

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SURFACE MINING DOCKET NO. C20-0021-SC-00-E
APPLICATION BY SAN MIGUEL ELECTRIC COOPERATIVE, INC.
FOR ACCEPTANCE OF REPLACEMENT BLANKET BONDS
PERMIT NOS. 11G, 52A AND 60, SAN MIGUEL LIGNITE MINES
ATASCOSA AND McMULLEN COUNTIES, TEXAS**

**ORDER ACCEPTING REPLACEMENT BLANKET SELF-BONDS WITH THIRD-
PARTY GUARANTEES FOR SAN MIGUEL ELECTRIC COOPERATIVE, INC.'S
STATEWIDE SURFACE MINING AND RECLAMATION OPERATIONS**

Statement of the Case

San Miguel Electric Cooperative, Inc. ("San Miguel"), P. O. Box 280, Jourdan, Texas 78026, has applied to the Railroad Commission of Texas ("Commission") for acceptance of two blanket self-bonds with third-party guarantees and indemnity agreements to replace its bonds currently in place for reclamation obligations arising from operations undertaken at each of San Miguel's three mines, permitted as Permit Nos. 11G, 52A and 60, located collectively 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. 2020) ("Act"), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) ("Regulations").

The proffered bonds are in the amounts of \$131,000,000 and \$9,000,000 and are both in the form of a self-bond with third-party guarantee and indemnity agreement. The third-party guarantees and indemnity agreements are by National Rural Utilities Cooperative Finance Corporation ("CFC"). Currently, each mine is bonded independently from the others by a single self-bond with third-party guarantee and indemnity agreement with CFC committed as the guarantor. The total amount of the three existing bonds is \$130,000,000. The proffered bonds will be applicable to all three permits upon acceptance and replacement of the existing bonds, resulting in a \$10,000,000 increase in the total bond amount for San Miguel's statewide mining operations.

The Commission's Surface Mining and Reclamation Division ("Staff") and San Miguel, the only parties to the proceeding, have waived the preparation and circulation of a proposal for decision. Based upon the most recent analysis of reclamation costs by Staff ("Staff") and the evidence and documentation submitted, the Commission finds that the proffered bonds and the guarantees and indemnity agreements are acceptable in form and amount and financial criteria for bond acceptance have been met. The Commission accepts the blanket bonds totaling \$140,000,000 to replace the existing bonds for San Miguel's permitted mines and provide required reclamation performance bonding.

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

FINDINGS OF FACT

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

1. By letter dated December 20, 2019, San Miguel Electric Cooperative, Inc. ("San Miguel") applied to the Railroad Commission of Texas ("Commission") for acceptance of replacement blanket bonds for operations arising under all three of its statewide permitted mines, currently designated as Permit Nos. 11G, 52A and 60, located collectively in Atascosa and McMullen Counties, Texas. The proffered bonds are in the amounts of \$131,000,000 and \$9,000,000 and are both in the form of a self-bond with third-party guarantee and indemnity agreement. Supplement No. 1, consisting of revised pages of third-party guarantees and indemnity agreements, and Supplement No. 2, providing an unaudited financial statement for the proposed third-party guarantor's prior fiscal year, were filed with the Commission's Surface Mining and Reclamation Division ("SMRD" or "Staff") by letters dated March 4 and 5, 2020, respectively. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, Tex. Nat. Res. Code Ann. Ch. 134 (Vernon Supp. 2020) ("Act"), and the "Coal Mining Regulations," Tex. R.R. Comm'n, 16 Tex. Admin. Code Ch. 12 (Thomson West 2020) ("Regulations").
2. By letter dated August 19, 2020, SMRD transferred the application, including all original bond instruments, to the Hearings Division, along with the Commission's Office of General Counsel's ("OGC") legal review of the materials dated March 2, 2020, as supplemented by email dated April 6, 2020, and the Financial Services Division's ("FSD") financial review dated July 23, 2020. The initial reviews conducted by OGC and FSD utilized the proposed third-party guarantor's, National Rural Utilities Cooperative Finance Corporation ("CFC"), audited financial statement for its fiscal year ending May 31, 2019 when assessing whether the application met the requirements for approval. Given that a proposed third-party guarantor's financial condition, as represented in the audited statement for its most recently completed fiscal year, is the primary financial information evaluated by the Commission in determining whether to accept a bond in the form as proffered in this docket, Staff was ordered by the administrative law judge ("ALJ") to file supplemental reviews by OGC and FSD that addressed CFC's audited statement for its fiscal year ending May 31, 2020. By letter dated October 13, 2020, Staff filed the supplemental legal and financial reviews from OGC and FSD dated October 7 and 8, 2020, respectively, that were performed in accordance with the ALJ's order.
3. San Miguel holds the following three surface mining and reclamation permits that were previously issued by the Commission: (1) Permit No. 11G for the San Miguel Lignite Mine; (2) Permit No. 52A for the C-Area Lignite Mine; and, (3) Permit No. 60 for the F, G & H Lignite Area Mine. Currently, each mine is bonded independently from the others by a single self-bond with third-party guarantee and indemnity agreement with National Rural Utilities Cooperative Finance Corporation ("CFC") committed as the guarantor. The

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

amounts of the three accepted bonds for San Miguel's respective permits are as follows: (1) \$70,000,000 – Permit No. 11G, accepted by Commission Order dated March 22, 2011 (Docket No. C11-0016-SC-11-E); (2) \$30,000,000 – Permit No. 52A, accepted by Commission Order dated March 22, 2011 (Docket No. C11-0017-SC-52-E); and, (3) \$30,000,000 – Permit No. 60, accepted by Commission Order dated April 24, 2018 (Docket No. C18-0002-SC-00-D).

