

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C18-0014-SC-42-D
APPLICATION BY DOS REPUBLICAS COAL PARTNERSHIP
FOR ACCEPTANCE OF SUPPLEMENTAL SURETY BOND
FOR EAGLE PASS MINE, PERMIT NO. 42B
MAVERICK COUNTY, TEXAS**

ORDER ACCEPTING SUPPLEMENTAL SURETY BOND

Statement of the Case

By letter dated June 15, 2018, Dos Repúblicas Coal Partnership (DRCP) filed its request for acceptance of a supplemental surety bond (Bond No. SUR0031838 issued by Argonaut Insurance Company) with the Railroad Commission of Texas. The surety bond is proposed for reclamation performance bonding required for its Eagle Pass Mine, Permit No. 42B, in Maverick County, Texas. Reclamation performance bonding for the mine is currently met with a separate surety bond issued by Argonaut Insurant Company (Bond No. SUR0031837) in the amount of \$29,255,188.57 that was accepted by Commission Order dated June 21, 2016.

The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE CH. 134 (Vernon Supp. 2018) and the Coal Mining Regulations, TEX. ADMIN. CODE CH.12 (Thomson West 2018). DRCP requests acceptance of the proffered bond in the amount of \$17,405,652.43 to supplement the existing surety bond that will remain in place. By letter dated July 19, 2018, the Surface Mining and Reclamation Division approved a revised reclamation cost estimate for the permit in the amount of \$46,436,446; exceeding the accepted amount of bonding for the permit. Upon acceptance of the proffered bond, with the existing bond remaining in place, the total bond amount will equal \$46,660,841. Evidence in the record indicates that \$46,660,841 exceeds the approved reclamation cost estimate and will provide sufficient bonding for the permit.

Notice of Commission consideration of this matter has been provided. This order has been circulated to the parties with an opportunity for the filing of exception and replies. The parties have filed waivers of the preparation and circulation of a Proposal for Decision.

The Commission finds that the proffered surety bond issued by Argonaut Insurance Company is sufficient in form and substance and may be accepted to provide reclamation performance bonding to supplement the existing surety bond for Permit No. 42B.

FINDINGS OF FACT

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

1. Dos Repúblicas Coal Partnership (DRCP) is the permittee of the Eagle Pass Mine pursuant to Permit No. 42B issued by the Railroad Commission of Texas (Commission). The permit area is located in Maverick County, Texas. By letter dated June 15, 2018, DRCP requests acceptance of a supplemental surety bond (No. SUR0031838) issued by Argonaut Insurance Company. The surety bond in the amount of \$17,405,652.43 is proposed for acceptance to provide required reclamation performance bonding for the permit and to supplement an existing bond. The application with exhibits (Bond Package) was filed pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE CH. 134 (Vernon Supp. 2018) (Act) and the Commission's "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH.12 (Thomson West 2018) (Regulations).
2. Permit No. 42B is currently bonded by a surety bond (No. SUR31837) issued by Argonaut Insurance Company in the amount of \$29,255,188.57 that was accepted by Commission Order dated June 21, 2016. The posted surety bond will remain in place. Acceptance of the proffered surety bond in the amount of \$17,405,652.43 will increase the total bond amount from \$29,255,188.57 to \$46,660,841.
3. A permittee must provide a bond for reclamation performance to ensure that disturbed areas within the permit are successfully reclaimed. The proffered surety bond has been submitted on a Commission form for surety bond (Tab 2, Bond Package).
4. 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. 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. DRCP's reclamation cost estimate, \$46,436,446, was filed as a part of an administrative revision application that included a revised bond map, Exhibit 145-1, *Reclamation Area Bonding*

Map, in Supplement No. 1. This amount was reviewed by Staff for regulatory compliance and approved as the minimum amount of bond required to reclaim the disturbed portions of the permit area by letter dated July 19, 2018 (Revision No. 17). The amount of the proffered surety bond, \$17,405,652.43, together with the amount of the existing surety bond, \$29,255,188.57, is in excess of the approved reclamation costs for Permit No. 42B and is sufficient for work that may be performed by a third-party at the direction of the Commission in the event of forfeiture.

5. The Commission may adjust the amount of performance bond applicable to the permit when the cost of reclamation changes [§12.307(a)]. In the event that an approved operations and reclamation plan is modified, the Commission will review the bond for adequacy and, if necessary, will adjust the bond to conform to the operations and reclamation plan as modified [§12.307(c)]. In its approval of Revision No. 17 on July 19, 2018, Staff informed DRCP that it must provide a replacement bond instrument or additional bond to account for the increase in reclamation costs for Permit No. 42B; however, the subject bond was submitted to the Commission on June 15, 2018, prior to the approval of Revision No. 17.
6. Argonaut Insurance Company, licensed as a surety in Texas, issued the proffered surety bond. Required licensing information from the Texas Department of Insurance has been provided as Tab 6 in the application. DRCP submitted a copy of the Certificate of Authority from the Texas Department of Insurance, Certificate No. 14321, dated April 11, 2007, certifying that Aspen American Insurance Company is authorized to transact business as a surety in Texas (Tab 6, Bond Package). The administrative law judge has taken official notice of documentation obtained from the Texas Department of Insurance's website, dated August 9, 2018, showing that the insurance company has an active Texas license and is currently licensed as a surety. Copies of the information were provided to the parties.
7. The administrative law judge has taken official notice that Eagle Pass Coal Corporation and Maverick County Coal Corporation, the general partners of DRCP, and DRCP are each authorized to transact business in Texas based on information available on the Texas Secretary of State's website for franchise tax account status. The entities are listed

as active, indicating that they are current in the payment of franchise taxes. Copies of the information were provided to the parties.

