

**RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION**

**SMRD DOCKET NO. C13-0001-SC-26-F.A
APPLICATION BY TEXAS MUNICIPAL POWER AGENCY
FOR RELEASE OF RECLAMATION OBLIGATIONS
PERMIT NO. 26D, GIBBONS CREEK LIGNITE MINE
GRIMES COUNTY, TEXAS**

**ORDER APPROVING RELEASE
OF PHASE I AND II RECLAMATION OBLIGATIONS FOR 18 ACRES**

Statement of the Case

Texas Municipal Power Agency (TMPA), P. O. Box 7000, Bryan, Texas 77805, applied to the Railroad Commission of Texas (Commission), Surface Mining and Reclamation Division (SMRD or Staff), for a release of reclamation obligations on an aggregate of 148.1 acres within Permit No. 26D, Gibbons Creek Mine, Grimes County, Texas. Texas Municipal Power Agency (TMPA) is a municipal power agency created by concurrent ordinances adopted by the Cities of Bryan, Denton, Garland, and Greenville, Texas in 1975. After Staff review and TMPA's supplementation, the original docket has been split into two dockets, C13-0001-SC-26-F.A, the instant docket, a request for release of Phases I-II reclamation obligations for 18 acres, and Docket No. C13-0001-SC-26-F.B, encompassing 111.0 acres (Phase III for the 18 acres and Phases I-III for the remainder of the acreage, except for 37.1 acres that have been withdrawn for which Staff has concerns regarding surface water quality, soil quality, revegetation success, and completion of the extended responsibility period. There is no controversy between the parties with regard to Phases I and II release for the 18 acres. TMPA will supplement the latter docket and it will be processed by the Commission in a later proceeding. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2014), and the "Coal Mining Regulations" Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE, Ch. 12 (Thomson West 2014).

Permit No. 26D currently authorizes surface coal mining operations at TMPA's Gibbons Creek Mine within its approximate 10,999.0-acre permit area. Copies of the application for release were filed in the required county and Commission offices and distributed to applicable agencies for review and comment. No comments or requests for hearing were filed following

public notice. The only parties to the proceeding are TMPA and the Commission's Surface Mining and Reclamation Division (Staff). Staff's initial review indicated that certain acres did not meet requirements for portions of the releases requested. TMPA requests release of Phases I and II for 18 acres at this time, to which Staff concurs. The remainder of the acreage initially requested for release, except for the withdrawn 37.1 acres, will be acted upon in a separate docket. No mining is ongoing; the mine is in reclamation.

Based on the information provided by the applicant, the inspection of the area, and Staff's review, Staff recommends release of Phases I and II release of reclamation obligations for the 18 acres. The parties have filed waivers of preparation and circulation of a proposal for decision.

The Commission approves the release of reclamation obligations. While TMPA has not requested an adjustment to its accepted reclamation bond instrument at this time and no new bond has been submitted, an eligible bond reduction amount of \$119,334.60 is also determined by the Commission.

FINDINGS OF FACT

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

1. By letter dated September 14, 2012, Texas Municipal Power Agency (TMPA) filed its application with the Surface Mining and Reclamation Division for Phases I, II, and III release of reclamation liability on an aggregate 148.1 acres within the Gibbons Creek Lignite Mine, Permit No. 26D. The acreage initially requested for release was made up of a request for Phases I-III release for 55.1 acres (18 acres requested for Phases I-III release and 37.1 acres requested for Phases I-III) and Phase III release on 93 acres. The application was declared administratively complete on March 28, 2013. Staff's technical analysis (TA) and inspection report for the subject application was filed with the Hearings Division on April 26, 2013.
2. The 148.1 acres is made up of a contiguous parcel that Staff reviewed as Areas 1, 2, and 3. Staff's TA recommended release of Phases I and II release and denial of Phase III release for 18 acres referred to as Area 2. Staff recommended denial of Phase III release

for 93 acres (Area 1) and denial of Phases I-III release for 37.1 acres (Area 3). By letter dated May 8, 2013, TMPA requested that the docket be held in abeyance until TMPA met with Staff to discuss the TA, particularly regarding surface water as an area of review critical to the application and future release applications.

