

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

**SMRD DOCKET No. C16-0018-SC-32-E; TEXAS WESTMORELAND COAL COMPANY  
APPLICATION FOR ACCEPTANCE OF REPLACEMENT SURETY BONDS FOR PERMIT No. 32G,  
JEWETT MINE, LEON, LIMESTONE AND FREESTONE COUNTIES, TEXAS**

**ORDER ACCEPTING REPLACEMENT SURETY BONDS**

**STATEMENT OF THE CASE**

Texas Westmoreland Coal Co. (TWCC) holds Railroad Commission of Texas (Commission) Permit No. 32G for the Jewett Mine located in Leon, Limestone and Freestone Counties, Texas. There are currently two accepted reclamation bonds totaling \$71,000,000 for Permit No. 32F: a self-bond with third-party guarantee by NRG Energy, Inc. in the amount of \$57,500,000 and a surety bond in the amount of \$13,500,000 by Liberty Mutual Insurance Company.

TWCC now requests acceptance of two surety bonds, one issued by Arch Insurance Company, No. SU1125305, in the amount of \$22,219,000, and the second, No. SU48309, issued by Aspen American Insurance Company in the amount of \$26,281,000 to replace the existing self-bond by NRG Energy, Inc. The surety bonds are proposed as replacements for the currently accepted self-bond with third-party guarantee by NRG Energy, Inc. accepted by Commission Order dated June 12, 2012, in the amount of \$57,500,000, determined to remain sufficient by Order dated March 29, 2016 [Finding of Fact No. 44(k)]. Since that date, by letter dated May 9, 2016, Staff notified TWCC that NRG Energy, Inc., its third-party guarantor, no longer met requirements for self-bonding contained in §12.309(j). The surety bonds have been filed for acceptance to address this issue by replacing the self-bond with third-party guarantee with the surety bonds. The surety bond issued by Liberty Mutual Insurance Company is not proposed for replacement.

TWCC's request is made pursuant to TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the "Coal Mining Regulations." On July 11, 2016, Staff filed all materials filed by TWCC and its review of the bonds. The transmittal memorandum indicated that the most recent cost estimate for Permit No. 32G totals \$56,117,622. With the Liberty Mutual Insurance Company surety bond to remain in place, acceptance of the two proffered surety bonds will total \$62,000,000 and will be in an amount in excess of reclamation costs. Currently, there is a reclamation cost estimate in process but incomplete.

The total bond amount with the existing accepted surety bond by Liberty Mutual Insurance Company in the amount of \$13,500,000 and the two bonds proposed to replace the self-bond with third-party guarantee will be \$62,000,000. This amount is sufficient to cover the latest approved reclamation cost estimate.

The Commission finds that the proffered replacement surety bonds issued by Arch Insurance Company and Aspen American Insurance Company, with the Liberty Mutual Insurance Company surety bond in the amount of \$13,500,000 that will remain in place, will be sufficient in form and substance and may be accepted to replace the self-bond with third-party guarantee in the amount of \$57,500,000.

### **FINDINGS OF FACT**

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

1. Texas Westmoreland Coal Company (TWCC) holds Permit No. 32G for the Jewett Mine in Leon, Limestone and Freestone Counties, Texas. TWCC has filed a request for acceptance of replacement surety bonds. The application, as supplemented, is made pursuant to TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the "Coal Mining Regulations." By letter dated July 11, 2016 the Commission's Surface Mining and Reclamation Division (Staff) filed TWCC's submittal to replace its current self-bond with third-party guarantee by NRG Energy, Inc. with the Hearings Division, along with its staff attorney's review of the documents.
2. There are currently two accepted reclamation bonds for Permit No. 32G: a surety bond issued by Liberty Mutual Insurance Company, in the amount of \$13,500,000 accepted by the Commission by Order dated June 12, 2012, and a self-bond with third-party guarantee and indemnity agreement by NRG Energy, Inc. in the amount of \$57,500,000 accepted by the Commission by Order dated March 22, 2011, for total bonding in the amount of \$71,000,000. These two bonds were determined to remain sufficient by Commission Order dated March 29, 2016 [Finding of Fact No. 44(k)](renewal of permit). TWCC has filed two surety bonds, one in the amount of \$22,219,000 issued by Arch Insurance Company, No. SU1125305, and one in the amount of \$26,281,000 issued by Aspen American Insurance Company, No. SU48309, to replace the self-bond with third-party guarantee in the amount of \$57,500,000. Acceptance of the surety bonds with the currently accepted Liberty Mutual Insurance Company surety bond in the amount of \$13,500,000 remaining in place will result in a change to the total proposed bond amount. It will reduce the total bond amount from \$71,000,000 to \$62,000,000.

