

**RAILROAD COMMISSION OF TEXAS  
OFFICE OF GENERAL COUNSEL  
HEARINGS SECTION**

**SMRD DOCKET No. C12-0024-SC-32-E  
TEXAS WESTMORELAND COAL COMPANY  
APPLICATION FOR ACCEPTANCE OF REPLACEMENT SURETY BOND FOR PERMIT No. 32F,  
JEWETT MINE, LEON, LIMESTONE AND FREESTONE COUNTIES, TEXAS**

**ORDER ACCEPTING REPLACEMENT SURETY BOND**

**STATEMENT OF THE CASE**

Texas Westmoreland Coal Co. (TWCC) holds Railroad Commission of Texas (Commission) Permit No. 32F 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 collateral bond with letter of credit (LOC) in the amount of \$13,500,000.

TWCC now requests acceptance of a surety bond issued by Liberty Mutual Insurance Company in the amount of \$13,500,000 to replace the existing collateral bond with LOC in the same amount. This request is made pursuant to TEX. NAT. RES. CODE §§134.121-134.127 and §§12.308-12.309 of the "Coal Mining Regulations." There is no proposed change to the existing self-bond with third-party guarantee, which was accepted by Commission Order dated March 22, 2011. By letter dated May 14, 2012, the Surface Mining and Reclamation Division verified that a recent financial and legal review confirmed that the self-bond continues to be valid and compliant with the requirements contained in §12.309(j). The total reclamation bond amount will remain \$71,000,000, and is sufficient to cover the latest approved reclamation cost estimate of \$62,469,912, which was approved administratively by the Director of Surface Mining and Reclamation by letter dated December 22, 2011.

The Commission finds that the proffered replacement surety bond issued by Liberty Mutual Insurance Company is sufficient in form and substance and may be accepted to replace the current collateral bond in the amount of \$13,500,000.

### **FINDINGS OF FACT**

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

1. TWCC holds Permit No. 32F for the Jewett Mine in Leon, Limestone and Freestone Counties, Texas. The application 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 April 11, 2012, the Commission's Surface Mining and Reclamation Division (Staff) filed TWCC's submittal with the Office of General Counsel, along with its staff attorney's review of the documents.
2. There are currently two accepted reclamation bonds for Permit No. 32F: a collateral bond with LOC issued by Deutsche Bank, AG, New York Branch, in the amount of \$13,500,000 accepted by the Commission by Order dated April 28, 2009, 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. The proffered surety bond has been submitted to replace the collateral bond with LOC. Acceptance of the surety bond will result in no change to the total bonding amount.
3. Liberty Mutual Insurance Company, a corporation licensed as a surety in Texas, issued TWCC's proffered surety bond. Required licensing information has been obtained from the Texas Department of Insurance. The surety bond in the amount of \$13,500,000, together with the accepted self-bond with third-party guarantee in the amount of \$57,500,000, will be in excess of the amount required for reclamation of the proposed permit area, as set out in Finding of Fact No. 5.
4. The bond and other documents submitted provide all required information for acceptance of the bond. 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 bond is properly executed.
    - (1). Documentation has been provided to establish that Liberty Mutual Insurance Company is a corporate surety licensed to do business in Texas.
    - (2). The bond is properly signed by Liberty Mutual Insurance Company's attorney-in-fact, Mark W. Edwards II. An original power of attorney containing an original corporate seal and red border signifying authenticity from the surety has

been submitted showing appropriate authorization of the signatory. The power of attorney is dated September 2, 2011, was properly acknowledged on the same date, and further authenticated by a submitted corporate certificate of resolution dated February 14, 2012, stating that it remained in full force and effect.

- (3). The bond is properly signed by John Ragan, Manager and President of NRG Texas Power LLC, as principal, and by J. Denny Kingsley, President and General Manager of TWCC, as permittee. Documentation has been provided to the Commission establishing the authority of Mr. Ragan and Mr. Kingsley with regard to their respective corporations. TWCC and Staff filed documentation indicating that NRG may be considered as controller of TWCC due to the Lignite Supply Agreement entered into between the two entities on September 28, 2007. The agreement includes an undertaking that NRG will provide to the Commission any and all additional bonds, bond amounts, or bond collateral above the current bonding level as necessary to secure TWCC's reclamation obligations to the Commission for both of TWCC's surface mining permits, Nos. 32F (Jewett Mine) and 47A (Jewett E/F Area Mine) [Finding of Fact No. 6(a)(3), Commission Order dated June 24, 2008]. By letter dated May 2, 2012, TWCC confirmed that the lignite supply agreement remains in effect.
- (4). The surety bond form contains all other provisions required by the Act and Regulations. The bond is conditioned upon faithful performance of all the requirements of the Act, permit, reclamation plan, and Regulations. The bond contains a provision that it shall remain in full force and effect for the duration of the reclamation obligation in accordance with §12.309 of the Regulations. The bond is non-cancellable during its term.
- (5). The bond, along with the accepted self-bond with third-party guarantee, will be in an amount 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 permittee forfeiture.
- (6). Bond coverage has been continuous and with acceptance of the replacement bond will continue uninterrupted.

5. 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 self-bond with third-party guarantee, the surety bond requested for acceptance in this docket will provide reclamation performance bonding in an amount in excess of the estimate of reclamation costs.

(a). Together, the bonds will provide a sufficient bond amount. The two currently accepted bonds in a total amount of \$71,000,000 exceed the amount of the most recently approved reclamation cost estimate of \$62,469,912, which was approved administratively by the Director of the Surface Mining and Reclamation Division by letter dated December 22, 2011. Staff's estimate is in excess of TWCC's most recent reclamation cost estimate of \$61,231,823. Upon acceptance of the replacement surety bond, the total amount of bond will remain \$71,000,000, also in excess of the approved reclamation cost estimate.

