality of the surface mining and reclamation operation on January 22 and 29, 2014 and on February 5 and 12, 2014. San Miguel filed the publisher's affidavit and copies of news clippings showing publication of notice by letter dated April April 3, 2014. The notice of application contains all information required by the Act and Regulations Regulations for notice of application for bond release applications. The published notice is adequate adequate notification of the request for release. The notice included the elements required by §134.129 of the Act and §12.312(a)(2) of the Coal Mining Regulations: the name of the permittee, the the precise location of the land affected, the total number of acres, permit number at the time of

application and date approved, the amount of bond filed, the type and appropriate dates reclamation reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contained information concerning the applicant, the location location and boundaries of the permit area, the availability of the application for inspection and address to which comments should be sent.

9. Copies of the application were filed for public review at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas, and in the office of the Atascosa County Clerk's Office, Atascosa County Courthouse, Jourdanton, Texas. The areas proposed for release are located in Atascosa County.
10. San Miguel sent notification letters to local governmental bodies, and other agencies and authorities as required by §12.312(a)(2), Coal Mining Regulations. The areas requested for release are not located within the territorial boundaries of any municipality. Letters were sent to the Natural Resources Conservation Service in Tilden and Pleasanton, Texas, the Texas Commission on Environmental Quality, the U.S. Army Corps of Engineers, the Nueces River Authority, the Atascosa County Clerk, the Environmental Protection Agency, the Atascosa County Soil and Water Conservation District, the Evergreen Underground Water Conservation District, and to the Texas General Land Office.
11. Staff mailed letters dated October 30, 2012 pursuant to §12.312(b), Coal Mining Regulations, to the landowners and owners of interests of tracts within the areas requested for release, and to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office ("OSM"). The notification stated that a release had been requested and, pursuant to §12.312(b)(1), Coal Mining Regulations, advised them of the opportunity to participate in the on-site inspection scheduled for November 15, 2012.
12. No adverse comments or written objections were filed regarding the request for release. No written objections or requests for hearing or informal conference were filed pursuant to §12.313(d), Coal Mining Regulations.

13. Staff conducted its inspection of the areas requested for release accompanied by a representative of San Miguel. No landowners attended the inspection. Staff's inspection report was dated July 2, 2013. Follow-up inspections were conducted on May 12, 2014 and on June 25, 2014. An amendment to the Staff inspection report dated August 22, 2014 was also included in the Staff review filed October 2, 2014. The amendment to the Staff inspection report provided information regarding the follow-up inspection on June 25, 2014 to examine three areas that appeared to contain structures not identified in the application or addressed in the initial field inspection report. At the follow-up inspection, Staff identified the structures, an unapproved access road, approved Ditch HP-1 (a diversion), and two other unapproved drainage structures. San Miguel filed additional information related to these structures in its supplement dated October 31, 2014. Staff again inspected the areas on May 25, 2015, and addressed the additional information in its TA Addendum No. 1 dated July 1, 2015 (See Finding of Fact No. 16, *infra*.)
14. The Commission previously approved Phase I release of reclamation liability for the subject acreage acreage by its Order dated October 22, 2009 (Docket No. C9-0014-SC-11-F).
15. All exposed surface areas have been stabilized to control erosion; any eroded areas which occurred during mining and reclamation were stabilized pursuant to §12.389, Coal Mining Regulations. Vegetation was planted in accordance with the approved reclamation plan.
16. All acreage requested for release from Phase II reclamation obligations has met Phase II revegetation requirements with the exception of the combined acreage of certain of the unidentified structures [subparagraph (c)].
 - (a). Revegetation has been established on all areas requested and approved for release in this Order in accordance with §12.395 within the 462.7-acre area.
 - (1). The areas proposed for Phase II release have the postmine land use pastureland. The release areas were planted with several varieties of grasses, including Coastal bermudagrass, Common bermudagrass, Kleingrass, Plains bristlegrass, Sideoats grama, Green sprangletop, Old World bluestem, WWW-B dahl bluestem,

- bluestem, Wilma lovegrass, and Buffalo grass.
- (2). By letter dated December 30, 2012, the Commission approved the initiation of the extended responsibility period (ERP) effective November 3, 2010. San Miguel conducted an evaluation of the vegetation in 2012 that included ground cover data for the pastureland land management unit (LMU) BX-4 covering the acreage requested for release. Staff determined that the vegetative ground cover within the LMU exceeded 90% of the approved success standard during the 2012 growing season. The land has been reclaimed to the approved postmine land uses as required by §12.147 and §12.399. Based upon the Staff inspection and photographs in the record, the vegetation is healthy and self-sustaining.
 - (3). There is no prime farmland within the areas requested for release for which production to equivalent yields as non-mined land would apply.
- (b). San Miguel has met the Phase II requirement that the areas not contribute suspended solids to streamflow outside the permit area in excess of the requirements set by TEX. NAT. RES. CODE ANN. §134.092(a)(10) and Subchapter K of 16 TEX. ADMIN. CODE Ch. 12.
- (1). Drainage from the Phase II release areas (Area B of the mine) flowed through final final discharge ponds 9B, 19B, 20B, 21B and 23B. Final discharge pond water quality records indicate that the water discharges from these ponds are compliant with the requirements of the permit and performance standards. SMRD records reflect that the water being discharged from the final discharge ponds receiving discharge from the areas requested for release for their varying periods of record meet meet the effluent requirements of the TCEQ's Texas Pollution Discharge Elimination System (TPDES) requirements for TCEQ Permit No. 02043 for pH [6.0- [6.0-9.0 standard units (s.u.), total suspended solids (TSS) based on allowable daily daily average (35 mg/L) and allowable daily maximum (70 mg/L), iron (Fe) based on on 3.0 mg/L allowable daily average) and 6.0 mg/L allowable daily maximum, and

and manganese (Mn), 1.0 mg/L allowable daily average and 6.0 mg/L allowable daily daily maximum. All ranges and all averages for these ponds for the periods of record record as follows met the requirements of the TCEQ permit: Pond 9B (09/1998 - 11/2010), Pond 19B (11/2001-05/2010), Pond 20B (09/2001-04/2010), Pond 21B 21B (07/2004-04/2011), and Pond 23B (05/2004-11/2010).