3. Staff filed an estimate of reclamation costs by letter dated February 26, 2016 as a part of the renewal/revision application for Permit No. 32F. This estimate was superseded by an estimate calculated as a part of Staff's review of Revision No. 73 that proposed changes to the operational and reclamation plans approved administratively September 30, 2015. The approved estimate in that revision filed by TWCC is in the amount of \$56,117,623 and is based on the following bond maps filed in Revision 73: Exhibit 145(b)(2), Sheet 1 of 3, *2015 Reclamation Cost Estimate, Areas A and B*, dated August 31, 2015; Exhibit 145(b)(2), Sheet 2 of 3, *2015 Reclamation Cost Estimate, Areas BX and C*, dated August 31, 2015; and Exhibit 145(b)(2), Sheet 3 of 3, *2015 Reclamation Cost Estimate, Areas D, DE, and DX*, dated August 31, 2015. Staff calculated its estimate in the amount of \$54,878,643. Staff approved TWCC's estimate by letter dated February 26, 2016 with attached letter dated September 30, 2015 with memorandum. The proffered surety bonds and the accepted surety bond by Liberty Mutual Insurance Company will be in a total amount (\$62,000,000) that will be in excess of the estimated costs of reclamation [Finding of Fact No. 5(b), *infra*]. Although an updated reclamation cost estimate is in process for Permit No. 32G, it is not yet complete.
4. The proffered surety bond issued by Arch Insurance Company and the surety bond issued by Aspen American Insurance Company list Texas Westmoreland Coal Company as Permittee/Principal with the notation that it is then referred to as "Principal" in the instrument. Although the Permittee/Principal is responsible for completion of reclamation requirements, if the permittee does not, the financial backing for the bond to ensure reclamation comes from the surety on the bond. The Regulations do not require a financial review of any kind for the principal on the surety bond, unlike self-bonds or self-bonds with third-party guarantees. The Texas Department of Insurance requires financial filings by the surety. There is a contractual relationship that exists between the surety and the principal whereby if reclamation is not completed, the surety will either complete reclamation or pay the performance bond amount. There is an additional attachment to the surety bond whereby NRG Texas Power LLC (that is party to a lignite supply agreement with TWCC) signed as a guarantor for TWCC with each insurance company. This attachment was submitted for informational purposes and is accepted as such.
5. The bonds and other documents submitted provide all required information for acceptance of the bonds. Documentation has been submitted to demonstrate that the requirements for surety bonds set out in the Act and Regulations have been met.
  - (a). A surety bond is an acceptable form of bond under §12.308(a)(1). The surety bonds are properly executed.

- (i). Documentation has been provided to establish that Arch Insurance Company and Aspen American Insurance Company are corporate sureties licensed to do business in Texas. TWCC filed a copy of a certification dated April 19, 2016 from the Director of Company Licensing and Registration of the Texas Department of Insurance (TDI) stating that documents attached to the certificate, current certificate of authority for Arch Insurance Company dated July 23, 2014, were true and correct copies and that they were filed with or maintained by or within the custodial authority of the Company Licensing and Registration of the TDI. Documentation has been provided to establish that Aspen American Insurance Company is a corporate surety licensed to do business in Texas. TWCC submitted a copy of a Certificate of Authority from the Texas Department of Insurance, Certificate No. 15019, dated September 23, 2010, certifying that Aspen American Insurance Company is authorized to transact business as a surety in Texas. Supplemental documentation was submitted in the form of a supplemental search from the Texas Department of Insurance's website, dated June 24, 2016, showing that the insurance company has an active Texas license and is currently licensed as a surety. The two items together are sufficient to show that the surety is licensed in Texas.
  
- (ii). The bonds are properly signed by Arch Insurance Company's and Aspen American Insurance Company's attorney-in-fact, Mark W. Edwards II. The power of attorney by Arch Insurance Company contains an original seal and authorized facsimile signatures with required authorization documentation that Mark W. Edwards II may act as attorney-in-fact for the company was submitted by TWCC in its bond package. The power of attorney submitted by Aspen American Insurance Company contained an original seal and authorized facsimile signatures with required authorization documentation that Mark W. Edwards II may act as attorney in fact for the company and may sign bonds in a sum not exceeding \$90 million. The power of attorney and accompanying resolutions exhibit the authorization of the person designated with power of attorney and of the instruments. The power-of-attorney for Arch Insurance Company was executed on November 19, 2014. The power of attorney was further authenticated by a certification dated June 28, 2016 that the power of attorney has been in full force and effect since the date of execution. The power of attorney for

Aspen American Insurance Company was adopted on May 11, 2016 and certified on May 11, 2016. It was further authenticated by a certification dated June 28, 2016 that it has been in full force and effect since the date of execution.