3. The docket was placed in abeyance by the examiner's letter dated May 24, 2013. TMPA met with Staff on May 14, 2013 and by letter dated June 4, 2013, TMPA indicated that it had follow-up discussions with Staff and would supplement the application perhaps by the end of June 2013. By letter dated August 23, 2013, TMPA supplemented its application with surface water information and indicated that it would not object to Staff's recommendation of denial of release for 37.1 acres (Area 3). Staff filed its review of this information in its Addendum No. 1 to the TA dated January 17, 2014. The addendum recommended approval of Phases I and II release for 18 acres, denial of Phase III release for the 18 acres, and denial of Phase III release for the remaining 93 acres (after TMPA withdrew its request for 37.1 acres). By letter dated February 20, 2014, the examiner inquired regarding TMPA's position following the TA recommendation. By letter dated March 13, 2014, TMPA requested additional time to allow TMPA to file a response package by April 30, 2014. The examiner granted TMPA's request. No additional filing had been received by August 22, 2014; therefore, the examiner requested that TMPA consider whether it wished to pursue Phases I and II release for the 18 acres and request that the remainder be held in abeyance until further discussion with Staff and supplementation occurred. By letter dated October 8, 2014, TMPA requested that the examiner process the request for release of 18 acres and place the remainder of the acreage requested for release (except the withdrawn 37.1 acres) in abeyance. Therefore, the docket has been split into two separate dockets for processing, Docket Nos. C13-0001-SC-26-F.A and C13-0001-SC-26-F.B. This Order addresses the request for release of Phase I and Phase II for the 18 acres.

4. The application is made pursuant to Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2014) (Act), and the Coal Mining

Regulations, Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE Ch. 12 (Thomson West 2014).
The application was properly certified in accordance with §12.312(a)(3).

5. Permit No. 26D was issued by Commission Order dated July 24, 2001. The current reclamation performance bonds total \$12,150,000 and are made up of a collateral bond with letter of credit in the amount of \$11,800,000 and an escrow account in the amount of \$350,000 accepted by Commission Order dated May 22, 2014.
6. By letter dated November 27, 2012, TMPA provided an affidavit of publication and tear sheets showing publication of notice of application. Notice of the application was published once each week for four consecutive weeks in the *Navasota Examiner*, a newspaper of general circulation in the vicinity of the Gibbons Creek Mine in Grimes County, the locality of the permitted acreage. Dates of publication were October 24 and 31, 2012 and November 7 and 14, 2012. The notice of application contains all information required by §134.129 of the Act and §12.312(a)(2) of the Regulations for notice of application for release of reclamation obligations. The notice contains a statement that the applicant does not seek a reduction in the approved bond, but that an eligible bond reduction amount may be determined. The published notice is adequate notification of the request for release. The notice included 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 approved bond, 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 notices contained information concerning the applicant, the location and boundaries of the permit area, the availability of the application for inspection and the address to which comments should be sent. The notice included a map showing sufficient notice of the boundaries of the areas requested for release.
7. Copies of the application were filed for public review in the offices of the County Clerk of Grimes County, Texas and in the offices of the Surface Mining and Reclamation Division, Railroad Commission of Texas at 1701 North Congress Avenue, William B. Travis Building, Austin, Texas.

