

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0002-SC-11-F  
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.  
FOR RELEASE OF PHASE I RECLAMATION OBLIGATIONS FOR 217.0 ACRES  
PERMIT NO. 11G, SAN MIGUEL LIGNITE MINE, ATASCOSA AND MCMULLEN  
COUNTIES, TEXAS**

**ORDER APPROVING  
RELEASE OF PHASE I RECLAMATION OBLIGATIONS  
FOR 217.0 ACRES IN PERMIT NO. 11G**

**Statement of the Case**

The San Miguel Electric Cooperative, Inc. ("SMECI"), P.O. Box 280, Jourdanton, Texas 78026, applied to the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division ("SMRD" and/or "Staff"), for Release of Phase I Reclamation Obligations for 217.0 acres within Permit No. 11G, San Miguel Lignite Mine, located in Atascosa and McMullen Counties, Texas. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2019) (Act) and §§12.312-12.313 of the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations).

SMECI requests release from Phase I reclamation obligations for backfilling, regrading, and drainage control for 217.0 acres. Permit No. 11G currently authorizes surface and coal mining operations at SMECI's San Miguel Lignite Mine, within its 16,000-acre permit area. No comments or requests for hearing were filed following public notice. The only parties to the proceeding are SMECI and Staff. There remain no outstanding issues between the parties. Based on information provided by SMECI and the inspection of the area, Staff recommends release of Phase I reclamation obligations for the requested 217.0 acres.

After consideration of the application and the Findings of Fact and Conclusions of Law, the Commission approves the release of reclamation obligations as requested by SMECI and recommended by Staff. There is no eligible bond reduction amount, the current bond is calculated for the area proposed for release by the worst-case bond methodology. The remaining reclamation cost, should revegetation fail, are for soil preparation, revegetation, and maintenance and may be released when the acreage is approved for final release (Phase III). The actual amount of bond liability attributable to the acreage granted release by this Order will be determined by the Commission when a bond adjustment is requested. SMECI does not request adjustment to the approved reclamation bond at this time and no new bond has been submitted. The parties have filed waivers of preparation and circulation of a proposal for decision. The

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Commission approves the release as requested and finds that SMECI is not eligible to reduce the amount of bond for the permit that is attributable to the subject acreage in future bond adjustments.

### **FINDINGS OF FACT**

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

1. By letter dated September 10, 2019, San Miguel Electric Cooperative, Inc. ("SMECI") filed an application ("Application") with the Railroad Commission of Texas ("Commission"), Surface Mining and Reclamation Division ("SMRD" and/or "Staff") for release of Phase I reclamation obligations for 217.0 acres, within Permit No. 11G, San Miguel Lignite Mine, Atascosa and McMullen Counties, Texas. The permit area encompasses approximately 16,000 acres. SMECI conducted mining operations on the proposed 217.0-acre release area from 2001 to 2012.
2. The Application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann Ch. 134 (Vernon Supp. 2019) (Act), and the "Coal Mining Regulations," Tex. Railroad Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2019) (Regulations). The Application was properly certified in accordance with §12.312(a)(3). No fee is required for the Application.
3. The currently accepted reclamation performance bond for SMECI's San Miguel Lignite Mine operations under Permit No. 11G, in a total amount of \$70,000,000, is in the form of a self-bond with third-party guarantor, accepted by Commission Order dated March 22, 2011 (Docket No. C11-0016-SC-11-E). The Permit No. 11G minimum bond amount is based on the worst-case pit method of reclamation cost calculation. By letter dated December 22, 2017, the Director, SMRD, approved the most recent bond-map update in Revision No. 13 to the permit. The approved reclamation cost estimate is \$64,750,435, derived from Staff's reclamation cost analysis prepared for Revision No. 13. The reclamation cost estimate is based on the worst-case pit reclamation cost calculation method (Areas B and BX), which assumes that mining and reclamation operations are contemporaneous with the reclamation plan at all times. No reduction in the required bond amount is recommended for Phase I release based on the method of bonding. In this application, SMECI does not request a reduction in the amount of the approved reclamation bond instrument in this application.
4. The Application was filed, via hand-delivery, to the Hearings Division on September 12, 2019. Public notice newspaper clippings and newspaper affidavits were received by Staff by letter dated December 30, 2019, and copies of letters sent to landowners and governmental entities were received by Staff by email on November 7, 2019. Staff

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determined the Application to be administratively complete by letter dated January 3, 2020 and transferred the Application to the Hearings Division for completion of processing. By letter dated January 6, 2020, Staff filed its Technical Analysis (TA) and the Field Inspection Report (Inspection Report) dated October 9, 2019, recommending approval of the release application. By letter dated February 6, 2020, Staff filed to its TA a correction for the bond reduction calculation.