- (iii). The bonds by Arch Insurance Company and Aspen American Insurance Company are properly signed on behalf of TWCC by Michael G. Altavilla, Lands and Compliance Superintendent, on June 28, 2016. An original certification dated June 28, 2016 by an officer of Texas Westmoreland Coal Company, sworn before a notary, was submitted, stating that Mr. Altavilla was authorized to act on behalf of TWCC before the Commission for Permit No. 47A on the date Mr. Altavilla signed the bond. The bond by Arch Insurance Company and Aspen American Insurance Company bond are properly signed by Arch Insurance Company's and Aspen American Insurance Company's attorney-in-fact, Mark W. Edwards II on June 28, 2016. An original power of attorney with an imprinted corporate seal and printed on blue background as specified in the instrument was submitted for Arch Insurance Company. In addition, a power of attorney with an imprinted corporate seal and facsimile signatures of certifying officers as allowed by the power of attorney with authorization documentation that Mark W. Edwards II may act as attorney-in-fact for the company was submitted by TWCC for Aspen American Insurance Company in its bond package. The powers of attorney and accompanying resolutions exhibit the authorization of the person designated with power of attorney and of the instruments. The power of attorney for Arch Insurance Company was adopted on September 15, 2011 and certified on November 19, 2014. It was further authenticated by a certification dated June 28, 2016 that it has been in full force and effect since the date of execution. The power of attorney for Aspen American Insurance Company contained an imprinted corporate seal and facsimile signatures as allowed by the instrument and was adopted on May 11, 2016 and certified on May 11, 2016. It was further authenticated by a certification dated June 28, 2016 that it has been in full force and effect since the date of execution.
- (iv). The surety bonds contain all other provisions required by the Act and Regulations. The bonds are conditioned upon faithful performance of all the requirements of the Act, permit, reclamation plan, and Regulations. The bonds contain provisions that

they shall remain in full force and effect for the duration of the reclamation obligation in accordance with §12.309 of the Regulations. The bonds are non-cancellable during their terms.

- (v). The bonds, along with the accepted surety bond by Liberty Mutual Insurance Company, must be in amounts sufficient to cover the costs of reclamation of disturbed lands within the permit area should a third party complete reclamation at the direction of the Commission in the event of forfeiture (Finding of Fact No. 5, *infra*).
- (vi). Bond coverage has been continuous and with acceptance of the replacement bonds will continue uninterrupted.
- (b). The Texas Department of Insurance (TDI) is responsible for review of a surety's financial status. The Commission has no financial criteria for sureties set out in the Regulations. Financial documents must be filed with the TDI. The Texas Department of Insurance (TDI) is responsible for review of a surety's financial status. The Commission has no financial criteria for sureties set out in the Regulations. Financial documents must be filed with the TDI. Although not required, the bond package includes as a part of Exhibit 7, Part 1, of the package a signed sworn statement for Arch Insurance Company by Thomas James Ahern, Senior Vice President, Chief Financial Officer and Treasurer, and Kenneth Nails, Senior Vice President, General Counsel and Secretary that the statement of financial condition dated December 31, 2015 is a true and correct statement of financial condition of the company as of December 31, 2015. This statement indicates that the surplus of the company as regards policyholders as of December 31, 2015 was \$826,539,368. Exhibit 8 also includes an unaudited quarterly statement for the quarter ended March 31, 2016 for Arch Insurance Company signed and sworn by officers of the company on May 10, 2016. The March 31, 2016 statement indicates that as of March 15, 2016, the surplus of the company as regards policyholders was \$855,825,968. The bond package includes as a part of Exhibit 12 of the bond package for Permit No. 32G, a signed sworn statement by Peter Clifton Felix, Treasurer and Kenneth Gerald Cadematori, Chief Financial Officer, of Aspen American Insurance Company that the attached sworn unaudited statement is a true and correct statement of financial condition of Aspen American Insurance Company as of December 31, 2015. This statement indicates that the surplus of the company as regards policyholders as of December 31, 2015 was \$268,547,345. This sworn statement also states that the statement of financial condition is consistent with the December 31, 2015 for Aspen American Insurance

Company's filings with the National Association of Insurance Companies and the State of Texas. Exhibit 12 also includes an unaudited quarterly statement for the quarter ended March 31, 2016 for Aspen Insurance Holdings Limited. Aspen Insurance Holdings Limited holds subsidiaries that provide insurance and reinsurance. Aspen American Insurance Company is one of its principal subsidiaries. The March 31, 2016 statement indicates that as of March 15, 2016, the total retained earnings of Aspen American Holdings Limited were \$2,375,900,000. This statement also reflects a retained earnings figure for December 31, 2015 for the holding company of \$2,283,600,000.