8. By letter dated March 22, 2013, TMPA submitted copies of letters notifying owners and adjoining landowners, lessees, utilities and governmental agencies of the application for release. The letters were dated October 18, 2012, and were sent to owners of interests within and adjacent to the areas requested for release, the District Conservationist, USDA Natural Resources Conservation Service in Temple, Texas, the Texas State Soil and Water Conservation Board, Environmental Protection Agency, the Texas Commission on Environmental Quality (TCEQ), the Navasota Soil and Water Conservation District, the Brazos River Authority, to the Grimes County Judge and Commissioners Court, to Grimes County, the sewage and water treatment authority in the county, and to Wickson Water Supply. Adequate evidence exists in the record that adequate notice of the request for release has been sent to owners of property and other interests within and adjoining the area requested for release and to local governmental bodies, planning agencies, sewage and water treatment authorities and water companies in the locality of the surface mining and reclamation operations [§12.312(a)(2), Regulations]. The areas requested for release are not located within the territorial boundaries of any municipality that must be notified pursuant to §12.313(c) of the Regulations. The Staff sent notice by letter dated December 7, 2012 to the Grimes County Judge by certified mail as required by §134.133 of the Act.
9. The 18-acre area proposed for release is located within Tracts 134, 134A, 135, 135B, and 135C. There are four landowners. TMPA leases these tracts.
10. The Commission's Inspection and Enforcement Section mailed letters dated September 26 and 27, 2012 to the landowners and owners of other interests within the areas requested for release and adjacent to the areas requested for release and to the U.S.D.I. Office of Surface Mining Reclamation and Enforcement (OSM), Tulsa Field Office, notifying them that a release had been requested and advising them of the opportunity to participate in the on-site inspection scheduled for October 9, 2012 [§12.312(b)(1)]. The inspection was conducted as scheduled. Three Commission inspectors, three representatives of the applicant, and eight landowners attended the inspection. No others

attended. The inspection report dated April 17, 2013 is included as Attachment III to the Staff's letter dated April 26, 2013 filing the TA and inspection report.

11. No persons filed written comments, objections, or requests for hearing [§12.313(d)]. During the inspection, landowners of Tract 134 expressed displeasure with reclamation of the tract relating to the location of the B2P-3 channel extension. Staff review indicates that it approximates its premine location. It was approved as permanent by Order dated December 5, 1994. Staff inspection reflects that it is a flat-bottomed structure with an approximate bottom width of 10-20 feet with 25 foot-side slopes, and was constructed with gentle meandering. Staff review indicates that it is suitable for the postmine land use of pastureland. This channel extension, however, is not located within the portion of the tract proposed for release in this Order. No issues were indicated with Pond B2P-5 that is located within a portion of the tract. The owners also expressed concern regarding maintenance of the property, specifically repairs of damage from feral hogs and weed control and stated that the area was too rough to be hayed. The area, however, had recently been shredded, and no conditions appeared to indicate that agricultural activities are hindered. Other issues were brought up by the landowners; however, these related to lease terms that are not within the Commission's jurisdiction. In addition to these comments, a representative of the landowners for Tract 141 made comments that he was satisfied with the reclamation of Tract 141. This tract, although not within the 18-acre area addressed in this Order, has been managed in the same manner as Tract 134.
12. Pond B2P-5 located within the 18-acre area proposed for release has been approved as a permanent structure. The pond was approved as permanent on April 28, 1995. Photographs from the inspection depict the permanent structure and the areas requested for release and the vegetation present on the areas requested for release. The photographs support the request for release.
13. The 18-acre area requested for Phases I-II release has been reclaimed in accordance with reclamation requirements of §134.131 of the Act and §12.313(a)(1) for Phase I release.

- (a). The 18-acre area requested for Phase I release has met Phase I requirements for backfilling, regrading, and drainage control. All highwalls, spoil piles and depressions were eliminated pursuant to §12.384(b)(1), and mining and backfilling was conducted in a manner to minimize potential for surface and groundwater contamination §12.384(b)(2). All areas have been filled, graded, or otherwise stabilized. The areas requested for release were disturbed as a result of mining-related activities between 1986 and 2005 and final grading occurred from 1991 and 2005. The areas meet requirements of §12.385(a) for regrading to approximate premine topography. Field staff conducted routine monthly inspections of the areas requested for release. The acres recommended for release do not contain any underground drains.
- (b). All requirements for covering acid and/or toxic-forming materials (AFM/TFM) and combustible materials have been met. Topsoil substitution and topsoil replacement were used for various areas within the permit area. Materials were placed in accordance with the requirements of the permit, §12.337 (redistribution in a manner to achieve an approximate uniform, stable thickness consistent with the approved postmining land use, contour, and surface water drainage) and §12.389 of the Regulations (soil stabilization). Based on soil testing grids within a 111.0-acre banking area (the 148.1 acres less the 37.1 acres that TMPA has withdrawn from consideration), postmine soil performance standards have been met for the 111.0-acre area that includes the 18 acres proposed for release (June 21, 2010 Staff review memorandum and page 6, Staff memorandum dated April 26, 2013). No acid-forming, toxic-forming, or combustible materials have been located in the soil grids sampled for this area. All exposed surface areas have been stabilized to control erosion; any eroded areas that occurred during mining and reclamation were stabilized (§12.389).
- (c). The pond located within the area proposed for release has been approved as a permanent structure.