(b). The approved Staff cost estimate is 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. Staff's cost estimate for reclamation was \$62,469,912, and was based upon total pit closure cost, ancillary facilities removal, including road base removal and disposal, pond embankment and sediment removal, road leveling, final grading, plugging dewatering wells, and revegetation. The Staff estimate included appendices setting out Staff calculations for soil preparation and revegetation, equipment productivity calculations, bonded acreages, and road information. The estimate includes a factor of 10% for administrative costs. TWCC's reclamation cost estimate was \$61,231,823. Staff's estimate was accepted as the most recent and conservative bond amount 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 adopts Staff's most recent reclamation cost estimate of \$62,469,912.

(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)].

6. The surety bond will remain in effect according to its terms, unless released or replaced by Commission Order, as will the self-bond with third-party guarantee currently accepted by the Commission. TWCC as permittee must complete the reclamation obligations pursuant to the surety bond, as well as the accepted self-bond with third-party guarantee. If TWCC does not, and the bond is forfeited, the surety is liable on its bond. NRG Texas Power LLC (NRG) is principal on the proffered surety bond and obligated as principal. TWCC and Staff filed documentation indicating that NRG may be considered as controller of TWCC due to the Lignite Supply Agreement entered into between the two entities on September 28, 2007. The agreement includes an undertaking that NRG will provide to the Commission any and all additional bonds, bond amounts, or bond collateral above the current bonding level as necessary to secure TWCC's reclamation obligations for both of TWCC's surface mining permits, Nos. 32F (Jewett Mine) and 47 (Jewett E/F Area Mine) [Finding of Fact No. 6(a)(3), Commission Order dated June 24, 2008]. By letter dated May 2, 2012, TWCC confirmed that the lignite supply agreement remains in effect.
7. TWCC and NRG Texas Power LLC are currently in good standing in the payment of franchise taxes as required by TAX CODE §171.001 *et seq.* (Vernon 2011).
8. TWCC's request for acceptance of the surety bond is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. §134.127 (Vernon 2011) (Act) and §§12.308-12.309 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (West 2012) (Regulations).
9. Bond coverage has been continuous and with acceptance of the proffered surety bond will continue uninterrupted.
10. 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.

11. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, GOV'T CODE §551.041.
12. 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 bond submitted by TWCC, NRG and Liberty Mutual Insurance Company is in proper form and, along with the currently accepted self-bond with third-party guarantee, is in the required amount to ensure reclamation of the permit area. The surety bond meets the requirements for an acceptable reclamation performance bond 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 bond.
4. The Commission is authorized by the Act and Regulations to accept the surety bond.

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

**IT IS FURTHER ORDERED** that the surety bond in the amount of \$13,500,000 is accepted and replaces the existing collateral bond with LOC in the amount of \$13,500,000; and

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

**IT IS FURTHER ORDERED** that the surety bond issued by Liberty Mutual Insurance Company in the amount of \$13,500,000 and the self-bond with third-party guarantee in the amount of \$57,500,000 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 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further Commission action. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

**SIGNED IN AUSTIN, TEXAS**, on the 12th day of June, 2012.

**RAILROAD COMMISSION OF TEXAS**

  
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CHAIRMAN BARRY T. SMITHERMAN

  
\_\_\_\_\_  
COMMISSIONER DAVID PORTER

  
\_\_\_\_\_  
COMMISSIONER BUDDY GARCIA

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.: 32F

Mine Name: Jewett Mine

Permittee: Texas Westmoreland Coal Company

Principal: NRG Texas Power LLC

Bond No.: 016049150

This bond (does)/does not (circle appropriate response) replace an existing bond, described as:

Collateral Bond with Letter of Credit No. 839BGC0900220 from Deutsche Bank AG, New York Branch, in the amount of \$13,500,000.00.

**KNOW ALL BY THESE PRESENTS** [Note: Recitals may be modified as necessary to address permits revisions, renewals, consolidations]:

**WHEREAS**, the above bound Permittee 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 Permittee's permit application (including the proposed reclamation plan) was approved by the Railroad Commission of Texas on the 21st day of December, 2004; 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 Permittee 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;

**WHEREAS** NRG Texas Power LLC (Principal) has agreed with Permittee to provide this bond to support Permittee's mining operations.

**THAT WE**, NRG Texas Power LLC as Principal, and Liberty Mutual Insurance Company, as Surety, are held and firmly bound to the State of Texas in the full sum of Thirteen Million Five Hundred Thousand Dollars United States Dollars (\$13,500,000.00 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 Permittee 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.: 016049150

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 Permittee 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 Permittee shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations and the Permit and the Permittee 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.: 016049150

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be duly signed and sealed this 14th Day of February, 2012.

NRG Texas Power LLC  
Principal

1201 Fannin, Houston, TX 77002  
Address

By: [Signature]  
Signature

John Ragan  
Typed Name

Manager and President  
Title

Attest: [Signature]

Accepted June 12, 2012

[Signature]  
CHAIRMAN, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

ATTEST: [Signature]

Liberty Mutual Insurance Company  
Surety

175 Berkeley Street, Boston, MA 02116  
Address

By: [Signature]  
Signature

Mark W. Edwards II  
Typed Name

Attorney-In-Fact  
Title

Attest: [Signature]

Texas Westmoreland Coal Company  
Permittee

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

By: [Signature]  
Signature

J. Denny Kingsley  
Typed Name

President and General Manager  
Title

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.