8. 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 bond set out in the Act and Regulations have been met.
 - (a). Approval by the Commission of the proffered surety bond will allow for the bonding of activities as set out in the approved bond map contained in the approved Revision No. 17.
 - (b). A surety bond is an acceptable form of bond pursuant to §12.308(a)(1). The surety bond is properly executed.
 - (i). The submitted bond is signed on behalf of Argonaut Insurance Company by Michael J. Friedrich, Attorney-in-Fact. Documents demonstrating Mr. Friedrich's authority to bind the surety were submitted in the form of an Original Power of Attorney from Argonaut Insurance Company that was certified by the Vice President of the surety, sworn before a notary, to be in full force and effect on June 13, 2018, the date the proffered bond was signed (Tab 5, Bond Package). The Original Power of attorney contains an original corporate seal. DRCP also submitted a document entitled Attorney-In-Fact Acknowledgement that states that on June 13, 2018 Mr. Friedrich attested he is the attorney-in-fact of the surety, the bond was executed by the authority of the surety's Board of Directors, and that he executed the instrument as a free and voluntary act and deed of the surety for the uses and purposes set forth in the bond (Tab 4, Bond Package).
 - (ii). The submitted bond is signed on behalf of DRCP by Andres Gonzales Saravia Coss, President of Eagle Pass Coal Corporation, a general partner of DRCP. Mr. Coss is authorized to act on behalf of DRCP as evidenced by a certification signed by Armando Sanudo Trueba, attorney on behalf of DRCP, stating that Mr. Coss is the President of Eagle Pass Coal Corporation, a general partner of DRCP, and that he was authorized to act

on behalf of the partnership in regard to the permit on June 13, 2018, the date that he signed the surety bond (Tab 3, Bond Package).

- (c). DRCP is authorized to transact business in the state and Argonaut Insurance Company is a corporate surety licensed to do business in Texas in accordance with §12.309(f)(1) of the Regulations [Finding of Facts Nos. 6 and 7, *supra*].
- (d). The proffered surety bond 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 the Regulations. The bond is non-cancelable during its term pursuant to §12.309(f)(2). Staff filed its Staff attorney's legal review dated July 30, 2018 of the materials submitted; the analysis indicates that DRCP has met all requirements for compliance.
- (e). The bond provides a mechanism for the surety to give prompt notice to the Commission in compliance with §12.309(e) of the Regulations of any notice received or action filed alleging the insolvency or bankruptcy of the surety company or alleging any violation which would result in suspension or revocation of the surety's license to do business in Texas.
- (f). The bond must 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 forfeiture. The amount of the proffered bond together with the existing surety bond will total an amount that is greater than the reclamation costs [Finding of Fact No. 4, *supra*].
- (g). 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, Tab 7 of the Bond Package consists of Argonaut Insurance Company's financial statements for the fiscal year ending December 31, 2017 and quarterly

statement for the first quarter of 2018 ending March 31, 2018.

9. The proffered surety bond will remain in effect according to its terms, unless released or replaced by Commission Order, as will the existing surety bond that was accepted by Order dated June 21, 2016. Pursuant to §12.309(c), DRCP as permittee must complete the reclamation obligations for the mine as required by the Act, Regulations and conditions of the permit. If DRCP does not complete reclamation as required by the Act and Regulations, then the surety is liable on its bond.
10. DRCP'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 Supp. 2018) (Act) and §§12.308-12.309 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE CH. 12 (Thomson West 2018) (Regulations).
11. Bond coverage has been continuous and with acceptance of the proffered surety bond will continue uninterrupted.
12. Acceptance of the proffered 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 proffered bond, when accepted and together with the existing bond, will bond the permit area in the required amount until all reclamation within the permit area has been completed and the Principal/Permittee and surety have been released from liability or until the bonds are replaced.
13. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, GOV'T CODE §551.041.
14. This order was circulated to DRCP, Staff and to Argonaut Insurance Company. DRCP and Staff, the only parties to the proceeding, submitted written waivers of preparation and circulation of a Proposal for Decision in this matter.
15. The Commission may accept the proffered surety bond for reclamation performance for Permit No. 42B.

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 proffered surety bond submitted by Dos Repúblicas Coal Partnership and Argonaut Insurance Company, No. SUR0031838, is in proper form and, together with the existing surety bond, No. SUR0031837, is in an amount so that the total will be sufficient to ensure reclamation of the permit area. The proffered 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 in the amount of \$17,405,652.43.

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

IT IS FURTHER ORDERED that surety bond No. SUR0031838, in the amount of \$17,405,652.43, is hereby accepted to provide reclamation performance bonding for required reclamation of the approved operations under Permit No. 42B, Eagle Pass Mine; and

IT IS FURTHER ORDERED that currently accepted surety bond No. SUR0031837, in the amount of \$29,255,188.57, will remain in place and together with the accepted bond in the amount of \$17,405,652.43 will provide bonding in a total amount of \$46,660,841; and

IT IS FURTHER ORDERED that \$46,660,841 is a sufficient amount for reclamation of the permit area; and

IT IS FURTHER ORDERED that surety bond No. SUR0031838 issued by Argonaut 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 the Commission's Order is signed, unless the time for filing a motion for rehearing has been extended under Tex. Gov't Code §2001.142, by agreement under Tex. Gov't Code §2001.147, or by written Commission Order issued pursuant to Tex. Gov't Code §2001.146(e). If a timely motion for rehearing is filed by any party at 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. Pursuant to Tex. Gov't Code §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case is 100 days from the date the Commission Order is signed.

SIGNED this 18th day of September, 2018.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER RYAN SITTON



COMMISSIONER WAYNE CHRISTIAN

ATTEST:



Secretary, Railroad Commission of Texas

Docket No. C18-0014-SC-42-D
Dos Repùblicas Coal Partnership