- (d). In accordance with §12.313(a), upon release of Phase I reclamation obligations, 60% of the amount of bond attributable to the Phase I released lands may be approved as eligible for bond reduction.
14. The 18-acre area requested for Phase II release has been reclaimed in accordance with reclamation requirements of §12.313(a)(2) of the Regulations.
- (a). The area is generally vegetated with grasses approved in the permit. No rills or gullies were observed during the inspection of the areas proposed for Phase II release (§12.389). Photographs 13, 14, 16 and 18 depict portions of the 18-acre area. As required for Phase II release, vegetation has been established on the 18-acre area in accordance with the requirements of the permit and §12.313(a)(2) of the Regulations for Phase II release. The postmine land uses are primarily pastureland, with developed water resources (Pond B2P-5, Photographs 13 and 14) (1.4 acres, Staff memorandum dated April 26, 2013, p. 14). Vegetation was planted within the entire 148.1 acres initially requested for release from 1991-2005. The vegetation observed within the proposed release areas appears healthy and self-sustaining (§§12.390-12.395). Staff review indicates that there are places where weeds are competing with the approved vegetation, but that weed control practices can effectively manage the problem. The 18-acre area is a part of Land Management Unit (LMU) B2-4 and has been placed in the B2-4 Extended Responsibility Area (ERA) (Application, Exhibit 1, Extended Responsibility Areas) initiated for the area on October 27, 1994. Hybrid bermudagrass and clover were planted within the 18-acre area. The 18 acres was approved for addition to the ERA by the Director's letter dated March 23, 2012. This peripheral area to the existing adjacent B2-4 ERA was regraded and planted at the same time, with the same land use, and was managed the same as the adjacent ERA. The 18-acre area was given the same ERP initiation date as the adjacent acreage. Staff evaluated the B2-4 ERA for groundcover and productivity for Years 1998 and 1999; the data were approved by Commission letters dated March

2, 1999 and July 5, 2000 as meeting the requirements of §12.395(c)(2) of the Regulations. The ERP is five years for this area that receives 26 or more inches of rainfall annually. Although not a requirement for Phase II release, the 18-acre area has met the five-year ERP.

- (b). The 18-acre area is contained primarily within the watershed of Pond B2P-5 with only a small portion within the watershed of Pond B2P-3. During active mining and reclamation, the area drained to Sedimentation Pond SP-1. Water discharges from SP-1 were compliant with effluent requirements, and the pond has been reclaimed. Monitoring data for this pond was not provided by TMPA; however, Staff reviewed water discharge records for Pond SP-1 as well as water quality data for B2P-5 filed with the Commission by TMPA. Discharge data was not provided for this pond. There are no specific TCEQ standards for the water quality of permanent ponds; however, the pond must not be contributing suspended solids to the area outside the permit area in excess of stream water quality standards. TMPA provided a table *Pond Water Quality* in the application for release. Staff compared the water quality of Pond B2P-5 for pH (minimum and maximum) and for total dissolved solids (TDS) (minimum and maximum) with the stream segment standard for these parameters for TCEQ Stream Segment No. 1209 (Navasota River) into which discharges from the permit area drain. TDS is used as the indicator parameter of material damage to the hydrologic balance due to chemical changes. The range of pH from the pond, 6.5 to 8.3 standard units (s.u.) based on field readings for five consecutive quarters from December 30, 2009 – March 17, 2011 (p. 4-29, application) are within the stream segment standard for pH (6.5 s.u. - 9.0 s.u.). Similarly, the range of TDS concentrations of the pond water, 61-92 mg/L for TDS is within the stream segment limitation of 600 mg/L for TDS. Based upon this data, the 18-acre area proposed for release of the Phase II requirement that the area is not contributing suspended solids in excess of regulatory requirements has been met [§12.213(a)(2)].

