

**RAILROAD COMMISSION OF TEXAS  
OFFICE OF GENERAL COUNSEL  
HEARINGS SECTION**

**SMRD DOCKET NO. C14-0013-SC-26-E, TEXAS MUNICIPAL POWER AGENCY  
APPLICATION FOR ACCEPTANCE OF REPLACEMENT COLLATERAL BOND AND LETTER OF CREDIT  
FOR PERMIT NO. 26D, GIBBONS CREEK LIGNITE MINE, GRIMES COUNTY, TEXAS**

**ORDER ACCEPTING REPLACEMENT COLLATERAL BOND  
AND LETTER OF CREDIT FOR PERMIT NO. 26D**

Statement of the Case

The Texas Municipal Power Agency (TMPA) operates the Gibbons Creek Lignite Mine in Grimes County, Texas under Permit No. 26D. TMPA has filed an application for acceptance of a replacement collateral bond and amended LOC (Amendment No. 8) also issued by Wells Fargo Bank, N.A. to decrease the collateral bond and letter of credit to \$11,800,000. The currently accepted bond for the permit area is a collateral bond with irrevocable Amended and Restated Letter of Credit (LOC) No. NZS564256 (Amendment No. 7) in the amount of \$12,800,000 issued by Wells Fargo Bank, N.A., with amendment that reduced the amount to \$11,800,000 and an escrow account in the amount of \$350,000 as supplemental security for the bond. The proffered LOC was submitted by letter dated December 27, 2013, with the lower amount effective April 14, 2014, resulting in the supplemental security. The proffered letter of credit carries an expiration date of April 14, 2015. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2013) and the "Coal Mining Regulations," TEX. ADMIN. CODE Ch. 12 (West 2013).

Based upon the application for acceptance of the replacement bond, associated documents, and legal and financial review, the Commission finds that the collateral bond with Amended and Restated LOC No. NZS564256 (Amendment No. 8) may be accepted along with the escrowed funds in accordance with the terms of this Order.

FINDINGS OF FACT

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

1. 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. By letter dated December 27, 2013, TMPA timely submitted a replacement collateral bond, with Amended and Restated Letter of Credit (LOC) No. NZS564256 (Amendment No. 8) in the amount of \$11,800,000 for performance bonding of its Permit No. 26D, Gibbons Creek Lignite Mine, and documentation relating to the bond and amended LOC to the Commission's Surface Mining and Reclamation Division. The approved collateral bond is in the amount of \$12,800,000 with amended LOC No. NZS564256 (Amendment No. 7) issued by Wells Fargo Bank, N.A., San Leandro, California that was in the amount of \$12,800,000, as amended by Amendment No. 8 reducing the collateral to \$11,800,000, and escrowed funds in the amount of \$350,000. Mining has ceased within the permit area, and the permit area is currently in reclamation.
2. By letter dated April 18, 2014, the Surface Mining and Reclamation Division (Staff) filed the replacement bond and amended LOC with the Hearings Division, along with other review documents. TMPA supplemented the application by letter dated April 14, 2014 to provide copies of the Certificate of Incumbency for the signing bank officer for the letter of credit, Brian T. O'Connell. Staff's filing included its transmittal of TMPA's bond documents, TMPA's revised certificates of incumbency submitted April 14, 2014 in response to Staff's comments dated January 31, 2014, its legal review from the Office of General Counsel of documents submitted by TMPA, and the financial review by the Financial Services section of the Commission. Staff's letter indicated that it had not provided a reclamation cost estimate due to outstanding matters between the parties related to a separate application involving Staff's request for bond map corrections. By letter dated April 23, 2014, the examiner

requested the following items from Staff: replacement attachment from financial services to correct a discrepancy in the evaluation of TMPA bond ratings, the originals of certificates of incumbency for the Bank officer signing the letter of credit or information that they had not been filed, and a reclamation cost estimate for Permit No. 26D. The examiner requested the bond estimate even though there were outstanding differences with regard to postmine land uses and correct bonding categories for certain acreages in TMPA's Revision No. 21 being processed separately by Staff in that the examiner did not wish the bond dockets to await the outcome of that docket when an estimate could be prepared based on the last approved bond map with available updated costs.