6. The Act and Regulations direct that the Commission shall determine the amount of bond required based on the costs of reclamation and shall periodically adjust the amount of bond required or terms of acceptance. In accordance with the Regulations §12.304(d), the required amount shall be based on, but not limited to, the estimate submitted by the applicant, and the reclamation cost estimate prepared by Staff. Together with the surety bond accepted from Liberty Mutual Insurance Company, the two proffered surety bonds requested for acceptance in this docket will provide reclamation performance bonding in an amount in excess of the estimate of reclamation costs.
  - (a). The currently accepted bond issued by Liberty Mutual Insurance Company in the amount of \$13,500,000 will remain in place. The two proffered surety bonds issued by Arch Insurance Company and Aspen American Insurance Company in the amounts of \$22,219,000 and \$26,281,000, respectively, are proposed to replace the accepted self-bond with third-party guarantee. When added to the accepted bond in the amount of \$13,500,000, the two bonds from Arch Insurance Company and Aspen American Insurance Company will total \$62,000,000 and will exceed the amount of the most recently approved reclamation cost, \$56,117,623 (administrative approval dated September 30, 2015) (Finding of Fact No. 3, *supra*). Upon acceptance of the replacement surety bonds, the total bond amount will be sufficient.
  - (b). The reclamation cost estimates by TWCC and Staff are based on the worst-case bonding method. This method uses estimated costs for reclaiming the worst-case pits, estimated costs for reclaiming each individual temporary structure used to support the mining operation, and costs for revegetation and maintenance of all disturbed lands, taking into consideration ongoing reclamation activities during the term of the bond. The estimate includes a factor of 10% for administrative costs. TWCC's reclamation cost estimate was \$56,117,623. This TWCC estimate was accepted as the most conservative bond estimate required for

reclamation of the permit area and therefore, more appropriate for a reclamation cost estimate for work that may be performed by a third party at the direction of the Commission in the event of forfeiture. The Commission approved TWCC's cost estimate by letter from the SMRD Director dated February 26, 2016 (with letter and review memorandum dated September 30, 2015). Staff's most recent reclamation cost estimate in the amount of \$54,878,643 is a lesser amount and not as conservative.

- (c). Because the administratively approved reclamation cost estimate is based on the worst-case method and operations in the permit area are ongoing and change with time, it is critical that reclamation operations remain contemporaneous, and close monitoring by Staff inspection must be employed to ensure adequate bond coverage. Quarterly aerial photography of the permit area is conducted by TWCC to track current disturbances, and the photographs are available for review at the mine. Tracking in this manner and inspection by Staff will ensure that any increases required for the bond will be identified. In the event that the approved reclamation plan is modified, the Commission will review the bond for adequacy and, if necessary, will initiate a bond adjustment to conform to the modified plan [§12.307(c)].
7. The proffered surety bonds will remain in effect according to their terms, unless released or replaced by Commission Order, as will the surety bond issued by Liberty Mutual that will remain in place. TWCC as permittee must complete the reclamation obligations for the mine as required by the Act and Regulations.
  8. TWCC, organized in Montana, is currently in good standing in the payment of franchise taxes as required by TAX CODE §171.001 *et seq.* (TAX CODE) and allowed to conduct business in Texas.
  9. TWCC's request for acceptance of the surety bonds is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. §134.127 (Vernon 2016) (Act) and §§12.308-12.309 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2016) (Regulations).
  10. Bond coverage has been continuous and with acceptance of the proffered surety bonds will continue uninterrupted.
  11. Acceptance of the replacement bond is not a bond release or a release of any reclamation obligations; no public notice is required other than notice of the Commission meeting to consider the matter. The accepted bonds will bond the permit area in the required amount until all reclamation within the



permit area has been completed and the principal and permittee have been released from liability or until the bonds are replaced.

12. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, GOV'T CODE §551.041.
13. TWCC and the Staff submitted written waivers of the preparation and distribution of a Proposal for Decision in this matter.

### **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 surety bonds submitted by TWCC with Arch Insurance Company and Aspen American Insurance Company as sureties on the respective bonds, are in proper form. Along with the surety bond issued by Liberty Mutual Insurance Company currently, the bonds are in required amounts so that the total will be sufficient to ensure reclamation of the permit area. The proffered surety bonds meet the requirements for acceptable reclamation performance bonds as set forth in TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the Regulations.
3. All requirements of the Act and Regulations have been satisfied for acceptance of the surety bonds.
4. The Commission is authorized by the Act and Regulations to accept the surety bonds to replace the self-bond with third-party guarantee.

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

**IT IS FURTHER ORDERED** that the surety bonds in the amounts of \$22,219,000 (Surety Bond No. SU1125305 issued by Arch Insurance Company, and \$26,281,000 (Surety Bond No. SU48309 issued by Aspen American Insurance Company) are accepted and together with the Liberty Mutual surety bond replace the existing self-bond with third-party guarantee in the amount of \$57,500,000; and

**IT IS FURTHER ORDERED** that the surety bonds along with the currently accepted Liberty Mutual surety bond continue to provide performance bonding of required reclamation of operations under Permit No. 32F, Jewett Mine; and

**IT IS FURTHER ORDERED** that the surety bonds issued by Arch Insurance Company, Aspen American Insurance Company, and Liberty Mutual Insurance Company will remain in place until released or replaced by Commission Order; and

**IT IS FURTHER ORDERED** that the Commission may vary the total bond amount 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 a party is notified of the Commission's order. 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 the 9<sup>th</sup> day of August, 2016.