4. The Regulations at §12.308(c) allow a blanket bond covering statewide or county wide operations to be provided if the terms and conditions are sufficient to comply with applicable Regulations §§12.308 – 12.311 (relating to Form, Conditions, and Terms of Performance Bond and Liability Insurance), and if approved by the Commission. A permittee may replace existing bonds with other bonds if the liability which has accrued against the permittee on the permit area is transferred to such replacement bonds pursuant to §12.310(a). The Commission may accept a self-bond from an applicant and a qualified third-party guarantor if all applicable requirements under the Act and Regulations have been met, including §12.309(j)(3). As allowed by the Regulations, San Miguel has requested acceptance of two blanket self-bonds with accompanying third-party guarantees and indemnity agreements to provide reclamation performance bonding for Permit Nos. 11G, 52A and 60, and to replace the existing bonds for these permits that are identified in Finding of Fact No. 3, *supra*. The proffered bonds are in the amounts of \$131,000,000 and \$9,000,000. Thus, upon acceptance, the bonds will provide bonding for San Miguel's permits in a total amount of \$140,000,000 – an increase of \$10,000,000 from the current total bond amount for the subject permits (See Finding of Fact No. 3, *supra*). CFC is the third-party guarantor for both bonds proposed for acceptance in the application.
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. The amount of bond for a permit must be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Commission in the event of forfeiture pursuant to §12.304(b). Estimated reclamation costs in respect to San Miguel's permitted mines have been approved administratively by Staff. The current cost estimates for Permit Nos. 11G, 52A, and 60 are \$61,850,347, \$20,554,661, and \$34,280,027, respectively. These estimates were approved for Permit No. 11G in Revision No. 13 on December 22, 2017, Permit No. 52A in Revision No. 12 on July 22, 2019 and Permit No. 60 in Revision No. 7 on December 10, 2019. Based on the current cost estimates, the total calculated reclamation cost estimate for the subject permits is \$116,685,035. Upon acceptance of the proffered replacement bonds, the total bond amount for the permits will increase to \$140,000,000, an amount that exceeds the approved estimated cost of reclamation for the permits and is sufficient for work that may be performed by a third-party at the direction of the Commission in the event of forfeiture in accordance with §12.304(b).
6. The self-bonds submitted are on a Commission form for self-bond. The bonds are

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

individually accompanied by a third-party guarantee and indemnity agreement also on a Commission form.

7. San Miguel and CFC are business entities. San Miguel is a corporation organized under the laws of the State of Texas for the purpose of engaging in rural electrification, and CFC is a District of Columbia cooperative association that provides financing for rural utility cooperatives and companies. Certified copies of the Articles of Incorporation, as amended, for San Miguel (Item 13) and a Certificate of Good Standing issued by the District of Columbia for CFC (Item 23) are included in the bond documents.
8. The self-bonds submitted by San Miguel are signed by San Miguel's General Manager, Mike Kezar, who is authorized to execute the bond on behalf of San Miguel [Certificates of Incumbency dated December 13, 2019 (Item 12) and Board Resolution dated November 15, 2019 (Item 15)]. The third-party guarantees and indemnity agreements are signed on behalf of the third-party guarantor CFC by Tim Bartel and Paula Kramp, Assistant Secretary-Treasurers of CFC, who are duly authorized to execute the guarantee and indemnity agreement on behalf of CFC [Certificates of Incumbency dated December 13, 2019 (Item 25) and CFC Resolutions dated December 6, 2019 (Item 26)]. The corporate resolutions authorize any Assistant-Treasurer and any other officer of CFC to execute the subject documents. The third-party guarantee and indemnity agreement is signed on behalf of principal-permittee San Miguel by San Miguel's General Manager, Mike Kezar, who is authorized to execute the guarantee and indemnity agreement on behalf of San Miguel. Corporate authorizations for San Miguel and CFC, along with affidavits, have been submitted to certify that the documents and agreements are valid. The third-party guarantee and indemnity agreement contains the required undertaking by CFC to complete the reclamation plan for lands in default or to forfeit to the Commission an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. The requirements of §12.309(j)(5) have been met.
9. The self-bond and third-party guarantee and indemnity agreement provide that San Miguel and CFC will comply with the requirements of the Texas Surface Coal Mining and Reclamation Act and applicable Commission Regulations.
10. The Commission regulation at 16 Tex. Admin. Code §12.309(j)(3) provides that the Commission may accept a self-bond from the applicant and the applicant's third-party guarantor when the applicant meets the self-bonding requirements for a business entity set out in 16 Tex. Admin. Code §12.309(j)(2)(A), (B), and (D) and when the third-party guarantor meets the requirements for a business entity set out in 16 Tex. Admin. Code §12.309(j)(2)(A), (B), (C), and (D).
11. The applicant, San Miguel, has met the requirements of 16 Tex. Admin. Code §12.309(j)(2)(A), (B), and (D).