- (c). There is no prime farmland located within the 18-acre area requested for Phase II release for which other requirements would be applicable. There are no silt dams located within the 18-acre area that would require plans for maintenance.
15. The 18-acre area is eligible for a release of the bond amount attributable to the acreage as long as an amount of bond is retained sufficient for revegetation should the area be required to be reclaimed by a third party at the direction of the Commission upon forfeiture. The acreage is currently bonded in the amount of \$6,707 per acre for disturbed lands. The amount that must be retained for soil preparation, revegetation, and maintenance is estimated by Staff as \$680 per acre. Retaining \$680 per acre, \$6,027 per acre may be released. The total eligible bond reduction amount is calculated thus: \$6,027 per acre x 18 acres = 108,486.00, with 10% added for administrative costs (\$10,848) for a total eligible amount of \$119,334.60.
16. Although initially requested for Phase III release as well as Phases I and II release of reclamation obligations, TMPA has determined to provide additional information regarding Phase III release for the 18 acres in the pursuit of the Phase III release requested for the remainder of the 148.1 acres, except for 37.1 acres that have been withdrawn. The remaining 111.0 acres have been made Part B of the docket to be processed subsequent to the instant request.
17. The areas requested for release have been marked in the field with boundary markers at corners and angle points so that these areas can be distinguished from active mining and reclamation areas. Permanent markers shall be maintained; marking the area approved for Phases I and II release will appropriately identify them from other reclamation areas and will aid in inspection and enforcement. (§12.330)
18. TMPA and Commission Staff are in agreement regarding the 18-acre area and have waived the preparation and circulation of a proposal for decision as provided for in §2001.062(e) of the Administrative Procedure Act, TEX. GOV'T CODE Ch. 2001 (Vernon Supp. 2014). Open meeting notice of consideration of this application has been provided (§551.048, TEX. GOV'T CODE).

CONCLUSIONS OF LAW

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

1. Proper notice was provided for this request for release of reclamation obligations pursuant to the Act, the Regulations, the Administrative Procedure Act, TEX. GOV'T CODE Ch. 2001 and §551.048 (Vernon Supp. 2014).
2. A public hearing on the request is not warranted.
3. TMPA has complied with all applicable provisions of the Act and the Regulations for Phase I and II release for 18 acres as required by §12.313(a)(1) and (2) of the Regulations and §134.131(c) of the Act, respectively, and as demonstrated in this application, as supplemented.
4. The Commission may approve an eligible bond reduction amount of \$119,334.60.
5. TMPA may pursue release of the remaining acreage without prejudice.

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 Phase I and II releases of reclamation obligations pursuant to §134.131(c) of the Act and §12.312(a)(1) and (2) of the Regulations for 18 acres requested for release is hereby approved for the Gibbons Creek Mine, Permit No. 26D;

IT IS FURTHER ORDERED that the Commission approves an eligible bond reduction amount of \$119,334.60;

IT IS FURTHER ORDERED THAT the current bond remains in effect according to its terms;

IT IS FURTHER ORDERED that all areas released from Phase I and II reclamation obligations shall remain clearly marked in the field with permanent boundary markers to distinguish the released areas from active mining and reclamation areas;

IT IS FURTHER ORDERED TMPA may pursue release of the remainder of the 148.1 acres without prejudice;

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

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is mailed. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. As authorized by TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the parties are notified of the order.

SIGNED IN AUSTIN, TEXAS, this 13th day of November, 2014.

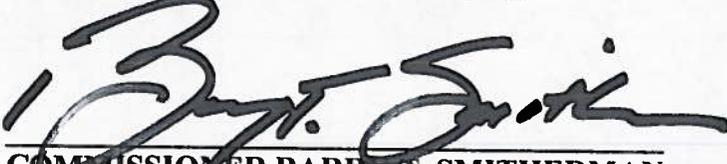
RAILROAD COMMISSION OF TEXAS



CHAIRMAN CHRISTI CRADDICK



COMMISSIONER DAVID PORTER



COMMISSIONER BARRY T. SMITHERMAN

ATTEST




Secretary, Railroad Commission of Texas