**RAILROAD COMMISSION OF TEXAS**

  
CHAIRMAN DAVID PORTER

  
COMMISSIONER CHRISTI CRADDICK

  
COMMISSIONER RYAN SITTON

ATTEST:   
Secretary  
Railroad Commission of Texas  


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

Permit No.: 32G

Mine Name: Jewett Mine

Permittee (hereinafter referred to as the "Principal"): Texas Westmoreland Coal Co.

Bond No.: SU48309

This bond ☒ does ☐ does not (check appropriate response) replace an existing bond, described as:  
Self-bond in the amount of \$57,500,000.

**KNOW ALL BY THESE PRESENTS** [Note: Recitals may be modified as necessary to address permits 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 application (including the proposed reclamation plan) was approved by the Railroad Commission of Texas on the 29th day of March, 2016; 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;

**THAT WE**, Texas Westmoreland Coal Co. as Principal, and Aspen American Insurance Company, as Surety, are held and firmly bound to the State of Texas in the full sum of ~~Twenty Six Million Two Hundred Eighty One Thousand~~ Twenty Six Million Two Hundred Eighty One Thousand United States Dollars (\$ 26,281,000.00 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, revised, renewed or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Bond No.: SU48309

And the Surety to this bond, for value received, agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules, or regulations, and no amendment, revision, renewal, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond, and it does hereby waive notice of any such amendment, adoption, revision, renewal, or replacement.

The Surety further agrees to give prompt notice to the Principal and to the Railroad Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Surety or which could result in suspension or revocation of the Surety's license to do business in the State of Texas; or (2) if it becomes unable, or, for any reason, unwilling, to fulfill its obligations under this bond.

If this is a replacement bond, Surety further agrees that any liability which has accrued against the Principal under the Act, the Coal Mining Regulations, or the Permit as originally issued, amended, revised, renewed, or replaced, is transferred to this bond.

The Surety further represents to the Railroad Commission that it is a corporate surety licensed to do business as a surety in Texas.

It is agreed that this bond shall be in full force and effect, and non-cancellable, for the duration of the reclamation obligation on the land affected by the Permit, as amended, renewed, revised, or replaced, or land substituted therefore, or until the Principal is otherwise relieved of its obligation hereunder by order of the Railroad Commission of Texas.

It is further agreed that upon the incapacity of the Surety by reason of bankruptcy, insolvency or suspension or revocation of its license, or for any other reason, 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.

Bond No.: SU48309

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 28th Day of June, 2016.

Texas Westmoreland Coal Co.  
Principal

P.O. Box 915, Jewett, TX 75846  
Address

By: Michael G. Altavilla  
Signature

Michael G. Altavilla  
Typed Name

Lands and Compliance Superintendent  
Title

Attest: Janet D. Forrester

Accepted August 9, 2016.

David Porter  
CHAIRMAN, Railroad Commission of Texas

Christi Caddick  
COMMISSIONER, Railroad Commission of Texas

Ben Ains  
COMMISSIONER, Railroad Commission of Texas

ATTEST: Kathryn Way

NOTE: The following documents should be provided to the Commission with the original bond instrument: Principal (1) Original power of attorney, or (2) Certified corporate resolution and certificate of incumbency for signatories; Surety - Original power of attorney for signatory and documentation that surety is licensed to do business in Texas.

Aspen American Insurance Company  
Surety

175 Capital Boulevard, Suite 300, Rocky Hill, CT 06067  
Address

By: Mark W. Edwards, II  
Signature

Mark W. Edwards, II  
Typed Name

Attorney-In-Fact  
Title

Attest: Alesia B. Jerni

Bond No.: SU48309

**IN WITNESS WHEREOF**, the Guarantor for Permittee and Surety have caused these presents to be duly signed and sealed this 28th day of June, 2016.

NRG Texas Power LLC  
Guarantor For Permittee

Aspen American Insurance Company  
Surety

1201 Fannin, Houston, TX 77002

Address

175 Capital Boulevard, Suite 300, Rocky Hill,  
CT 06067

Address

By: 

Signature

By: 

Signature

Glen Mackey  
Typed Name

Mark W. Edwards, II  
Typed Name

Sr. Vice President and Chief Risk Officer  
Title

Attorney-in-Fact  
Title

Attest: 

Attest: 



Aspen American Insurance Company  
175 Capital Boulevard, Rocky Hill, CT 06067

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, THAT Aspen American Insurance Company, a corporation duly organized under the laws of the State of Texas, and having its principal offices in Rocky Hill, Connecticut, (hereinafter the "Company") does hereby make, constitute and appoint: Ronald B. Gladroslch; Mark W. Edwards, II, Jeffrey M. Wilson, Evondia H. Woessner, William Milton Smith, Ailsa B. Ferris, Robert R. Freel of McGriff Seibels & Williams, Inc. its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge on behalf of the Company, at any place within the United States, the following instrument(s) by his/her sole signature and act: any and all bonds, recognizances, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking and any and all consents incident thereto, and to bind the Company thereby as fully and to the same extent as if the same were signed by the duly authorized officers of the Company. All acts of said Attorney(s)-in-Fact done pursuant to the authority herein given are hereby ratified and confirmed.