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

- a. San Miguel has designated a suitable agent to receive service of process in Texas, Derrick L. Brummett, 6200 FM 3387, Christine, Texas 78012 (Item 13) [§12.309(j)(2)(A)].
 - b. San Miguel has been in continuous operation for a period of not less than 5 years immediately preceding the date of application (Items 8 and 13) [§12.309(j)(2)(B)].
 - c. The Regulations at §12.309(j)(2)(D) require the applicant submit an audited financial statement from its most recently completed fiscal year and unaudited financial statements for completed quarters in the current fiscal year. In the application that was submitted in December 2019, San Miguel provided required audited financial statements for the fiscal year ending December 31, 2018 (Item 10) and unaudited financial statements for the periods ending June 30, 2018 and September 30, 2018 (Item 11). Prior to docketing of the application in August 2020, San Miguel submitted additional financial statements to the Commission in accordance with ongoing reporting requirements related to self-bonding that are mandated under § 12.309(j)(6). The additional statements have been filed in the docket and include San Miguel's audited financial statement for its fiscal year ending December 31, 2019 that was prepared by an independent certified public accountant in conformity with generally accepted accounting principles that contains no adverse opinion of the auditor. Other required statements that have been received in the record include San Miguel's unaudited financial statements for its quarterly periods ending March 31, 2020, June 30, 2020 and September 30, 2020. The requirements of § 12.309(j)(2)(D) of the Regulations have been met with respect to the applicant, San Miguel.
12. CFC as third-party guarantor has met the requirements of 16 Tex. Admin. Code §12.309(j)(2)(A), (B), (C), and (D).
- a. CFC has designated a suitable agent to receive service of process in Texas, Jeff Kilpatrick, 274 Ranch Ridge Drive, Spicewood, Texas 78620 (Item 19) [§12.309(j)(2)(A)].
 - b. CFC has been in continuous operation for a period of not less than 5 years immediately preceding the date of application (Item 19) [§12.309(j)(2)(B)].
 - c. Financial information has been submitted in sufficient detail to show that the requirements of §12.309(j)(2)(C)(i) and §12.309(j)(2)(D) have been met.
 - i. CFC meets the financial criterion that it must have an investment grade rating for its most recent bond issuance of "A" or higher from Moody's Investors Service ("Moody's") or Standard and Poor's Corporation ("S&P"). As of May 31, 2020, the applicable ratings are "A2" and "A" from Moody's and S&P,

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

respectively (CFC's Form 10-K, Fiscal Year Ending May 31, 2020, p. 66) [§12.309(j)(2)(C)(i)].

- ii. The Regulations at §12.309(j)(2)(D) require the applicant submit an audited financial statement from the proposed third-party guarantor's most recently completed fiscal year and unaudited financial statements for completed quarters in current fiscal year. In the application that was submitted in December 2019, San Miguel provided required audited financial statements for CFC's the fiscal year ending May 31, 2019 (Item 22, Form 10-K) and unaudited financial statements for the period ending June 30, 2018 and September 30, 2018 (Item 22, Form 10-Q). Prior to docketing of the application in August 2020 or during the pendency of this matter, San Miguel submitted additional financial statements to the Commission in accordance with ongoing reporting requirements related to self-bonding that are mandated under § 12.309(j)(6). The additional statements have been filed in the docket and include CFC's audited financial statement for its fiscal year ending May 31, 2020 that was prepared by an independent certified public accountant in conformity with generally accepted accounting principles that contains no adverse opinion of the auditor. Other required statements that have been received in the record include CFC's unaudited financial statement for its quarterly period ending August 31, 2020. SMECI committed to file any other financial statements that became available during the pendency of the docket. CFC's unaudited statement for its quarterly period ending November 30, 2020 is not in the record but must be submitted to the Commission in accordance with § 12.309(j)(6). Accordingly, given the date of this Order relative to completion of CFC's November 2020 quarter, the absence of this statement in the record does not hinder acceptance of the proffered bonds. The requirements of §12.309(j)(2)(D) of the Regulations have been met with respect to the proposed third-party guarantor, CFC.
13. The terms of the subject third-party guarantees contain the provisions required for a third-party guarantee by 16 Tex. Admin. Code §12.309(j)(3)(A). The respective guarantees individually provide that if San Miguel fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the Commission sufficient to complete the reclamation plan not to exceed the bond amount. The guarantee shall remain in force unless CFC sends notice of cancellation as required by 16 Tex. Admin. Code §12.309(j)(3)(B) and such cancellation is accepted by the Commission. The third-party guarantee associated with each of the proffered bonds guarantees all obligations of San Miguel under the respective bond, including providing replacement bonding as required.
14. The Regulations at 16 Tex. Admin. Code §12.309(j)(4)(B) provide that for the Commission to accept a self-bond with third-party guarantee pursuant to qualification by 16 Tex. Admin.

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

Code §12.309(j)(2)(A), (B), (C)(i), and (D), the total amount of the guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25% of the guarantor's tangible net worth in the United States. Pursuant to §12.309(j)(1)(I), tangible net worth is equal to net worth minus intangibles such as goodwill and rights to patents or royalties.¹ Net worth is equal to total assets minus total liabilities [§12.309(j)(1)(F)]. For CFC's fiscal year ending May 31, 2020, its total asset and liability calculations are \$28,157,605,000 and \$27,508,783,000, respectively (CFC's Form 10-K, Consolidated Balance Sheet, p. 89). FSD's review of the audited statement determined CFC's assets should not include \$8,647,000 of "restricted cash" or \$22,701,000 of "noncontrolling interests"; finding CFC's tangible net worth totals \$617,474,000 with the exclusion of these categories. Additionally, CFC's total asset calculation considers \$37,627,000 of "other assets" that includes \$5,496,000 of nonqualified 457(b) deferred compensation plans to highly compensated employees; the amounts deferred by employees are invested by the company (Form 10-K, Deferred Compensation Investments, p. 141). In the Order accepting the current bond for Permit No. 60, the Commission found that deferred compensation plans are more characteristic of a deferred liability than an asset to CFC; therefore, the amounts deferred were excluded from CFC's total asset calculation (Docket No. C18-0002-SC-00-D, Finding of Fact No. 14). Consistent with Commission precedent, the \$5,496,000 in deferred compensation plans are also excluded from CFC's total assets when calculating its net worth for the applicable fiscal year. Therefore, CFC's tangible net worth in the United States is \$611,978,000, as defined by §12.309(j)(1)(I) of the Regulations. When the proffered bonds (\$131,000,000 and \$9,000,000) replace the currently accepted bonds guaranteed by CFC for Permit Nos. 11G, 52A and 60, CFC will have guaranteed two self-bonds in a total amount of \$140,000,000. This amount is approximately 22.88% of \$611,978,000 CFC's tangible net worth in the United States. CFC meets the requirement of 16 Tex. Admin. Code §12.309(j)(4)(B).