- (2). No permanent impoundments are located within the areas requested for release for which water quality would be required to be sufficient for the postmine land use. No silt dams to be retained as permanent impoundments are present within the area proposed for Phase II release for which plans for future maintenance would be required.
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- (c). Staff indicated that 265.81 acres contained four structures that had not been approved and that the acreage did not qualify for release from Phase II reclamation obligations. Staff noted that the structures must either be approved structures or be reclaimed prior to Phase II release. Photographs 28-36 depict these areas. San Miguel provided additional information showing that two of the four structures, a constructed drainage channel (Photos 30-33) located parallel and east of reclaimed Ramp 3B (Drainage UN-2, BX-4 mining area), and a ditch located between Pupil and Homestead Ponds (Photographs 34-36), do not require submittal of designs, approval, and certification because the drainage areas for these structures are less than 640 acres each (Advisory Notice EN-PS-341). Therefore, these areas may be released from Phase II reclamation obligations. San Miguel also presented evidence that what appeared to be a well-traveled access road (Photos 28-29 south of Pond 27B in the BX-4 mining area) is not classified as a road that requires approval in that the roadway is now completely overgrown and is not being used; the road qualifies as a limited use vehicular pathway (Advisory Notice IN-EN-008) because it is no longer frequently used and does not have other attributes of a road as defined in §12.3(153). The area may be released from Phase II requirements. After this supplementation and review, Staff recommended that these acreages be released from Phase II reclamation obligations.

- (d). In its Addendum No. 1 to the TA, Staff recommended denial of release of 234.51 acres (Parcels BX-4-3 and BX-4-4). Parcels BX-4-3 and BX-4-4 contain Ditch HP-1. The ditch alignment was approved in Revision No. 25. It conveys water from Homestead Pond to downstream ponds; however, no construction certification has been submitted for the ditch, and the approved designs for related ponds do not address Ditch HP-1. Although the area drained by Ditch HP-1 does not include 640 acres or more, the ditch is a part of a pond system whose construction certifications do not address the ditch. As such, the area does not qualify for release from Phase II reclamation obligations (234.51 acres). Subsequent to this review, by letter dated July 20, 2015, San Miguel stated that it withdrew its request for the 5.7-acre grid in Parcel BX-4-3 that Ditch HP-1 crosses (Grid AS-100) to decrease the bond release acreage by 5.7 acres to 457 acres. San Miguel determined to perform the field work necessary to certify the portion of HP-1 falling within Parcel BX-4-4. In addition to the certification, San Miguel was required to revise exhibit 142-BR, 462.7-AC Phase II bond Release Map, and Tables 4-1, 4-2, and 4-3, as well as pages 1-1 and 2-1 to reflect the decrease in acreage. By letter dated August 26, 2015, San Miguel submitted the materials requested. In its letter dated November 5, 2015 with attached review, Staff provided its analysis of the certification and revised materials and recommended release of Phase II reclamation obligations for 457 acres, the acreage initially requested less the 5.7-acre grid withdrawn by San Miguel.
17. Based upon the application, as supplemented, and Staff review, sufficient evidence has been submitted submitted to show that all requirements have been met for Phase II release of 457 acres.
18. There is no eligible bond reduction amount for the acreage approved for release of Phase II reclamation requirements. Bonded areas within Permit No. 11G are bonded based upon the “worst-case” bond method. This method estimates reclamation costs of reclaiming the worst-case pit and reclamation of structures, and assumes that all other disturbed areas are reclaimed contemporaneously, so that there is no eligible bond reduction amount until Phase III release is approved; at that time, the remaining reclamation costs for the bonded acreage will be soil preparation, revegetation, and maintenance costs, retained until Phase III release is approved.

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.
2. A public hearing on the request is not warranted.
3. San Miguel has complied with all applicable provision of the Act and the Regulations for Phase II release of reclamation obligations for 457 acres as set out in the Findings of Fact. The Commission acknowledges the withdrawal of the 5.7 acre grid containing a portion of Ditch HP-1 by San Miguel. San Miguel may request further releases for this acreage in a future application.
4. The Commission may approve a release of Phase II reclamation obligations for 457 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 a release of Phase II reclamation obligations for the requested 457 acres is hereby approved;

IT IS FURTHER ORDERED that all areas released from reclamation obligations shall remain clearly marked in the field with permanent boundary markers maintained to distinguish these areas at all corners and angle points from active mining and reclamation areas in accordance with this Order;

IT IS FURTHER ORDERED that the current bond remains in effect according to its terms until a replacement bond is approved by the Commission;

IT IS FURTHER ORDERED that the Commission may vary the total amount of bond required 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 25 days after the order is signed. 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.

SIGNED IN AUSTIN, TEXAS on this 8th day of December, 2015.

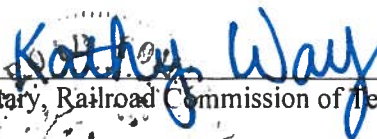
RAILROAD COMMISSION OF TEXAS


CHAIRMAN DAVID PORTER


COMMISSIONER CHRISTI CRADDICK


COMMISSIONER RYAN SITTON

ATTEST:


Secretary, Railroad Commission of Texas