This appointment is made under and by authority of the following Resolutions of the Board of Directors of said Company effective on April 7, 2011, which Resolutions are now in full force and effect;

**VOTED:** All Executive Officers of the Company (including the President, any Executive, Senior or Assistant Vice President, any Vice President, any Treasurer, Assistant Treasurer, or Secretary or Assistant Secretary) may appoint Attorneys-in-Fact to act for and on behalf of the Company to sign with the Company's name and seal with the Company's seal, bonds, recognizances, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said Executive Officers at any time may remove any such appointee and revoke the power given him or her.

**VOTED:** The foregoing authority for certain classes of officers of the Company to appoint Attorneys-in-Fact by virtue of a Power of Attorney to sign and seal bonds, recognizances, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, as well as to revoke any such Power of Attorney, is hereby granted specifically to the following individual officers of Aspen Specialty Insurance Management, Inc.:

Michael Toppl, Executive Vice President, Scott Sadowsky, Senior Vice President, Kevin W. Gillen, Senior Vice President, Mathew Raino, Vice President, and Ryan Field, Vice President.

This Power of Attorney may be signed and sealed by facsimile (mechanical or printed) under and by authority of the following Resolution voted by the Boards of Directors of Aspen American Insurance Company, which Resolution is now in full force and effect:

**VOTED:** That the signature of any of the Officers identified by title or specifically named above may be affixed by facsimile to any Power of Attorney for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any and all consents incident thereto, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company. Any such power so executed and certified by such facsimile signature and/or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking so executed.

IN WITNESS WHEREOF, Aspen American Insurance Company has caused this instrument to be signed and its corporate seal to be hereto affixed this 11th day of May, 2016.

STATE OF CONNECTICUT

SS. ROCKY HILL

COUNTY OF HARTFORD

Aspen American Insurance Company

Ryan Field, Vice President

On this 11th day of May, 2016 before me personally came Ryan Field to me known, who being by me duly sworn, did depose and say; that he/she is Vice President of Aspen American Insurance Company, the Company described in and which executed the above instrument; that he/she knows the seal of said corporation; that affixed to the said instrument is such corporate seal; and that he/she executed the said instrument on behalf of the Company by authority of his/her office under Resolutions thereof.

*Vanessa Arias*

Notary Public

My commission expires: February 28, 2019

### CERTIFICATE

I, the undersigned, Ryan Field of Aspen American Insurance Company, a stock corporation of the State of Texas, do hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the Boards of Directors, as set forth above, are now in full force and effect.

Given under my hand and seal of said Company, in Rocky Hill, Connecticut, this 28th day of June, 2016.

By: 

Name: Ryan Field, Assistant Vice President



\* For verification of the authenticity of the Power of Attorney you may call (860) 760-7728 or email: [Vanessa.arias@aspen-insurance.com](mailto:Vanessa.arias@aspen-insurance.com)



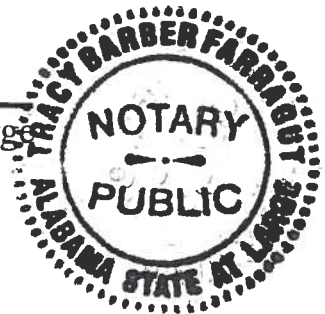
**CERTIFICATE OF ACKNOWLEDGEMENT OF ALL PURPOSE SURETY**

State of Alabama     )  
                                      ) ss  
County of Jefferson)

On this 28th day of June, 2016, before me appeared **Mark W. Edwards, II**, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of **Aspen American Insurance Company**, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said **Mark W. Edwards, II** acknowledged said instrument to be the free act and deed of said corporation.



Tracy Barber Farragut, Notary Public, State at Large  
My commission expires- 4/12/2020





**CERTIFICATION**

This is to certify that Michael G. Altavilla was authorized on June 28, 2016 to act on behalf of Texas Westmoreland Coal Company.

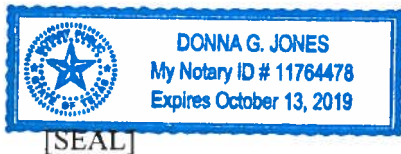
On June 28, 2016 and continuing to present, Michael G. Altavilla was authorized to act on behalf of Texas Westmoreland Coal Company for Railroad Commission Permit No. 32G.


  
Janet Bowman

6/28/2016  
Date

STATE OF TEXAS       §  
                                     §  
COUNTY OF LIMESTONE §

This instrument was acknowledged before me on June 28, 2016, by Janet Bowman, Sr. Permitting Engineer, on behalf of Texas Westmoreland Coal Company.