3. By letter dated April 25, 2014, Staff filed the corrected financial review. Staff again filed copies of the certificates of incumbency, but later located the originals and filed them. Staff did not file an updated cost estimate for Permit No. 26D as requested by the examiner, but did provide the numbers of acres in the various disturbance categories and updated costs per acre of disturbance for reclamation so that the examiner could prepare an estimate. Staff stated that it could not prepare an estimate because there was no bond map corresponding exactly with the areas described by the examiner; however, because issues regarding acreage were outstanding in a separate docket the examiner had requested that it be based on the approved bond map with costs for 904.4 acres that had been fully released subtracted from the costs. The examiner used the information that Staff did provide for acreage and costs and calculated costs for the acreage, arriving at \$12,109,562.70. This estimate is lower than the last approved estimate but higher than the amount of the reduced amended letter of credit, resulting in a shortfall of \$309,562.70. The estimate included the number of acres included in the last Commission Order approving a bond estimate minus released lands. The estimate includes 107.1 acres bonded at the mined rate, 913.7 acres bonded at the disturbed rate, and 31.2 acres bonded at the ancillary rate. In addition, it includes 1.1 acres partially released from bond (Phase I, mined rate), 3,981.4 acres partially released from bond (Phase I and Phase II,

mined rate), 2.5 acres partially released from bond (Phase I, disturbed rate), 1,317.3 acres of land partially released from bond (Phase I and II, disturbed rate), and 31.2 acres partially released from bond (Phase I and II, ancillary rate).

4. By letter dated April 25, 2014, the examiner requested additional items including evidence from TMPA that the bank officer signing the bond on behalf of the bank held his authority and position with the bank on the date of signing the bond; TMPA filed this certificate on May 6, 2014.
5. TMPA responded to the shortfall by proposing that it provide an escrow agreement to provide \$350,000 to cover the shortfall amount to the Commission in an escrow account. The supplemental security was submitted to make up the difference between the Commission approved amount of bond required (\$12,800,000 and LOC Amendment No. 7) and the amount of effective bond following the decrease in the proffered amendment to the letter of credit (Amendment No. 8, \$11,800,000) that went into effect on April 14, 2014. The Commission took up this matter at the Commission Conference on May 6, 2013 and accepted the escrow agreements; the escrow accounts were then funded.
6. TMPA now requests acceptance of the replacement collateral bond and Amendment No. 8 to the LOC, in the amount of \$11,800,000. The proffered LOC carries an expiration date of April 14, 2015. TMPA submitted the proffered collateral bond with amended letter of credit to decrease the amount of bond for areas that were disturbed within the permit area. Using the reclamation cost estimate set out in Finding of Fact No. 3, \$12,109,562.70, the amount of the proffered collateral bond and Amendment No. 8, along with the approved escrowed funds (\$350,000) total \$12,150,000, an amount in excess of calculated reclamation costs.

7. Based on the Findings of Fact, the Commission finds that the amount of the proffered replacement bond and amended letter of credit, \$11,800,000, along with the approved escrow account in the amount of \$350,000, will be sufficient to cover the costs of reclamation of the permit area should the Commission direct a third party to reclaim the permit area in the event of forfeiture.
8. In the event that the approved reclamation plan is modified, the Commission will review the bond and amendment to the LOC for adequacy and, if necessary, will initiate a bond adjustment to conform to the modified plan [§12.307(c)].
9. According to the terms of the amended LOC, it is irrevocable during its term as required by §12.309(g)(2) of the Regulations. The amended LOC states that it is to be considered a part of the original letter of credit and is to be attached thereto.
10. Authorized persons for TMPA and for the issuing Bank signed the proffered collateral bond, and an authorized person for the Bank signed the LOC. An officer of the Bank who is authorized to execute bonds on behalf of the Bank, Patrick Hennessey, Senior Vice President, signed the bond. Bob Kahn, General Manager, TMPA, signed the bond for TMPA. Brian T. O'Connell, a Vice President of the Bank authorized to sign letters of credit, signed the amended LOC for the Bank. Documents that show the authorization for the signatories to act on behalf of TMPA and the Bank have been filed with the Commission. For TMPA, these are the Certificate of Incumbency dated December 20, 2013 and the General Certificate dated December 20, 2013 certifying Exhibit A, a copy of TMPA's Agency Rules and Regulations, including Article IV, Section VII, page 6, providing that TMPA'S General Manager is authorized to execute reclamation bonds and to execute agreements associated with the collateral supporting reclamation bonds, including letters of credit and reimbursement agreements and associated