15. Acceptance of the self-bonds with third-party guarantees and indemnity agreements in the total amount of \$140,000,000 will allow currently approved operations to take place in the currently approved bonded areas.
16. The proffered bonds contain a clause replacing existing bond coverage and assuming any liability which has accrued against the permittee on the permit areas pursuant to §12.310(a) of the Regulations.
17. Bond coverage has been continuous and with acceptance of the proffered blanket bonds will continue uninterrupted.
18. The record in this docket includes proof of San Miguel's continued compliance with

¹ CFC does not list any intangible assets for its fiscal year ending May 31, 2020 (Form 10-K, Fiscal Year Ending May 31, 2020, p. 89).

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

§12.311 for minimum liability insurance coverage. By letter dated October 15, 2020, Staff filed its review and administrative approval of certificates of insurance that were submitted to SMRD by San Miguel for each of its permits. Attached to Staff's review were proof of public liability insurance in the form of certificates for each permit certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamations operations under the permits. The certificates indicate the policy term is July 14, 2020 through July 14, 2021 and required coverage for bodily injury and property damage protection is provided in the amounts required under §12.311(a). Each certificate is dated June, 9, 2020, adequately identifies the permit area to which the insurance applies, and demonstrates the liability insurance provides for coverage of personal injury and property damage protection in an amount adequate to compensate all persons injured or property damaged as a result of surface coal mining and reclamation operations, including use of explosives and damage to water wells, and entitled to compensation under the applicable provisions of State law. The certificates further evidence that ACE American Insurance Company, P.O. Box 1000, Philadelphia, PA 19106, issued Policy No. G249154020011, and documents have been filed that demonstrate the person who issued the certificates verifying insurance on behalf of San Miguel for documentation to the Commission had the authority to do so. In accordance with §12.311(c), the certificates and an endorsement related to the policy commit the insurer to notify the Commission whenever substantive changes are made in the underlying policy, including any termination or failure to renew.

19. San Miguel and CFC are authorized to conduct business in Texas and are current in the payment of required franchise taxes due.
20. Acceptance of the proffered bonds 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 bonds, when accepted, will bond the permit areas in the required amount until all reclamation within the permit areas has been completed according to the terms of the current permits and the permittee and guarantor have been released from liability or until the bonds are replaced.
21. Open meeting notice of Commission consideration of this matter has been provided in accordance with the Administrative Procedure Act, Gov't Code §551.041.
22. This order was circulated to San Miguel, Staff and CFC. San Miguel and Staff, the only parties to the proceeding, submitted written waivers of preparation and circulation of a Proposal for Decision in this matter.
23. The Commission may accept the proffered blanket self-bonds with third-party guarantees and indemnity agreements for reclamation performance for Permit Nos. 11G, 52A and 60.

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

CONCLUSIONS OF LAW

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

1. All required notice for consideration of this matter has been provided.
2. The Commission has jurisdiction pursuant to §§134.001, *et seq.* of the Tex. Nat. Res. Code, including §§134.121-134.122, §134.125, and §134.127 and the Coal Mining Regulations, 16 Tex. Admin. Code Ch. 12, §§12.308(a)(4), 12.308(c), and §12.309(j) to consider this application for acceptance of blanket self-bonds with third-party guarantees and indemnity agreements.
3. The reclamation performance self-bonds, guarantees, and indemnity agreements meet the financial criteria of §12.309(j)(2)(A), (B), (C)(i), and (D) of the Regulations for a self-bond with third-party guarantee.
4. The proffered self-bonds and third-party guarantees and indemnity agreements have been conditioned upon the faithful performance of all the requirements of the Act, the Coal Mining Regulations, and the provisions of the reclamation plan and permits. The amount and period of liability of the proffered bonds comply with §§12.304-12.307 of the Regulations and with §§12.308-12.311 of the Regulations relating to replacement, form, terms and conditions, and liability insurance. Because the terms and conditions are sufficient to comply with §§12.308-12.311, the proffered bonds with third-party guarantees and indemnity agreements submitted by San Miguel and executed by San Miguel and by CFC may be accepted by the Commission.
5. The proffered self-bonds and third-party guarantees and indemnity agreements in the total amount of \$140,000,000 will provide sufficient bonding for the reclamation operations approved for the permits for which they were submitted based on proof that the criteria set out for acceptance of the bonds have been met and the total amount of the bonds are in excess of approved reclamation cost estimates of \$116,685,035.
6. The Commission is authorized by the Act and Regulations to accept the blanket self-bonds with third-party guarantees and indemnity agreements to replace the existing bonds for Permit Nos. 11G, 52A and 60.