  
Notary Public, State of Texas

My commission expires:

Oct. 13, 2019

Donna G Jones  
Printed Name of Notary

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

Permit No.: 32G

Mine Name: Jewett Mine

Permittee (hereinafter referred to as the "Principal"): Texas Westmoreland Coal Co.

Bond No.: SU1125305

This bond ☒ does ☐ does not (check appropriate response) replace an existing bond, described as:  
Self-bond in the amount of \$57,500,000.

**KNOW ALL BY THESE PRESENTS** [Note: Recitals may be modified as necessary to address permits 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 application (including the proposed reclamation plan) was approved by the Railroad Commission of Texas on the 29<sup>th</sup> day of March, 2016; 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;

**THAT WE**, Texas Westmoreland Coal Co. as Principal, and Arch Insurance Company, as Surety, are held and firmly bound to the State of Texas in the full sum of Twenty Two Million Two Hundred Nineteen Thousand United States Dollars (\$ 22,219,000.00 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, revised, renewed or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Bond No.: SU1125305

And the Surety to this bond, for value received, agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules, or regulations, and no amendment, revision, renewal, or replacement of the Permit (including the reclamation plan) shall in any way alleviate its obligation on this bond, and it does hereby waive notice of any such amendment, adoption, revision, renewal, or replacement.

The Surety further agrees to give prompt notice to the Principal and to the Railroad Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Surety or which could result in suspension or revocation of the Surety's license to do business in the State of Texas; or (2) if it becomes unable, or, for any reason, unwilling, to fulfill its obligations under this bond.

If this is a replacement bond, Surety further agrees that any liability which has accrued against the Principal under the Act, the Coal Mining Regulations, or the Permit as originally issued, amended, revised, renewed, or replaced, is transferred to this bond.

The Surety further represents to the Railroad Commission that it is a corporate surety licensed to do business as a surety in Texas.

It is agreed that this bond shall be in full force and effect, and non-cancellable, for the duration of the reclamation obligation on the land affected by the Permit, as amended, renewed, revised, or replaced, or land substituted therefore, or until the Principal is otherwise relieved of its obligation hereunder by order of the Railroad Commission of Texas.

It is further agreed that upon the incapacity of the Surety by reason of bankruptcy, insolvency or suspension or revocation of its license, or for any other reason, 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.

Bond No.: SU1125305

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed  
and sealed this 28th Day of June, 2016.

Texas Westmoreland Coal Co.

Principal

P.O. Box 915, Jewett, TX 75846

Address

By: Michael G. Altavilla  
Signature

Michael G. Altavilla  
Typed Name

Lands and Compliance Superintendent  
Title

Attest: Shirley D. Brown

Accepted August 9, 2016.

Arch Insurance Company

Surety

300 Plaza Three, Jersey City, NJ 07311 - 1107

Address

By: Mark W. Edwards, II  
Signature

Mark W. Edwards, II  
Typed Name

Attorney-In-Fact  
Title

Attest: Alicia B. Ferris

David Porter  
CHAIRMAN, Railroad Commission of Texas

Christi Caddick  
COMMISSIONER, Railroad Commission of Texas

Ban Acker  
COMMISSIONER, Railroad Commission of Texas

ATTEST: Kathy Way

NOTE: The following documents should be provided to the Commission with the original bond instrument:  
Principal (1) Original power of attorney, or (2) Certified corporate resolution and certificate of incumbency  
for signatories; Surety - Original power of attorney for signatory and documentation that surety is licensed to  
do business in Texas.

Bond No.: SU1125305

**IN WITNESS WHEREOF**, the Guarantor for Permittee and Surety have caused these presents to be duly signed and sealed this 28th day of June, 2016.


NRG Texas Power LLC  
Guarantor For Permittee

Arch Insurance Company  
Surety

1201 Fannin, Houston, TX 77002  
Address

300 Plaza Three, Jersey City, NJ 07311-1107  
Address

By:   
Signature

By:   
Signature

Glen Mackey  
Typed Name

Mark W. Edwards, II  
Typed Name

sr Vice President and Chief Risk Officer  
Title

Attorney-in-Fact  
Title

Attest:   
Attest: \_\_\_\_\_

Attest:   
Attest: \_\_\_\_\_

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON BLUE BACKGROUND.**

***This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Mortgage, Note, Loan, Letter of Credit, Bank Deposit, Currency Rate, Interest Rate or Residential Value Guarantees.***

## **POWER OF ATTORNEY**

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Evondia H. Woessner, Jeffrey M. Wilson, Mark W. Edwards II, Robert R. Freel and Ronald B. Giadrosich of Birmingham, AL (EACH)

its true and lawful Attorney(s)-in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00).