documentation. TMPA's Certificate of Incumbency indicates that Mr. Kahn holds the position of General Manager for TMPA. Documents that show the authorization for signatories to act on behalf of the Bank include: Assistant Secretary's Certificate dated November 13, 2013 with extract from Resolutions of Wells Fargo Bank, N.A., that certain officers of the Bank, including Senior Vice President Patrick A. Hennessey, are authorized to sign bonds for the Bank. The exhibit indicates that any Senior Vice President, although not authorized to sign letters of credit, is authorized to sign "bonds of indemnity" among other instruments. Mr. Patrick Hennessey, Senior Vice President of the Bank, signed the bond on December 20, 2013. Pursuant to the examiner's request, an additional certificate was submitted on May 6, 2014 showing that Mr. Hennessey continued to hold his position as a Senior Vice President of the Bank on the date the bond was signed. A secretary's certificate has also been filed (April 14, 2014) certifying that Brian T. O'Connell, on the date the amended LOC was signed, was a qualified vice President of the Bank authorized to sign letters of credit in any amount issued by the Bank. Submitted documentation in the form of a Certificate of Corporate Existence from the Comptroller of the Currency, Administrator of National Banks, dated October 2, 2013, demonstrates that Wells Fargo Bank, N.A., is a bank authorized to do business in the United States (Exhibit 7, Bond Package). This meets the requirement of §12.309(g)(1) of the Regulations that the issuer of an acceptable LOC must be a bank authorized to do business in Texas. The replacement collateral bond and amended LOC are in forms acceptable pursuant to §12.308(a)(2) and §12.309(g) of the Regulations and §134.121(a) of the Act.

11. TMPA's request for acceptance of the proffered replacement collateral bond and amended LOC is made pursuant to §134.127 of the Act and §12.307 of the Regulations.
12. The proffered amendment to the LOC is payable to the Commission as required by §12.309(g)(3) of the Regulations in part or in full on demand at the bank's office in San Leandro, California by payment of a

draft on or before the Expiry Date drawn at sight on Bank mentioning thereon the Letter of Credit No. NZS564256. The draft must be accompanied by the irrevocable standby letter of credit or a copy, and the Commission's signed and dated statement reading: "The undersigned, an authorized representative of the Railroad Commission of Texas hereby certifies that the amount drawn is due to us pursuant to the terms of 16 TAC Sec. 12.314." The Regulations, §12.314 provide for Commission forfeiture proceedings on bonds.

13. The proffered collateral bond will remain in effect until all reclamation requirements are met or the bond is replaced, and the amended LOC will remain in effect according to its terms, unless released or replaced by Commission Order. The proffered amended LOC states that as of April 14, 2014 the amount of the amended LOC is reduced to \$11,800,000. The proffered letter of credit carries an expiration date of April 14, 2015. The proposed collateral bond, upon acceptance by the Commission in accordance with this Order, will remain in effect until released or replaced by the Commission. The Amended and Restated LOC is effective and enforceable against the issuer when the Commission received the amended LOC and is effective and enforceable against the issuer in the decreased amount of \$11,800,000, in accordance with the terms of the amended LOC, as of April 14, 2014, in the amount of \$11,800,000 and will remain effective, unless released or replaced, through its expiration date, April 14, 2015.
14. The replacement collateral bond provides a mechanism for the permittee to give prompt notice to the Commission of any notice received or action filed alleging the insolvency or bankruptcy of the Bank or which could result in suspension or revocation of the Bank's authority to do business, in compliance with §12.309(e) of the Regulations.
15. The Commission may adjust the amount of the required performance bond applicable to the permit area

when the cost of reclamation changes [§12.307(a)]. Bonds amounts may be reduced or increased when the cost of reclamation changes.

16. Although the amended LOC carries a term of approximately one year, the collateral for the bond is sufficient. This Order contains an ordering paragraph that is needed to ensure timely replacement of the collateral as set out in subparagraph (b) of this Finding of Fact.
  - (a). The Regulations at §12.306(a) require that the collateral bond itself must be in effect for the duration of the reclamation obligations on the affected lands; however, for letters of credit, the letter must be irrevocable during its term [§12.306(g)(2)]. No specific term is prescribed for the letter of credit by the Regulations, other than that it be irrevocable during its term.
  - (b). The proffered LOC is payable to the Commission as required by §12.309(g)(3) of the Regulations in part or in full on demand and receipt from the Commission of a notice of forfeiture pursuant to the Regulations. Although the proffered LOC carries a term of approximately one year, the collateral for the bond is sufficient. The Commission has recognized that letters of credit have terms that are shorter than the period of reclamation liability on the bond. In rulemaking SMRD 1-07, §12.309(g)(2) was revised to adopt language included in the federal counterpart regulation to ensure continuous bond coverage. According to revised §12.309(g)(2), effective November 12, 2007, a letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the Commission if not replaced by another suitable bond or letter of credit at least 30 days before its expiration date. In this case, the replacement bond documents were provided more than 30 days prior to the date by which forfeiture proceedings would occur. The amended LOC was submitted to the Commission

by letter dated December 27, 2013, and the amended LOC was dated December 20, 2013 and was received by the Commission on December 27, 2013. The amended LOC was effective according to its terms prior to the expiration date of the last amendment. A letter of credit is issued and becomes enforceable according to its terms when the issuer sends it to the beneficiary. The collateral bond and amended letter of credit dated December 20, 2013 were received on December 27, 2013 in accordance with the previous Commission Order approving the current bond that provided that a replacement bond and LOC must be provided to the Commission no later than January 14, 2014.

