

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 20, 2015

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: Executive Director's Response to Hearing Request Brief for Luminant Generation Company, LLC, Air Quality Permit No. 933
TCEQ Docket No. 2015-0496-AIR

Dear Ms. Bohac:

Enclosed please find a copy of the Executive Director's Response to Hearing Request brief for the above referenced item. If you have any questions, please do not hesitate to call me at extension 1439.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer J. Furrow".

Jennifer J. Furrow
Staff Attorney
Environmental Law Division

Enclosure

**TCEQ AIR QUALITY PERMIT NO. 933
TCEQ DOCKET NO. 2015-0496-AIR**

APPLICATION BY	§	BEFORE THE TEXAS
LUMINANT GENERATION	§	
COMPANY, LLC	§	COMMISSION ON
MARTIN LAKE STEAM	§	
ELECTRIC STATION	§	ENVIRONMENTAL QUALITY
TATUM, RUSK COUNTY	§	

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this response (Response) to the requests for a contested case hearing submitted by persons listed herein. The Texas Clean Air Act (TCAA) § 382.056(n) requires the Commission to consider hearing requests in accordance with the procedures provided in Texas Water Code § 5.556.¹ This statute is implemented through the rules in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter F.

A current compliance history report, technical review summary, and draft permit prepared by the Executive Director's staff are being filed concurrently with the TCEQ's Office of Chief Clerk for the Commission's consideration. In addition, the Executive Director's Response to Public Comments (RTC), which was mailed by the chief clerk to all persons on the mailing list, is on file with the Chief Clerk for the Commission's consideration.

I. Application Request and Background Information

Luminant Generation Company, LLC (Applicant) applied to the TCEQ for the renewal of a New Source Review (NSR) Authorization under TCAA § 382.0518. This renewal will authorize the continued operation of an existing plant Martin Lake Steam Electric Station (MLSES), which may emit air contaminants.

If issued, this permit will authorize the Applicant to continue operation of an existing permitted facility, which includes three lignite/western coal-fired steam generators and appurtenant equipment which operate in order to provide electricity to the grid. The facility is located at 8850 Farm to Market Road 2658 North, Tatum, Rusk County, Texas. Contaminants authorized under this permit include carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM) including particulate matter with diameters of 10 microns or less (PM₁₀) and 2.5 microns or less (PM_{2.5}), sulfur dioxide (SO₂), organic compounds, sulfuric acid (H₂SO₄), and hazardous air pollutants including (but not limited to) hydrogen fluoride (HF) and lead (Pb).

The permit application was received on March 3, 2014, and declared administratively complete on March 10, 2014. The Notice of Receipt and Intent to Obtain an Air Quality Permit (public notice) for this permit application was published in English on April 2, 2014, in the *Henderson*

¹ Statutes cited in this response may be viewed online at www.capitol.state.tx.us/statutes/statutes.html. Relevant statutes are found primarily in the Texas Health and Safety Code and the Texas Water Code. The rules in the Texas Administrative Code may be viewed online at www.sos.state.tx.us/tac/index.shtml, or follow the "Rules, Policy & Legislation" link on the TCEQ website at www.tceq.state.tx.us.

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Daily News and in Spanish on April 2, 2014, in *La Opinion*. The RTC was filed on March 3, 2015, and mailed out along with the letter setting the matter on the Commissioner's Agenda to all interested persons, including those who asked to be placed on the mailing list for this application and those who submitted comment or requests for contested case hearing.

The Applicant is delinquent on a payment of \$0.18 to the TCEQ's Non-Hazardous Waste program. The TCEQ Enforcement Database was searched and no pending enforcement activities were found.

The TCEQ received timely hearing requests during the public comment period from the following persons: Mr. Richard W. Lowerre, on behalf of the Caddo Lake Institute (CLI), and Mr. Ilan Levin, on behalf of the Environmental Integrity Project (EIP) and Sierra Club.

II. Analysis of Hearing Requests

The Applicant is seeking a renewal that would not result in an increase in allowable emissions and would not result in an emission of an air contaminant not previously emitted. TCAA § 382.056(g) states, "The commission may not seek further comment or hold a public hearing...in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted."² Therefore, the Commission should deny the hearing requests as a matter of law and approve the renewal of Applicant's Permit No. 933.

Although this renewal application will not result in an increase in allowable emissions and will not result in an emission of an air contaminant not previously emitted, TCAA § 382.056(o) states, "[n]otwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections."³ The Commission adopted 30 TAC, Chapter 60 to evaluate compliance history. The lowest classification under the Texas Water Code §§ 5.753 and 5.754 and 30 TAC § 60.2 is an "unsatisfactory performer." Under 30 TAC § 60.3(a)(3)(B), the TCEQ may hold a hearing on an air permit renewal if the site is classified as an unsatisfactory performer. The compliance history for the company and the site is reviewed for the five-year period prior to the date the permit application was received by the ED. The company and this site have a rating of 0.02 and 0.00 respectively, and have been classified as "high" performers according to 30 TAC Chapter 60. Therefore, a hearing should not be granted under TCAA § 382.056(o) based on the compliance history of Applicant.

² See also 30 TAC § 55.201(i)(3)(C) (Renewals of air applications that "would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted" are applications for which there is no right to a contested case hearing).

³ See also 30 TAC § 55.201(i)(3)(C) (stating the commission may hold a hearing if the application "involves a facility for which the applicant's compliance history contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations").

III. Executive Director's Recommendation

The renewal of this permit would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted. Under these circumstances, TCAA § 382.056(g) directs the Commission to “not seek further comment or hold a public hearing.” Because consideration of hearing requests on a “no increase” renewal application is governed by TCAA § 382.056(g) and (o), this Response does not include an analysis of the individual hearing requests. Accordingly, the ED respectfully recommends the Commission deny the hearing requests as a matter of law and approve the renewal of Applicant's Permit No. 933.

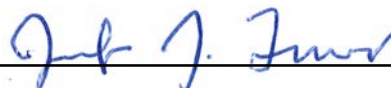
Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Caroline Sweeney, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

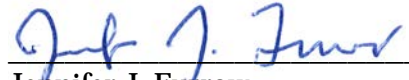


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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

On April 20, 2015, a true and correct copy of the foregoing instrument was served on all persons on the attached mailing list by the undersigned via deposit into the U.S. Mail, inter-agency mail, facsimile, electronic transmission or hand delivery.



Jennifer J. Furrow

MAILING LIST
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DOCKET NO. 2015-0496-AIR; PERMIT NO. 933

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