This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

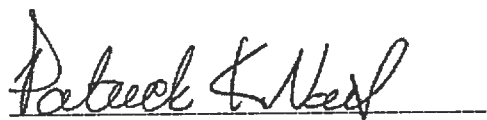
This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.

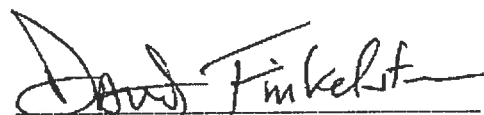
In Testimony Whereof, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this 19<sup>th</sup> day of November, 2014.

Attested and Certified

Arch Insurance Company

  
Patrick K. Nails, Secretary

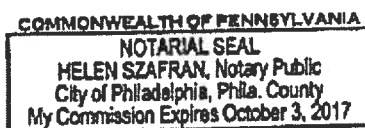


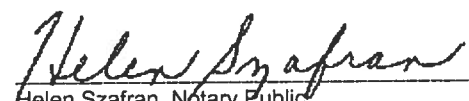
  
David M. Finkelstein, Executive Vice President

STATE OF PENNSYLVANIA SS

COUNTY OF PHILADELPHIA SS

I, Helen Szafran, a Notary Public, do hereby certify that Patrick K. Nails and David M. Finkelstein personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.

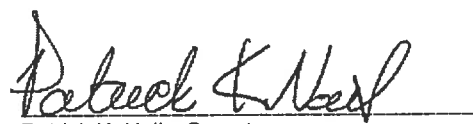


  
Helen Szafran, Notary Public  
My commission expires 10/03/2017

#### CERTIFICATION

I, Patrick K. Nails, Secretary of the Arch Insurance Company, do hereby certify that the attached Power of Attorney dated November 19, 2014 on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said David M. Finkelstein, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 20<sup>th</sup> day of June, 2014.

  
Patrick K. Nails, Secretary

This Power of Attorney limits the acts of those named therein to the bonds and undertakings specifically named therein and they have no authority to bind the Company except in the manner and to the extent herein stated.

**PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:**

**Arch Insurance – Surety Division**  
3 Parkway, Suite 1500  
Philadelphia, PA 19102





**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON BLUE BACKGROUND.**

***This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Mortgage, Note, Loan, Letter of Credit, Bank Deposit, Currency Rate, Interest Rate or Residential Value Guarantees.***

## **POWER OF ATTORNEY**

Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

Evondia H. Woessner, Jeffrey M. Wilson, Mark W. Edwards II, Robert R. Freel and Ronald B. Giadrosich of Birmingham, AL (EACH)

its true and lawful Attorney(s)in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed:

Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00).

This authority does not permit the same obligation to be split into two or more bonds In order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on September 15, 2011, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

"VOTED, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on September 15, 2011:

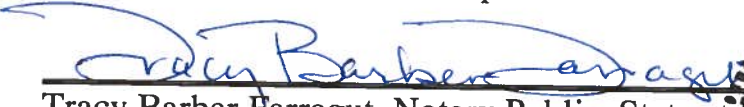
VOTED, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on September 15, 2011, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company.



**CERTIFICATE OF ACKNOWLEDGEMENT OF ALL PURPOSE SURETY**

State of Alabama     )  
                                      ) ss  
County of Jefferson)

On this 28th day of June, 2016, before me appeared **Mark W. Edwards, II**, to me personally known, who, being by me duly sworn, did say that he is the Attorney-In-Fact of **Arch Insurance Company**, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said **Mark W. Edwards, II** acknowledged said instrument to be the free act and deed of said corporation.

  
\_\_\_\_\_  
Tracy Barber Farragut, Notary Public, State of Alabama  
My commission expires- 4/12/2020



**CERTIFICATION**

This is to certify that Michael G. Altavilla was authorized on June 28, 2016 to act on behalf of Texas Westmoreland Coal Company.

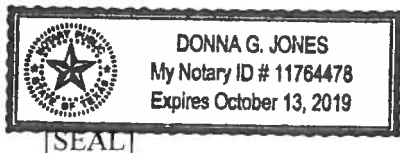
On June 28, 2016 and continuing to present, Michael G. Altavilla was authorized to act on behalf of Texas Westmoreland Coal Company for Railroad Commission Permit No. 32G.

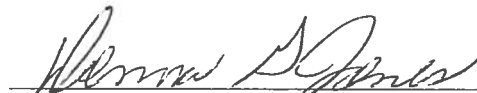
  
\_\_\_\_\_  
Janet Bowman

6/28/2016  
\_\_\_\_\_  
Date

STATE OF TEXAS       §  
                                  §  
COUNTY OF LIMESTONE §

This instrument was acknowledged before me on June 28, 2016,  
by Janet Bowman, Sr. Permitting Engineer, on behalf of Texas Westmoreland Coal Company.



  
\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:

Oct. 13, 2019  
\_\_\_\_\_

Donna G Jones  
\_\_\_\_\_  
Printed Name of Notary