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

IT IS FURTHER ORDERED that the self-bonds and the third-party guarantees and indemnity agreements in the amounts of \$131,000,000 and \$9,000,000 are accepted to provide reclamation performance bonding for required reclamation of approved operations under Permit Nos. 11G, 52A and 60;

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

IT IS FURTHER ORDERED that the existing bonds and corresponding third-party guarantees and indemnity agreements for Permit Nos. 11G, 52A and 60 are hereby replaced, with all liabilities for previous operations incorporated into and assumed by the self-bonds with third-party guarantees and indemnity agreements accepted by this Order;

IT IS FURTHER ORDERED that the self-bonds and third-party guarantees and indemnity agreements accepted by this Order will remain in place until released or replaced by Commission Order;

IT IS FURTHER ORDERED that the Commission may vary the required bond amount of each permit as affected acreages are increased or decreased or where the cost of reclamation changes; and

Docket No. C20-0021-SC-00-E
San Miguel Electric Cooperative, Inc.
Order Accepting Replacement Blanket Bonds

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 of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. 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 December 8, 2020.

RAILROAD COMMISSION OF TEXAS

DocuSigned by:
Christi Craddick
1549487DF466424
CHAIRMAN CHRISTI CRADDICK

DocuSigned by:
Ryan Sitton
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COMMISSIONER RYAN SITTON

DocuSigned by:
Wayne Christian
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COMMISSIONER WAYNE CHRISTIAN

ATTEST:

DocuSigned by:
Callie Farrar
3561G88DFDE8476
Secretary
Railroad Commission of Texas



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

Permit No.: 11G, 52A, 60

Mine Name: San Miguel Lignite Mine

Permittee: San Miguel Electric Cooperative, Inc.

(hereinafter referred to as the "Principal")

This instrument ☒ does ☐ does not (check appropriate response) replace an existing bond, described as:

Permit No. 11G, 52A, 60

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

WHEREAS, as the above bound Principal-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, said permit application (including the proposed reclamation plan) was approved on the _____ day of _____, ____; and

WHEREAS, the granting of a permit is conditioned in part on the Principal-Permittee's posting bond to insure the faithful performance of all requirements of the Principal-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 § 12.004 *et seq.*, (hereinafter referred to as the "Coal Mining Regulations"); and the Permit as amended, renewed, revised, or replaced;

THAT San Miguel Electric Cooperative, Inc., as Principal-Permittee, is held and firmly bound unto the State of Texas in the full sum of **One Hundred Thirty-One Million Dollars And No/100** United States Dollars (\$131,000,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and Principal-Permittee binds itself, its 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-Permittee shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit as amended, renewed, revised, or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the Principal-Permittee, for value received, agrees that no amendment to existing laws, rules, or regulations, no adoption of new laws, rules, or regulations, and no amendment, renewal, revision, 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, renewal, revision, or replacement.

The Principal-Permittee further agrees to give prompt notice to the Railroad Commission: (1) of any notice received or action filed alleging its insolvency or bankruptcy; or (2) if it becomes unable, or unwilling, to fulfill its obligation under this bond.

Self Bond of **San Miguel Electric Cooperative, Inc.** (Principal-Permittee)

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

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

It is further agreed that upon incapacity of the Principal-Permittee, or the Third-Party Guarantor if this bond is guaranteed, by reason of bankruptcy or incapacity, or for any other reason, Principal-Permittee shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal-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.

IN WITNESS WHEREOF, the Principal-Permittee has caused these presents to be duly signed and sealed this 13th Day of Dec., 2019

San Miguel Electric Cooperative, Inc.

PRINCIPAL-PERMITTEE

PO Box 280, Jourdanton, TX 78026

Address

By:

Signature

Mike Kezar

Typed Name

General Manager

Title

Attest:

Self Bond of San Miguel Electric Cooperative, Inc. (Principal-Permittee)

Accepted: 12/9/2020

DocuSigned by:

Christi Craddock

15494B7DF4CC424

CHAIRMAN, Railroad Commission of Texas

DocuSigned by:

Ryan Sifton

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COMMISSIONER, Railroad Commission of Texas

DocuSigned by:

Wayne Christian

C3C7ABBA4A8422

COMMISSIONER, Railroad Commission of Texas

DocuSigned by:

Callie Farrar

3581680DFBE0476

Attest:

NOTE: The following documents should be submitted to the Commission along with the original self-bond: (1) original certified corporate resolution and certificate of incumbency, and (2) affidavit certifying that this instrument is valid under all applicable State and Federal laws.

**THIRD-PARTY GUARANTEE and
INDEMNITY AGREEMENT**

Principal-Permittee: San Miguel Electric Cooperative, Inc.

Permit No.: 11G, 52A, 60

Mine Name: San Miguel Lignite Mine

Self-Bond Amount: \$131,000,000.00 Effective Date: December 13, 2019

Third-Party Guarantor: National Rural Utilities Cooperative Finance Corporation

This instrument, executed by the above-named Principal-Permittee and Third-Party Guarantor guarantees Principal-Permittee's obligations under the Self-Bond described above.

Upon default by Principal-Permittee in the performance of its obligations under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, §134.001 *et seq.* (the "Act"); regulations adopted under the Act, 16 TAC §12.001 *et seq.* (the "Coal Mining Regulations"); and the Permit (including the reclamation plan) as now or hereafter amended, renewed, revised, or replaced, Third-Party Guarantor agrees to either complete performance of Principal-Permittee's obligations or to pay to the Commission an amount necessary to complete performance of such obligations as determined by the Commission. In no event, however, shall the amount paid to the Commission for completion of performance of Principal-Permittee's obligations exceed the amount of the bond as described above.