5. Copies of the Application were filed for public review, in compliance with notice requirements, at the main office of the Railroad Commission of Texas at 1701 North Congress, William B. Travis Building, Austin, Texas 78711, at the office of the Atascosa County Clerk, Circle Drive Suite 101, Jourdanton, Texas 78026, and at the office of the McMullen County Clerk, P.O. Box 237, Tilden, Texas 78072. By separate letters dated November 13, 2019 to the Atascosa and McMullen County Judges, SMRD indicated a complete copy of the application, including maps on which SMECI has delineated the proposed release area, are on file with the Atascosa and McMullen County Clerks.
6. Notice of application was published once a week for four consecutive weeks in *The Pleasanton Express*, a newspaper of general circulation in Atascosa County, on November 13, 20, and 27, and December 4, 2019. The notice of application contains all information required by the Act and Regulations for notice of an application requesting release. The published notice is adequate notification of the request for release. The notice includes the elements required by §134.129 of the Act and §12.312(a)(2) of the Regulations: the name of the permittee, the precise location of the land affected, the number of acres, permit number at the time of application and date approved, the amount of bond approved, the type and appropriate dates reclamation work was performed, and a description of the results achieved as they relate to the approved reclamation plan. The notice contains information on the applicant, location and boundaries of the permit area, the Application's availability for inspection, and the address to which comments should be sent.
7. Staff's TA indicated that SMECI sent notice by letters dated November 13, 2019, to owners of interests in the areas requested for release and adjacent lands, and to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality, as required by §12.312(a)(2) of the Regulations. Staff's TA indicated that copies of the notification letters were filed with Staff by email on November 15, 2019. By letter dated March 11, 2020, the ALJ informed the parties that based on review of the application, copies of the notification letters were not provided to the Hearings Division. By letter dated March 13, 2020, the ALJ informed the parties that it had come to her attention that the notification letters were not mailed pursuant to §12.312(a)(2) and requested that the parties submit an explanation as to why the notification letters were not mailed. By letter dated March 16, 2020, Staff responded that

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Staff's TA statement that copies of letters to the landowners and agencies were filed with SMRD was in error, and that a correction letter to the January 6, 2020, TA would be provided to the ALJ. SMECI mailed notice to the Atascosa and McMullen County Judges and County Clerk offices, the Texas General Land Office, the Natural Resources Conservation Service (Pleasanton, Texas and Tilden, Texas), the U.S. Environmental Protection Agency, the Texas Commission on Environmental Quality, the Nueces River Authority, Atascosa County Soil and Water Conservation District, Evergreen Underground Water Conservation District, and the U.S. Army Corp of Engineers. The areas requested for release are not located within the territorial boundaries of any municipality that would be notified pursuant to §12.313(c) of the Regulations. Copies of the notification letters were filed with Staff by email on April 9, 2020. By letter dated April 13, 2020, Staff filed a correction letter to its TA regarding letter notice in accordance with §12.313(a)(2).

8. No adverse comments or written objections were received regarding the request for release pursuant to the notification. No requests for hearing or informal conference were filed pursuant to §12.313(d).
9. Staff provided notification of the Application by certified letters dated November 13, 2019, to the County Judges of Atascosa and McMullen Counties. Mailing of notification was provided at least 31 days prior to the date of consideration of the docket by the Commission in accordance with §134.133 of the Act. Pursuant to §12.312(b) of the Regulations, Staff notified owners of interests in lands and lessees of the application for release and the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office (OSM) by letters dated September 13, 2019, of the date and time of Staff's field inspection scheduled for October 9, 2019. The notification stated that a release had been requested and, pursuant to §12.312(b)(1), advised them of the opportunity to participate in the on-site inspection. Staff provided copies of the letters sent pursuant to §12.312(b) in Appendix II of Attachment III (Inspection Report) of the TA.
10. The inspection occurred on October 9, 2019. Two Commission inspectors and one representative of SMECI attended the pre-inspection meeting and participated in the inspection of the property. No landowners were present for the pre-inspection meeting or accompanied the inspectors during the inspection of the property. A sign-in sheet of the meeting participants is included in Staff's TA, Appendix III of Attachment III.
11. The 16,000-acre permit area is located 16 miles south of Jourdanton, Texas, and 6 miles south of Christine, Texas, on FM 3387. A general location map of the permit area, with those areas proposed for release distinguished, is provided in the published public notice and in Staff's TA, Appendix I to Attachment III.