- (c). Specific findings and ordering paragraphs are included in this Order to require the filing of replacement collateral with sufficient time for review and acceptance by the Commission prior to the expiration of existing collateral (the amended LOC). Due to the presence of a stated expiration date of the collateral and in order to maintain required bonding in a timely manner, the Commission finds that it is reasonable to require that TMPA file any replacement bond and collateral required in a manner that will allow adequate time for review and determination by the Commission. The Commission finds that for orderly processing, review by Staff, and determination by the Commission of replacement bond instruments for the permit area to ensure reclamation, it is appropriate to require that TMPA file an extension to the LOC or otherwise request the initiation of processing materials to replace the bond instrument and collateral no later than Thursday, January 15, 2015 (90 days prior to the expiration date) to provide for 60 days of review and adjustment of documents prior to the date the Commission must initiate forfeiture proceedings. The Commission approves a date of January 15, 2015 (90 days prior to April 14, 2015) for submittal of the bond instrument and related documents. The Commission must initiate bond forfeiture proceedings by Monday, March 16, 2015 if such documents are not

submitted (30 days prior to expiration of the collateral).

17. All documentation required by the Act and Regulations for the bond with amended LOC has been submitted.
  
18. With letters of credit that contain a specified effective date, it is reasonable to provide an additional mechanism to ensure that bonds that reduce the amount of bonding or do not increase the amount of bonding in a sufficient amount based on the Commission's latest reclamation cost estimate are replaced, reviewed, and acted upon prior to or on the effective date of the change in amount of the letter of credit. The Commission approves the following additional mechanism: If a bond application or application for replacement of bond is filed with the Commission containing a letter of credit as collateral that either reduces the amount of bond or does not increase the amount of bond in at least the amount of the latest reclamation cost estimate, and it has not been previously filed with the Hearings Division for docketing at least 30 days prior to the expiration date of the letter of credit whether all documents have been received or not, the Surface Mining and Reclamation Division shall send to the Hearings Division a request for a show cause hearing pursuant to §1.47 of the Commission's "Practice and Procedure" rules no later than 30 days prior to the expiration date of the currently approved letter of credit, along with all documents that have been filed or prepared relevant to the application. This mechanism will allow the Hearings Division to determine whether to immediately schedule a show cause hearing or a prehearing conference to determine appropriate steps to ensure timely approval of the bond or replacement bond or other security.
  
19. Acceptance of the proffered collateral bond and Amended and Restated LOC is not a bond release or a release of any reclamation obligations for which public notice would be required. The required public posting of Commission consideration of this application has occurred. The Staff, TMPA, and the Bank

have been sent notice of the Commission's consideration of this matter.

20. The parties filed no exceptions to the proposed order. Staff filed comments regarding the proposed ordering paragraphs. In one comment, Staff recommended that an ordering paragraph be included in the Commission's order that requires TMPA to file a revision within 10 days of the date of the order to include a bond map based on the bonded acres set out in Finding of Fact No. 3. Because outstanding issues exist between Staff and TMPA regarding the appropriate bond status of various acreages in Revision No. 21 currently being processed administratively and an outstanding issue exists relating to the bond map in an appeal currently in process in the Hearings Division (Docket No. C14-0011-SC-26-F), the examiner declined to include an ordering paragraph as requested by Staff in order to preserve the positions of the parties in outstanding cases currently being processed within both the Surface Mining and Reclamation Division and the Hearings Division.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the following Conclusions of Law are made:

1. All required notice for consideration of this matter has been provided in accordance with the Act, Regulations, and the Open Meetings Act, TEX.GOV'T CODE Ch.551 (Vernon Supp. 2013).
2. All requirements of the Act and the Regulations for acceptance of the proffered collateral bond and Amended and Restated LOC (Amendment No. 8) have been met.
3. The Commission is authorized by the Act and Regulations to accept the proffered collateral bond and Amended and Restated LOC (Amendment No. 8).
4. A letter of credit may be accepted for a lesser term than the length of completion of reclamation as long as procedures are in place to ensure timely replacement of collateral [§12.309(g)(2)].

5. A branch of Wells Fargo, N.A. in San Leandro, California issued the proffered LOC. According to both California law [California Commercial Code (UCC) §5116(b)] and Texas law [Business and Commercial Code, Title 1, Uniform Commercial Code, Chapter 5, Letters of Credit, §5.116(b)], the branch of a bank is treated as a separate bank for purposes of applicable law: if the instrument does not specify the agreed upon forum, the applicable forum is the location of the issuing bank, in this case, California. Pursuant to both laws of the State of California [§5106(a), California Commercial Code] and of the State of Texas [TEX. BUS. & COMM. CODE §5.106(a)], the proffered LOC is enforceable between the issuer (Bank) and beneficiary (Commission) as an obligation of the Bank on the date sent to the beneficiary according to its terms; such terms provided that the decrease in amount to \$11,800,000 occurred on April 14, 2014.
  
6. In accordance with the authority of the Commission in §134.011(4) of the Act to issue orders requiring a permittee to take actions that are necessary to comply with the Act and Regulations, the Commission may make reasonable provisions to ensure that replacement bonds are submitted in a timely manner. A requirement that the permittee submit a replacement collateral bond and LOC (or amendment) or other replacement bond no later than January 15, 2014, is reasonable and will ensure that a replacement bond and replacement collateral will be submitted and processed in a timely manner so that required bonding may be maintained. [Finding of Fact No. 16(c)]. In addition, the Commission may make a reasonable provision to ensure that bonds containing letters of credit are acted upon promptly. Requiring the filing of bond documents and a show cause hearing request by the Surface Mining and Reclamation Division no later than 30 days prior to the expiration date of a currently effective letter of credit will assist in orderly processing of a letter of credit that reduces the amount of bond or does not increase the amount of bond in at least the amount of the approved reclamation bond estimate (Finding of Fact No. 18) §1.47, "Practice and Procedure."

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

**IT IS FURTHER ORDERED** that the proffered collateral bond and irrevocable Amended and Restated LOC No. NZS564256 (Amendment No. 8) issued by Wells Fargo Bank, N.A., in the amount of \$11,800,000 are accepted and the amended and restated LOC is enforceable against the issuer according to its terms, such terms providing the decrease in amount effective April 14, 2014;

**IT IS FURTHER ORDERED** that the collateral bond and amended LOC along with the approved escrow account with funds in the amount of \$350,000 will together provide reclamation bonding in a sufficient amount;

**IT IS FURTHER ORDERED** that the collateral bond in the amount of \$12,800,000 is hereby replaced;

**IT IS FURTHER ORDERED** that the amendments to the LOC shall be attached to the LOC as a part of the LOC in accordance with the terms of the amended LOC and must be retained by the Commission until replaced;

**IT IS FURTHER ORDERED** that the collateral bond with amended LOC No. NZS564256 (Amendment No. 8) provides for continuation of sufficient bonding for the permit in accordance with this Order;

**IT IS FURTHER ORDERED** that TMPA must timely file a substitute bond and collateral or other replacement bond in accordance with Finding of Fact No. 16(c) of this Order, no later than January 15, 2015;

**IT IS FURTHER ORDERED** that with letters of credit that contain a specified effective date, the additional mechanism shall be used to ensure that bonds that reduce the amount of bonding or do not increase the amount of bonding in a sufficient amount based on Staff's latest reclamation cost estimate are replaced, reviewed, and acted upon prior to or on the effective date of the change in amount of the letter of credit. If a bond application or application for replacement of bond is filed with the Commission containing a letter of credit as collateral that either reduces the amount of bond or does not increase the amount of bond in at least the amount of Staff's latest reclamation cost estimate, and it has not been previously filed with the Hearings Division for docketing at least 30 days prior to the expiration date of the letter of credit whether all documents have been received by the Commission or not, the Surface Mining and Reclamation Division shall send to the Hearings Division a request for a show cause hearing no later than 30 days prior to the expiration date of the currently approved letter of credit, along with all documents that have been filed or prepared relevant to the application. This mechanism will allow the Hearings Division to determine whether to immediately schedule a show cause hearing or a prehearing conference to determine appropriate steps to ensure timely approval of the bond or replacement bond or other security;

**IT IS FURTHER ORDERED** that the Commission may vary the total bond amount and the terms of

acceptance as affected land acreages are increased or decreased or where the cost of reclamation changes; and

**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 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 Commission action. Pursuant to 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, on May 22, 2014.

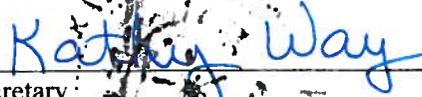
**RAILROAD COMMISSION OF TEXAS**

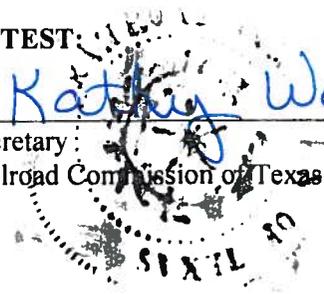
  
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CHAIRMAN BARRY T. SMITHERMAN

  
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COMMISSIONER DAVID PORTER

  
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COMMISSIONER CHRISTI CRADDICK

ATTEST:

  
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Secretary  
Railroad Commission of Texas



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

Permit No.: 26D

Mine Name: Gibbons Creek Lignite Mine

Permittee (hereinafter referred to as the "Principal"): Texas Municipal Power Agency

This instrument replaces an existing bond, described as Collateral Bond, dated December 20, 2012, and accepted by the Railroad Commission of Texas on May 7, 2013, in the amount of \$12,800,000.00.

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

**WHEREAS**, the above bound Principal 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**, the Principal's permit renewal/revision application (including the proposed reclamation plan) was approved on the 24th day of July, 2001; and

**WHEREAS**, issuance of a permit pursuant to such approved application (the "Permit") and retention of the Permit are conditioned on the Principal's posting bond to insure faithful performance of all requirements of the Principal 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 § 12.1 *et seq.*, (hereinafter referred to as the "Coal Mining Regulations"); and the Permit as amended, renewed, revised, or replaced;

**WHEREAS**, the bound Principal has previously submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, a collateral bond, in the amount of \$12,800,000.00 (the "Existing Collateral Bond");

**WHEREAS**, this Collateral Bond (the "Collateral Bond"), in the amount of \$11,800,000.00, replaces the Existing Collateral Bond;

**THAT WE**, Texas Municipal Power Agency, as Principal, are held and firmly bound to the State of Texas in the full sum of Eleven Million Eight Hundred Thousand and No/100 United States Dollars (\$11,800,000.00 U.S.), well and truly to be paid to the State of Texas in Austin, Travis County, Texas, and we bind ourselves, our 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 shall faithfully and fully perform the requirements set forth in the Act, the Coal Mining Regulations, and the Permit, as now or hereafter 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, for value received, agrees that no amendment to existing law, 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.

To secure performance and payment in accordance with this bond, Principal has provided to the Railroad Commission of Texas (hereinafter referred to as the "Commission") an irrevocable Letter of

Credit issued by Wells Fargo Bank, N.A. (hereinafter referred to as the "Bank"), in the amount of this bond. Such letter is attached to this bond and fully incorporated herein.

The Principal and Bank agree that the letter of credit is irrevocable during its term and is payable in part or in full upon demand and receipt from the Commission of a notice of forfeiture issued in accordance with the Act and Regulations.

The Bank represents that it is organized or authorized to do business in the United States. Further, the Bank, agrees to give prompt notice to the Principal and to the Commission: (1) of any notice received or action filed alleging the absolving or bankruptcy of the Bank or which could result in suspension or revocation of the Bank's license to do business; or (2) if it becomes unable, or unwilling, to fulfill its obligation under the letter of credit. It is further agreed that upon the incapacity of the Bank by reason of bankruptcy, insolvency, or suspension or revocation of its license, the Principal shall be deemed to be without bond coverage in violation of the permit and shall discontinue surface mining operations until a replacement or substitute bond is approved.

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

It is further agreed that if at any time the fair market value of the collateral securing this bond does not equal or exceed the amount of this bond, or, in this case of a letter of credit, the amended face of the letter, the Principal shall be deemed to be without bond coverage in violation of the Act, the Coal Mining Regulations, and the Permit, and the Principal 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.

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 now hereafter amended, renewed, revised, or replaced or until the Principal is otherwise relieved of its obligation hereunder by order of the Commission.

IN WITNESS WHEREOF, the Principal has caused these presents to be duly signed and sealed as of the 20th Day of December, 2013.

[FOR LETTER OF CREDIT OPTION

Texas Municipal Power Agency  
Principal

Wells Fargo Bank, N.A.  
Bank

P.O. Box 7000, Bryan, Texas 77805  
Address

3000 Briarcrest, Bryan, Texas 77802  
Address

CJS By: [Signature]  
Signature

By: [Signature]  
Signature



Bob [Signature]  
Typed Name  
General Manager  
Title

Patrick Hennessey  
Typed Name

SVP  
Title

[Signature]  
Assistant Secretary to the Board of Directors

Attest: [Signature]

Accepted May 22, 2014.

[Signature]  
CHAIRMAN, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

[Signature]  
COMMISSIONER, Railroad Commission of Texas

ATTEST: [Signature]

NOTE: The following documentation should be submitted with the original bond: (1) Appropriate collateral documentation; (2) for Principal, (a) original power of attorney, or (b) certified corporate resolution and certificate of incumbency for signatory; (3) for Bank, evidence of authority for signatory to bind bank under the bond.

Schedule of Collateral<sup>1</sup>

<u>Description</u>	<u>Value</u> <sup>2</sup>
Wells Fargo Bank, N.A. Irrevocable Standby Letter of Credit No. NZS564256, dated February 8, 2006, as amended by the Amended and Restated Letter of Credit, dated February 8, 2007, the Amended and Restated Letter of Credit, dated January 15, 2008, the Amended and Restated Letter of Credit, dated January 15, 2009, the Amended and Restated Letter of Credit, dated January 13, 2010, the Amended and Restated Letter of Credit, dated January 11, 2011, the Amended and Restated Letter of Credit, dated January 10, 2012, the Amended and Restated Letter of Credit, dated December 20, 2012, and the Amended and Restated Letter of Credit, dated December 20, 2013.	\$11,800,000.00

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1 Collateral shall be cash, negotiable bonds of the United States, the State of Texas, negotiable certificates of deposit or irrevocable letters of credit.

2 Value shall be fair market value.

**Amendment To  
Irrevocable Standby Letter Of Credit**

**Number:** NZS564256  
**Amendment Number:** 008  
**Amend Date:** December 20, 2013

AMENDMENT TO IRREVOCABLE STANDBY LETTER OF CREDIT

NUMBER: NZS564256  
AMENDMENT NUMBER: 8  
AMEND DATE: DECEMBER 20, 2013

AMENDED AND RESTATED LETTER OF CREDIT

LETTER OF CREDIT NO. NZS564256  
DATE: DECEMBER 20, 2013  
APPLICANT: TEXAS MUNICIPAL POWER AGENCY  
AMENDMENT NO. 8

TO:  
RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
P.O. BOX 12967  
AUSTIN, TEXAS 78711-2967

OR

RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
1701 NORTH CONGRESS AVENUE, 11TH FLOOR  
AUSTIN, TEXAS 78711

LADIES AND GENTLEMEN:

THIS AMENDMENT IS TO BE CONSIDERED AS PART OF THE ABOVE LETTER OF CREDIT AND MUST BE ATTACHED THERETO.

THE TEXT OF THE ABOVE MENTIONED LETTER OF CREDIT IS DELETED IN ITS ENTIRETY AND REPLACED BY THE FOLLOWING:

QUOTE

IRREVOCABLE LETTER OF CREDIT

TO:

RAILROAD COMMISSION OF TEXAS:  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
P.O. BOX 12967  
AUSTIN, TEXAS 78711-2967

OR

RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND RECLAMATION DIVISION  
1701 NORTH CONGRESS AVENUE, 11TH FLOOR  
AUSTIN, TEXAS 78711

WE HAVE BEEN INFORMED BY THE TEXAS MUNICIPAL POWER AGENCY ("PERMITTEE"), BUT DO NOT INDEPENDENTLY VERIFY THAT THIS LETTER OF CREDIT IS ISSUED IN CONNECTION WITH SURFACE MINING AND RECLAMATION OPERATIONS CONDUCTED BY THE PERMITTEE IN THE AREA COVERED BY THE SURFACE MINING AND RECLAMATION PERMIT NO. 26D, AS NOW OR HEREAFTER AMENDED, REVISED OR REPLACED (THE "PERMIT") AND THAT THIS LETTER OF CREDIT IS TO SECURE PERMITTEE'S COLLATERAL BOND TO THE RAILROAD COMMISSION OF TEXAS FOR THE PERMIT. THE PRECEDING SENTENCE IS INSERTED IN THIS LETTER OF CREDIT FOR INFORMATIONAL PURPOSES ONLY AND WILL NOT AFFECT, OR BECOME A PART OF, THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

WE HEREBY REPRESENT TO THE RAILROAD COMMISSION OF TEXAS THAT WE ARE A BANK (WE MAY BE HEREINAFTER REFERRED TO AS THE "BANK") AUTHORIZED TO DO BUSINESS IN THE UNITED STATES OF AMERICA.

WE HEREBY ISSUE IN FAVOR OF THE RAILROAD COMMISSION OF TEXAS, AUSTIN, TEXAS OUR IRREVOCABLE STANDBY LETTER OF CREDIT FOR AN AMOUNT NOT TO EXCEED IN THE AGGREGATE TWELVE MILLION EIGHT HUNDRED THOUSAND AND NO/100 UNITED STATES DOLLARS (\$12,800,000.00 U.S.) AVAILABLE WITH US AT OUR ABOVE OFFICE BY PAYMENT OF YOUR DRAFT(S) DRAWN AT SIGHT ON BANK MENTIONING THEREON THIS LETTER OF CREDIT NO. NZS564256. THE BANK AGREES THAT THE LETTER OF CREDIT SHALL BE IRREVOCABLE DURING ITS TERM.

THE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT WILL REDUCE AUTOMATICALLY, WITHOUT AMENDMENT OR BENEFICIARY'S PRIOR CONSENT, IN ACCORDANCE WITH THE FOLLOWING SCHEDULE:

DATE OF REDUCTION	AMOUNT OF REDUCTION
04/14/2014	USD 1,000,000.00

IN THE EVENT A COMPLIANT DRAWING IS RECEIVED PRIOR TO A SCHEDULED DECREASE, THE AMOUNTS OF THE SUCCEEDING SCHEDULED DECREASES SHALL BE REDUCED BY THE AMOUNT OF SUCH DRAWINGS IN THE ORDER OF OCCURRENCE OF SUCH SCHEDULED DECREASES UNTIL THE AMOUNT OF SUCH DRAWING HAS BEEN FULLY APPLIED.



THIS LETTER OF CREDIT EXPIRES AT OUR ABOVE OFFICE ON APRIL 14, 2015 (THE "EXPIRY DATE"). AMOUNTS DRAWN HEREUNDER WILL PERMANENTLY REDUCE THE AVAILABLE AMOUNT UNDER THIS LETTER OF CREDIT AND SUCH REDUCTIONS SHALL NOT BE SUBJECT TO REINSTATEMENT.

THE WELLS FARGO BANK, N.A. SAN FRANCISCO STANDBY LETTER OF CREDIT DEPARTMENT HAS MOVED TO SAN LEANDRO, CALIFORNIA. ON AND AFTER SEPTEMBER 16TH, 2013, ALL DRAFTS, DEMANDS, OR DOCUMENTS PRESENTED UNDER THIS L/C AND ALL NOTICES AND COMMUNICATIONS MADE WITH RESPECT TO THIS L/C THAT PREVIOUSLY WOULD HAVE BEEN DIRECTED TO SAN FRANCISCO, SHOULD NOW BE PRESENTED OR DELIVERED TO WELLS FARGO BANK, N.A., STANDBY LETTER OF CREDIT PROCESSING, 794 DAVIS STREET, 2ND FLOOR, SAN LEANDRO, CALIFORNIA 94577-6922.

DRAFT(S) MUST BE PRESENTED TO US ON OR ON OR BEFORE THE EXPIRY DATE AND MUST BE ACCOMPANIED BY:

- A. THIS IRREVOCABLE STANDBY LETTER OF CREDIT OR A COPY THEREOF; AND
- B. YOUR SIGNED AND DATED STATEMENT READING AS FOLLOWS:

"THE UNDERSIGNED, AN AUTHORIZED REPRESENTATIVE OF THE RAILROAD COMMISSION OF TEXAS HEREBY CERTIFIES THAT THE AMOUNT DRAWN IS DUE TO US PURSUANT TO THE TERMS OF 16 TAC SEC. 12.314."

WE ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON PRESENTATION TO US AT OUR OFFICE AT THE ADDRESS SHOWN ABOVE ON OR BEFORE THE EXPIRY DATE.

THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION IN FORCE AS OF JULY 1, 2007), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600.

DOCUMENTATION FROM THE BANK ESTABLISHING THE AUTHORITY OF THE SIGNATORY TO THIS LETTER OF CREDIT TO BIND THE BANK IS ATTACHED. ALSO ATTACHED IS A COPY OF THE BANK'S CHARTER OR OTHER EVIDENCE OF THE BANK'S AUTHORITY TO DO BUSINESS IN THE UNITED STATES.

UNQUOTE

Very Truly Yours,

WELLS FARGO BANK, N.A.

By: \_\_\_\_\_  
Authorized Signature

**The original of the Letter of Credit contains an embossed seal over the Authorized Signature.**



Please direct any written correspondence or inquiries regarding this Letter of Credit, always quoting our reference number, to **Wells Fargo Bank, National Association**, Attn: U.S. Standby Trade Services

*at either* 794 Davis Street  
MAC A0283-023,  
San Leandro, CA 94577-6922

*or* 401 Linden Street  
MAC D4004-017,  
Winston-Salem, NC 27101

Phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals

1-800-798-2815 Option 1  
(Hours of Operation: 8:00 a.m. PT to 5:00 p.m. PT)

1-800-776-3862 Option 2  
(Hours of Operation: 8:00 a.m. EST to 5:30 p.m. EST)