Third-Party Guarantor agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules or regulations, and no amendment, renewal, revision, or modification of the Permit (including the reclamation plan) shall in any way alleviate its obligation under this Third-Party Guarantee and Indemnity Agreement and it does hereby waive notice of any such amendment, adoption, renewal, revision, or replacement.

Third-Party Guarantor further agrees to give prompt notice to the Principal-Permittee and the Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Third-Party Guarantor; (2) of any notice received or action filed alleging the insolvency or bankruptcy of the Principal-Permittee; (3) if it becomes unable, or unwilling, to fulfill its obligations under this Third-Party Guarantee and Indemnity Agreement.

Third-Party Guarantor agrees that it will submit financial information to the Commission during the pendency of this agreement as required by the Act or Coal Mining Regulations within the time period specified in such regulations.

It is agreed that this Third-Party Guarantee and Indemnity Agreement shall be in full force and effect for the duration of the reclamation obligation on the land affected by the Permit (including the reclamation plan) as amended, renewed, revised, or replaced or until the Principal-Permittee is otherwise relieved of its obligation by order of the Commission in accordance with applicable rules or this instrument is canceled in accordance with applicable rules.

Upon request, and upon timely and proper showing by Principal-Permittee, the Commission agrees to release the Principal-Permittee from all or any part of the Self-Bond if the Commission is satisfied that the Principal-Permittee's obligations with respect to some or all of the property covered by the Self-Bond have been accomplished as required in accordance with the Act, the Coal Mining Regulations, and the Permit as

now or hereafter amended, renewed, revised, or replaced.

National Rural Utilities Cooperative Finance Corporation

Third-Party Guarantor

20701 Cooperative Way, Dulles, VA 20166
Address

By: _____
Signature

Tim Bartel
Typed Name

Assistant Secretary Treasurer
Title

By: _____
Signature

Paula Kramp
Typed Name

Assistant Secretary Treasurer
Title

Attest: _____

Accepted: 12/9/2020

DocuSigned by:
Christi Craddick

15404B7DF4CC424

CHAIRMAN, Railroad Commission of Texas

DocuSigned by:
Ryan Sifton

7D1B8C36A37443C

COMMISSIONER, Railroad Commission of Texas

DocuSigned by:
Wayne Christian

C1C746B4E446422

COMMISSIONER, Railroad Commission of Texas

San Miguel Electric Cooperative, Inc.

Principal-Permittee

PO Box 280, Jourdanton, TX 78026
Address

By: _____
Signature

Mike Kezar
Typed Name

General Manager
Title

By: _____
Signature

Typed Name

Title

Attest: _____

DocuSigned by:
Callie Farrar

35B1C80DFDE0476

Attest: _____


NOTE: The following documents should be provided to the Commission with the original bond instrument: (1) certified corporate resolution and certificate of incumbency, and (2) affidavit certifying that this instrument is valid under all applicable State and Federal laws.

now or hereafter amended, renewed, revised, or replaced.

National Rural Utilities Cooperative Finance Corporation

Third-Party Guarantor

20701 Cooperative Way, Dulles, VA 20166
Address

By: 
Signature

Tim Bartel
Typed Name

Assistant Secretary Treasurer
Title

By: 
Signature

Paula Kramp
Typed Name

Assistant Secretary Treasurer
Title

Attest: _____

Accepted: 12/9/2020

DocuSigned by:

15494B7DF46G424
CHAIRMAN, Railroad Commission of Texas

DocuSigned by:

7B1B8C36A37443C
COMMISSIONER, Railroad Commission of Texas

DocuSigned by:

C1C740B4F440422
COMMISSIONER, Railroad Commission of Texas

San Miguel Electric Cooperative, Inc.

Principal-Permittee

PO Box 280, Jourdanton, TX 78026
Address

By: _____
Signature

Mike Kezar
Typed Name

General Manager
Title

By: _____
Signature

Typed Name

Title

Attest: _____

Attest: 
3504C80DFDE0470

NOTE: The following documents should be provided to the Commission with the original bond instrument: (1) certified corporate resolution and certificate of incumbency, and (2) affidavit certifying that this instrument is valid under all applicable State and Federal laws.

THE STATE OF TEXAS
COUNTY OF ATASCOSA

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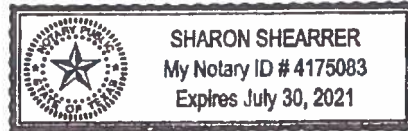
This instrument was acknowledged before me on the 13th day of December, 2019, by Michael D. Kezar, who being by me duly sworn did say that he is the General Manager of San Miguel Electric Cooperative, Inc., the Texas corporation that executed the above and foregoing Self-Bond for Surface Mining and Reclamation Permit, and that said instrument was signed on behalf of said corporation by authority of its corporate resolutions, and that said Michael D. Kezar duly acknowledged to me that said corporation executed the same.

Sharon Shearrer

Notary Public in and for the State of Texas

My Commission Expires:

July 30, 2021

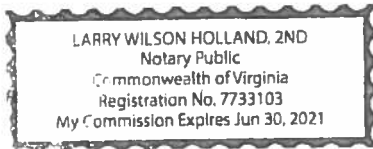


THE COMMONWEALTH OF VIRGINIA

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COUNTY OF LOUDOUN

This instrument was acknowledged before me on the 13 day of DECEMBER, 2019, by Tim Bartel, Assistant Secretary-Treasurer, who being by me duly sworn did say that he/she is signing on behalf of the Governor of National Rural Utilities Cooperative Finance Corporation, the District of Columbia cooperative association that executed the above and foregoing Third-Party Guarantee and Indemnity Agreement, and that said instrument was signed on behalf of said corporation by authority of its corporate resolutions, and that said Assistant Secretary-Treasurer duly acknowledged to me that said corporation executed the same.