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12. The Application includes ownership and tract information for owners of interests in the areas proposed for release and adjacent lands. There are three affected tracts within and no tracts adjoining the area requested for Phase I release of reclamation obligations (proposed release area is encompassed within the larger tracts). A list of the tract owners within and adjoining the subject acreage is found in the Application (Section 2-1, *List of Landowners*).
13. The subject acreage requested for release was mined or otherwise disturbed between 2001 to 2012, and final grading occurred between 2001 and 2013. Staff conducted routine monthly inspections of the proposed release area since 2001.
14. Based upon the Application and Staff's review, Phase I release of reclamation obligations have been met for 217.0 acres in accordance with Phase I requirements for backfilling, regrading and drainage control as required by §12.313(a)(1) of the Regulations.
  - a. The approved postmine land use within the area requested for release is pastureland (217.0 acres).
  - b. The soil-testing grids within the 217.0 acres proposed for Phase I release of reclamation obligations have met the soil suitability requirements. All soil grids located within the release area are represented in various initial postmine soil monitoring reports as described in letters dated June 8, 2012, February 27, 2018, and August 7, 2019, wherein the Commission notified SMECI that the data for sampled areas do not indicate the presence of acid-forming or toxic-forming materials in the top four feet of postmine soil. Copies of the approval letters are contained in Staff's TA within Appendix V of Attachment III.
  - c. The area has been re-graded to its approximate original contour; highwalls have been eliminated; suitable topsoil has been placed over regraded spoil; no cut-and-fill terraces have been constructed, and drainage control has been accomplished in accordance with the approved reclamation plan. Surface-water runoff from the proposed Phase I release area flows into Sedimentation Ponds 19B, 21B, 22B, and 23B.
  - d. As indicated by SMECI and Staff, there is one permanent structure located within the proposed Phase I release area, Ditch HP-1, for which the certification as permanent was approved by Staff by letter dated August 6, 2015.
  - e. No areas are approved for the disposal of non-coal waste within the area proposed for Phase I bond release [§12.375].

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15. Based on the terms of the approved permit, there is no eligible bond reduction amount for the acreage approved for release of Phase I reclamation requirements given bonded areas within Permit No. 11G are bonded based upon the "worst-case" bond methodology (see Findings of Fact No. 3, *supra*). This method estimates reclamation costs of reclaiming the worst-case pit and reclamation of structures, and assumes that all other disturbed areas are reclaimed contemporaneously, so that there is no eligible bond reduction amount until Phase III release is approved; at that time, the remaining reclamation costs for the bonded acreage will be soil preparation, revegetation, and maintenance costs, retained until Phase III release is approved. Further, the Commission is not required under the Act or the Regulations to determine an eligible bond reduction amount when approving an application for release, and the actual amount of bond liability attributable to the acreage granted release by this Order will be determined by the Commission when a bond adjustment is requested.
16. The area requested for release was marked in the field with white PVC poles at the corners and along the proposed boundaries. (Photographs of marked area are contained in Staff's TA in Appendix IV of Attachment III).
17. SMECI and Staff, the only parties to the proceeding, filed waivers of the preparation and circulation of a proposal for decision. The proposed order was circulated to the parties with opportunity for comment.
18. Open meeting notice has been posted for Commission consideration of this application in accordance with Tex. Gov't Code Ann. CH. 551 (Vernon Supp. 2019).

### **CONCLUSIONS OF LAW**

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

1. Proper notice of SMECI's Application and proper notice of consideration by the Commission has been provided.
2. No public hearing was requested, and none is warranted.
3. SMECI has complied with all applicable provisions of the Act and the Regulations regarding notice for Commission jurisdiction to allow consideration of the matter.
4. SMECI has complied with all applicable provisions of the Act and the Regulations for the acreage requested for release as set out in the Findings of Fact.
5. The Commission may approve a release of Phase I reclamation obligations for the 217.0

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acres as set out in the above Findings of Fact and Conclusions of Law.

6. Pursuant to the Commission's authority for inspections and evaluation of release applications, the Commission may order that SMECI continue marking the area approved for release so that Staff mapping, and tracking will be efficient.
7. SMECI is not eligible to reduce the amount of bond for the permit as a result of Phase I release of the subject 217.0 acres due to the terms of the approved permit.

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

**IT IS FURTHER ORDERED** that a release of Phase I reclamation obligations for 217.0 acres is hereby approved;

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

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

**IT IS FURTHER ORDERED** SMECI is not eligible to reduce the amount of bond for the permit by the amount that is attributable to the 217.0 acres as a result of the release granted by this Order;

**IT IS FURTHER ORDERED** that the Commission may vary the total amount of bond required from time to time as affected land acreage is increased or decreased or where the cost of reclamation changes; and

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**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** on May 5, 2020.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN WAYNE CHRISTIAN**

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**Secretary, Railroad Commission of Texas**