Larry Wilson Holland, 2nd
Notary Public in and for the
Commonwealth of Virginia

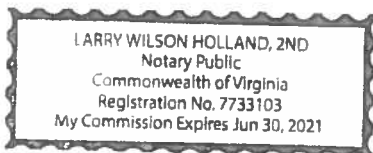
My Commission Expires:

THE COMMONWEALTH OF VIRGINIA

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§

COUNTY OF LOUDOUN

This instrument was acknowledged before me on the 13 day of DECEMBER, 2019, by Paula Z. Kramp, Assistant Secretary-Treasurer, who being by me duly sworn did say that he/she is signing on behalf of the Governor of National Rural Utilities Cooperative Finance Corporation, the District of Columbia cooperative association that executed the above and foregoing Third-Party Guarantee and Indemnity Agreement, and that said instrument was signed on behalf of said corporation by authority of its corporate resolutions, and that said Assistant Secretary-Treasurer duly acknowledged to me that said corporation executed the same.



Larry Wilson Holland, 2nd
Notary Public in and for the
Commonwealth of Virginia

My Commission Expires:

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

Permit No.: 11G, 52A, 60
Mine Name: San Miguel Lignite Mine
Permittee: San Miguel Electric Cooperative, Inc.
(hereinafter referred to as the "Principal")

This instrument ☒ does ☐ does not (check appropriate response) replace an existing bond, described as:

Permit No. 11G, 52A, 60

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

WHEREAS, as the above bound Principal-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, said permit application (including the proposed reclamation plan) was approved on the ____ day of ____, ____; and

WHEREAS, the granting of a permit is conditioned in part on the Principal-Permittee's posting bond to insure the faithful performance of all requirements of the Principal-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 § 12.004 *et seq.*, (hereinafter referred to as the "Coal Mining Regulations"); and the Permit as amended, renewed, revised, or replaced;

THAT San Miguel Electric Cooperative, Inc., as Principal-Permittee, is held and firmly bound unto the State of Texas in the full sum of **Nine Million Dollars And No/100** United States Dollars (\$9,000,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and Principal-Permittee binds itself, its 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-Permittee shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit as amended, renewed, revised, or replaced, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

And the Principal-Permittee, for value received, agrees that no amendment to existing laws, rules, or regulations, no adoption of new laws, rules, or regulations, and no amendment, renewal, revision, 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, renewal, revision, or replacement.

The Principal-Permittee further agrees to give prompt notice to the Railroad Commission: (1) of any notice received or action filed alleging its insolvency or bankruptcy; or (2) if it becomes unable, or unwilling, to fulfill its obligation under this bond.

Self Bond of **San Miguel Electric Cooperative, Inc.** (Principal-Permittee)

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

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

It is further agreed that upon incapacity of the Principal-Permittee, or the Third-Party Guarantor if this bond is guaranteed, by reason of bankruptcy or incapacity, or for any other reason, Principal-Permittee shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal-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.

IN WITNESS WHEREOF, the Principal-Permittee has caused these presents to be duly signed and sealed this 13th Day of Dec., 2019

San Miguel Electric Cooperative, Inc.

PRINCIPAL-PERMITTEE

PO Box 280, Jourdanton, TX 78026

Address

By: 

Signature

Mike Kezar

Typed Name

General Manager

Title

Attest: 

Self Bond of San Miguel Electric Cooperative, Inc. (Principal-Permittee)

Accepted: 12/9/2020

DocuSigned by:

Christi Craddick

15494B7DE4CC424

CHAIRMAN, Railroad Commission of Texas

DocuSigned by:

Ryan Sifton

7D1B8C36A37443C

COMMISSIONER, Railroad Commission of Texas

DocuSigned by:

Wayne Christian

C1C746B4F446422

COMMISSIONER, Railroad Commission of Texas

DocuSigned by:

Callie Farrar

3581C88DFDE0476

Attest:

NOTE: The following documents should be submitted to the Commission along with the original self-bond: (1) original certified corporate resolution and certificate of incumbency, and (2) affidavit certifying that this instrument is valid under all applicable State and Federal laws.

**THIRD-PARTY GUARANTEE and
INDEMNITY AGREEMENT**

Principal-Permittee: San Miguel Electric Cooperative, Inc.

Permit No.: 11G, 52A, 60

Mine Name: San Miguel Lignite Mine

Self-Bond Amount: \$9,000,000.00 Effective Date: December 13, 2019

Third-Party Guarantor: National Rural Utilities Cooperative Finance Corporation

This instrument, executed by the above-named Principal-Permittee and Third-Party Guarantor guarantees Principal-Permittee's obligations under the Self-Bond described above.

Upon default by Principal-Permittee in the performance of its obligations under the Texas Surface Coal Mining and Reclamation Act, Texas Natural Resources Code, §134.001 *et seq.* (the "Act"); regulations adopted under the Act, 16 TAC §12.001 *et seq.* (the "Coal Mining Regulations"); and the Permit (including the reclamation plan) as now or hereafter amended, renewed, revised, or replaced, Third-Party Guarantor agrees to either complete performance of Principal-Permittee's obligations or to pay to the Commission an amount necessary to complete performance of such obligations as determined by the Commission. In no event, however, shall the amount paid to the Commission for completion of performance of Principal-Permittee's obligations exceed the amount of the bond as described above.

Third-Party Guarantor agrees that no amendment to existing law, rules or regulations, no adoption of new laws, rules or regulations, and no amendment, renewal, revision, or modification of the Permit (including the reclamation plan) shall in any way alleviate its obligation under this Third-Party Guarantee and Indemnity Agreement and it does hereby waive notice of any such amendment, adoption, renewal, revision, or replacement.

Third-Party Guarantor further agrees to give prompt notice to the Principal-Permittee and the Commission: (1) of any notice received or action filed alleging the insolvency or bankruptcy of the Third-Party Guarantor; (2) of any notice received or action filed alleging the insolvency or bankruptcy of the Principal-Permittee; (3) if it becomes unable, or unwilling, to fulfill its obligations under this Third-Party Guarantee and Indemnity Agreement.

Third-Party Guarantor agrees that it will submit financial information to the Commission during the pendency of this agreement as required by the Act or Coal Mining Regulations within the time period specified in such regulations.

It is agreed that this Third-Party Guarantee and Indemnity Agreement shall be in full force and effect for the duration of the reclamation obligation on the land affected by the Permit (including the reclamation plan) as amended, renewed, revised, or replaced or until the Principal-Permittee is otherwise relieved of its obligation by order of the Commission in accordance with applicable rules or this instrument is canceled in accordance with applicable rules.

Upon request, and upon timely and proper showing by Principal-Permittee, the Commission agrees to release the Principal-Permittee from all or any part of the Self-Bond if the Commission is satisfied that the Principal-Permittee's obligations with respect to some or all of the property covered by the Self-Bond have been accomplished as required in accordance with the Act, the Coal Mining Regulations, and the Permit as

now or hereafter amended, renewed, revised, or replaced.

National Rural Utilities Cooperative Finance Corporation

Third-Party Guarantor

20701 Cooperative Way, Dulles, VA 20166

Address

By: _____

Signature

Tim Bartel

Typed Name

Assistant Secretary Treasurer

Title

By: _____

Signature

Paula Kramp

Typed Name

Assistant Secretary Treasurer

Title

Attest: _____

Accepted: 12/9/2020

DocuSigned by:

Christi Craddick

15494B7DF4CC424

CHAIRMAN, Railroad Commission of Texas

DocuSigned by:

Ryan Sifton

7D1B8C36A37443C

COMMISSIONER, Railroad Commission of Texas

DocuSigned by:

Wayne Christian

G1E746B4F44B422

COMMISSIONER, Railroad Commission of Texas

San Miguel Electric Cooperative, Inc.

Principal-Permittee

PO Box 280, Jourdanton, TX 78026

Address

By: _____

Signature

Mike Kezar

Typed Name

General Manager

Title

By: _____

Signature

Typed Name

Title

Attest: _____

DocuSigned by:

Callie Farnas

3581C80DFDE0476

Attest: _____

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now or hereafter amended, renewed, revised, or replaced.

National Rural Utilities Cooperative Finance Corporation

Third-Party Guarantor

20701 Cooperative Way, Dulles, VA 20166

Address

By: 

Signature

Tim Bartel

Typed Name

Assistant Secretary Treasurer

Title

By: 

Signature

Paula Kramp

Typed Name

Assistant Secretary Treasurer

Title

Attest: _____

Accepted: 12/9/2020

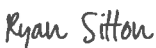
DocuSigned by:



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CHAIRMAN, Railroad Commission of Texas

DocuSigned by:



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COMMISSIONER, Railroad Commission of Texas

DocuSigned by:



C1G746B4F446422

COMMISSIONER, Railroad Commission of Texas

San Miguel Electric Cooperative, Inc.

Principal-Permittee

PO Box 280, Jourdanton, TX 78026

Address

By: _____

Signature

Mike Kezar

Typed Name

General Manager

Title

By: _____

Signature

Typed Name

Title

Attest: _____

DocuSigned by:



3681C80DFDE0476...

Attest: _____

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THE STATE OF TEXAS
COUNTY OF ATASCOSA

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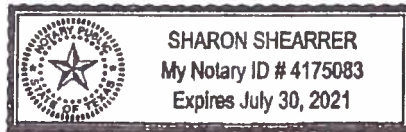
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Sharon Shearer

Notary Public in and for the State of Texas

My Commission Expires:

July 30, 2021

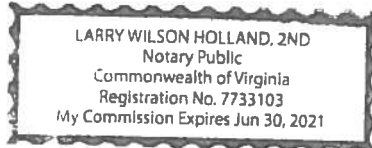


THE COMMONWEALTH OF VIRGINIA

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COUNTY OF LOUDOUN

This instrument was acknowledged before me on the 13 day of DECEMBER, 2019, by Tim Bartel, Assistant Secretary-Treasurer, who being by me duly sworn did say that he/she is signing on behalf of the Governor of National Rural Utilities Cooperative Finance Corporation, the District of Columbia cooperative association that executed the above and foregoing Third-Party Guarantee and Indemnity Agreement, and that said instrument was signed on behalf of said corporation by authority of its corporate resolutions, and that said Assistant Secretary-Treasurer duly acknowledged to me that said corporation executed the same.



Larry Wilson Holland, 2ND
Notary Public in and for the
Commonwealth of Virginia

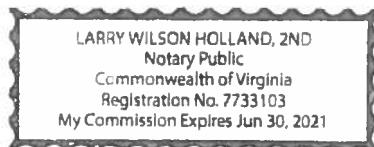
My Commission Expires:

THE COMMONWEALTH OF VIRGINIA

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COUNTY OF LOUDOUN

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Larry Wilson Holland, 2ND
Notary Public in and for the
Commonwealth of Virginia

My Commission Expires:
