

**RAILROAD COMMISSION OF TEXAS  
HEARINGS DIVISION**

**DOCKET NO. C17-0014-SC-38-E, TEXAS MUNICIPAL POWER AGENCY  
APPLICATION FOR ACCEPTANCE OF SELF-BOND AND REPLACEMENT COLLATERAL BOND AND LETTER OF  
CREDIT NO. IS0479755U, PERMIT NO. 38D, GIBBONS CREEK LIGNITE MINE V, GRIMES COUNTY, TEXAS**

**ORDER ACCEPTING REPLACEMENT SELF-BOND AND COLLATERAL BOND  
AND LETTER OF CREDIT FOR PERMIT NO. 38D**

**Statement of the Case**

The Texas Municipal Power Agency (TMPA) operates the Gibbons Creek Lignite Mine V in Grimes County, Texas under Permit No. 38D. TMPA has filed an application for acceptance of a replacement self-bond in the amount of \$7,450,000 to replace the currently accepted self-bond in the amount of \$8,300,000 and a replacement collateral bond and irrevocable Letter of Credit (LOC) No. IS0479755U in the amount of \$10,850,000 to replace the currently accepted collateral bond and Amended and Restated LOC No. NZS564257 (Amendment No. 11) in the amount of \$11,450,000 issued by Wells Fargo Bank, N.A. The accepted letter of credit (Amendment No. 11) carries an expiration date of April 9, 2017. The proffered letter of credit (Amendment No. 10) becomes effective April 9, 2017 and expires April 9, 2018. The application is made pursuant to the Texas Surface Coal Mining and Reclamation Act, TEX. NAT. RES. CODE ANN. Ch. 134 (Vernon Supp. 2016) and the "Coal Mining Regulations," TEX. ADMIN. CODE Ch. 12 (Thomson West 2016).

The total amount of self-bond and collateral bond with LOC Amendment currently accepted for the permit is \$19,750,000; TMPA proposed replacing this amount by the proffered self-bond and collateral bond with LOC in a total amount of \$18,300,000. Based upon the application for acceptance of the replacement bonds, associated documents, and legal and financial reviews, the Commission finds that the proffered self-bond and the collateral bond with LOC may be accepted in accordance with the terms of this Order and that the self-bond may replace the currently accepted self-bond and the proffered collateral bond and LOC may replace the currently accepted collateral bond and letter of credit amendment.

**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. TMPA holds Permit Nos 26D and 38D. By letter dated January 9, 2017, TMPA timely submitted replacement bonds for the permits. In this docket for Permit No. 38D, TMPA timely submitted a replacement self-bond in the amount of \$7,450,000 to replace the currently accepted self-bond in the amount of \$8,300,000 and a replacement

collateral bond and irrevocable Letter of Credit (LOC) No. IS0479755U in the amount of \$10,850,000 issued by Wells Fargo Bank, N.A. to replace the LOC No. NZS564257 (Amendment No. 11) in the amount of \$11,450,000 issued by Wells Fargo Bank, N.A. The current Amendment No. 11 was effective April 11, 2016 for performance bonding of its Permit No. 38D, Gibbons Creek Lignite Mine V through April 9, 2017. The proffered collateral bond carries an effective date of April 9, 2017 and expires April 9, 2018. TMPA filed the bonds and related documentation relating to the bonds and LOC by letters dated January 9, 10, 11, and 27, 2017, and February 22, 2017. The permit area is currently in reclamation.

2. By letter dated March 7, 2017, the Surface Mining and Reclamation Division (SMRD or Staff) filed the replacement self-bond and collateral bond and LOC with the Hearings Division, along with other review documents and bonds for Permit No. 26D. In its letter, Staff stated that it was in the process of preparing revised updated reclamation costs for Permit No. 26D; this document was filed on March 8, 2017. By letter dated March 13, 2017, the administrative law judge requested materials that were inadvertently left out of the initial filing by SMRD. SMRD filed these documents on March 15, 2017.
3. Staff calculated reclamation costs as \$17,934,635 (Revision No. 35 approved February 7, 2017). TMPA did not submit an updated reclamation cost estimate. The total amount of the self-bond and proffered collateral bond and LOC, \$18,300,000, exceeds Staff's estimate of reclamation costs, \$17,934,635. Staff's estimate of reclamation costs is accepted as the amount required to ensure sufficient bonding of the permit area of Permit No. 38D.
4. The legal review performed by the Office of General Counsel, as supplemented on March 15, 2017, and filed with the Hearings Division by letter of the same date, along with other materials filed, indicates that all legal requirements are met for the proffered self-bond, collateral bond, and LOC. TMPA requests acceptance of the replacement self-bond and the collateral bond and LOC. The proffered LOC, effective January 6, 2017, carries a provision indicating that the LOC cannot be presented for payment prior to April 9, 2017 (the currently accepted LOC with amendment expires on April 9, 2017) and that the LOC expires on April 9, 2018. The proffered self-bond amount, \$7,450,000, in effect upon the Commission's acceptance, when added to the amount of the proffered collateral bond and LOC when it becomes payable on April 9, 2017 totals \$18,300,000, an amount that exceeds the estimated costs of reclamation set out in Finding of Fact No. 3.
5. Based on the Findings of Fact, the Commission finds that the amount of the proffered self-bond and the proffered replacement collateral bond and LOC 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.

6. If 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)].
7. The proffered self-bond, collateral bond, and LOC are in forms acceptable under §12.309 of the Regulations and §134.121 of the Act.
8. The Commission may accept a self-bond for a business or governmental entity when the conditions set out in §12.309(j)(2) are met. The self-bond meets requirements for acceptance of a self-bond from a business or governmental entity.
  - (a). The regulation requires that the applicant must designate a suitable agent to receive service of process in the state. Bob Kahn, TMPA's General Manager, is TMPA's agent for service of process, and he also signed the self-bond for TMPA. Documents that show the authorization for Mr. Kahn to act on behalf of TMPA have been filed with the Commission. TMPA filed a General Certificate providing a copy of the Rules and Regulations of Texas Municipal Power Agency that includes Article IV, Section 7, page 6 of 13, that provides that the General Manager is authorized to execute reclamation bonds as well as other related documents (Exhibit 1) and an updated certificate of incumbency (Exhibit 2) showing that Mr. Kahn held the position of General Manager on the date he signed the bond (January 6, 2017) (Exhibit 5) (Exhibit numbers refer to the Bond Package filed by TMPA, as supplemented).
  - (b). TMPA has been in continuous operation for a period of not less than five years immediately preceding the date of application and has not been in bankruptcy proceedings during that time (Exhibit 1).
  - (c). TMPA has submitted financial information in sufficient detail to show that TMPA meets one of the criteria for acceptance of self-bonding listed in §12.309(j)(2)(C). Meeting at least one of the criteria is a prerequisite for approval of self-bonding, in addition to meeting the requirement addressed in subsection (d) of this Finding of Fact (tangible net worth requirement). TMPA meets the requirement set out in §12.309(j)(2)(C)(i): Staff financial review indicates that TMPA has a current rating for its most recent bond issuance of A or higher by Moody's Investor Service or Standard and Poor's Corporation. TMPA's rating by Moody's Investor Service is "A2" and by Standard and Poor's is "A+" (financial review and Exhibit 1).

- (d). Financial staff has reviewed TMPA's audited financial statements for TMPA's fiscal year ending September 30, 2016. Based on the review, TMPA meets the requirement of Regulation §12.309(j)(4)(A) that its existing and proposed self-bonds must not total more than 25% of its tangible net worth. TMPA has no existing or proposed self-bonds other than the currently accepted bond and the proposed replacement self-bond proposed in this application. The amount of the proposed self-bond, is 22.42 % of TMPA's tangible net worth in the United States, \$31,552,000, based on the September 30, 2016 audited financial statement (pp. 12-13, and 23-24) reviewed by the Commission's Financial Services division and the OGC staff attorney (pp. 19-20, Memorandum dated February 10, 2017). Pursuant to §12.309(j), TMPA is required to submit the next audited annual report no later than 90 days after the close of the fiscal year ending September 30, 2017. TMPA has submitted the unaudited financial statement for the quarter ending December 31, 2016.
9. The terms of the proffered LOC provide that it is irrevocable during its term as required by §12.309(g)(2) of the Regulations.
10. Authorized persons for TMPA and for the issuing Bank signed the proffered collateral bond, and an authorized person for the Bank signed the proffered LOC. An officer of the Bank who is authorized to execute bonds on behalf of the Bank, R. Scott Harris, Senior Vice President, Wells Fargo Bank, N.A., 3000 Briarcrest, Bryan, Texas, signed the collateral bond (Exhibit 4, Bond Package). Bob Kahn, General Manager, TMPA, signed the collateral bond for TMPA. Documents that show the authorization for the signatories to act on behalf of TMPA and the Bank on the date of signature have been filed with the Commission. For TMPA, these are the General Certificate with Exhibit A (Exhibit 1) submitted with the Bond Package certifying that the signing officer of TMPA (Exhibit A: copy of TMPA's Agency Rules and Regulations, Article IV, Section VII, page 6, is authorized to execute reclamation bonds and to execute agreements associated with the collateral supporting reclamation bonds, including letters of credit and reimbursement agreements. A Secretary's Certificate dated January 20, 2017 was also filed showing that R. Scott Harris (also known as Robert S. Harris) held the position of Senior Vice President and is authorized to sign letters of credit for the Bank and was a duly appointed, qualified, and acting officer of the Bank on the date that he signed the collateral bond, January 6, 2017. Submitted documentation in the form of a Certificate of Corporate Existence from the Comptroller of the Currency, Administrator of National Banks, dated December 2, 2016, demonstrates that Wells Fargo Bank, N.A., is a bank authorized to do business in the United States (Exhibit 9, 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 LOC are in forms acceptable pursuant to §12.308(a)(2), §12.309(g) and §12.309(h) of the Regulations and §134.121(a) of the Act, and authorized persons have signed the documents.

11. TMPA's request for acceptance of the self-bond and proffered replacement collateral bond and LOC is made pursuant to §134.127 of the Act and §12.307 of the Regulations.
12. The proffered LOC is payable to the Commission as required by §12.309(g)(3) of the Regulations in part or in full on presentation to the bank of a draft drawn on the Bank at sight mentioning Letter of Credit No. IS0479755U at its office at Wells Fargo Bank, N.A., Standby Letter of Credit Department, 794 Davis Street, 2<sup>nd</sup> Floor, San Leandro, California on or before the expiry. 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. Authorized persons signed the proffered LOC. A Secretary's certificate signed by Assistant Secretary of the Bank, Linda Yang was submitted by letter dated January 27, 2017, certifying a true and correct copy of Section 7.2 of the by-laws of the Bank and Exhibit A to the certificate includes an extract from a document dated September 18, 2014 that authorizes among others, Aurea C. Balenbin, Assistant Vice President, and Michele C. Lee, Assistant Vice President, signing alone, to execute letters of credit on behalf of the Bank and that includes specimen signatures of the two officers. It certifies that at all times since January 6, 2017, through January 25, 2017, that the officers have been authorized to sign letters of credit in any amount issued by the Bank. Assistant Vice President Michele Lee signed the LOC for Permit No. 38D.
13. The proffered collateral bond will remain in effect until all reclamation requirements are met or the bond is replaced, and the LOC will remain in effect according to its terms, unless released or replaced by Commission Order. The proffered letter of credit carries an expiration date of April 9, 2018. 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 LOC is effective and enforceable against the issuer when the Commission received the LOC and is effective and enforceable against the issuer in the named amount in accordance with the terms of the LOC, and will remain effective, unless released or replaced, through its expiration date, April 9, 2018.
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)]. Required bonds amounts may be reduced or increased when the cost of reclamation changes.
16. Although the 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 [§12.309(g)(2)]. No stated 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, replacement bond materials (including a specimen collateral bond and LOC) were provided to SMRD at least 90 days prior to the expiration date as required by the Commission Order accepting the last amendment to the currently accepted collateral bond and amended LOC. The required original self-bond and the original replacement collateral bond and LOC were filed were filed with SMRD on January 10, 2017; SMRD filed these original bonds with the Hearings Division on March 7, 2017, more than 30 days prior to the date by which forfeiture proceedings would occur if they were not filed (30 days prior to the expiration date of currently accepted LOCs, April 9, 2017). The proffered LOC is effective in amount according to its terms upon the expiration date of the last amendment, April 9, 2017. 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 letter of credit dated January 6, 2017 received by the Commission on January 10, 2017 was issued and enforceable according to its terms on January 10, 2017. The proffered bonds and LOC were received in accordance with the previous Commission Order approving the current bonds.

- (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 as previously ordered in bond dockets 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, amendment to the LOC or otherwise request the initiation of processing materials to replace the bond instrument and collateral no later than Tuesday, January 9, 2018 (90 days prior to the expiration date, Monday, April 9, 2018) to provide for 60 days of review and adjustment of documents prior to the date the Commission must initiate forfeiture proceedings. The Commission must initiate bond forfeiture proceedings by Friday, March 9, 2018 if such documents are not submitted (approximately 30 days prior to expiration of the collateral, Monday, April 9, 2018). The Commission approves Tuesday, January 9, 2018 (90 days prior to Monday, April 9, 2018) for submittal of the bond instrument(s) and related documents

17. 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.

18. Acceptance of the proffered self-bond and collateral bond and 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.
19. All documentation required by the Act and Regulations for the proffered self-bond and collateral bond with LOC has been submitted.
20. No exceptions were filed to the proposed order. The docket has been posted for consideration by the Commission.

#### **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. 2016).
2. The total amount of bond for Permit No. 38D is sufficient.
3. All requirements of the Act and the Regulations for acceptance of the proffered self-bond and collateral bond and LOC have been met.
4. The Commission is authorized by the Act and Regulations to accept the proffered self-bond and collateral bond with LOC.
5. 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)].

6. 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.
  
7. 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 9, 2018, 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. Providing dates for the filing of bond documents, and providing for 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 in accordance with Regulations will assist in orderly processing of letters of credit to ensure the maintenance of sufficient collateral for the bond (§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 Commission determines reclamation costs as \$17,934,635;

**IT IS FURTHER ORDERED** that the proffered self-bond, collateral bond, and irrevocable LOC No. IS0479755U issued by Wells Fargo Bank, N.A., that total \$18,300,000 will together provide reclamation bonding in a sufficient amount;

**IT IS FURTHER ORDERED** that the proffered self-bond in the amount of \$7,450,000 is hereby accepted

and replaces the self-bond in the amount of \$8,300,000;

**IT IS FURTHER ORDERED** that the collateral bond and LOC No. IS0479755U in the amount of \$10,850,000 is hereby accepted on the date of this Commission Order, with the amount of the LOC effective on April 9, 2017, and the collateral bond and LOC No. NZS564257 (Amendment No. 11) in the amount of \$11,450,000 are hereby replaced as of April 9, 2017;

**IT IS FURTHER ORDERED** that the bonds and LOC must be retained by the Commission until replaced;

**IT IS FURTHER ORDERED** that the accepted self-bond in the amount of \$7,450,000 and the collateral bond with LOC No. IS0479755U in the amount of \$10,850,000 provide 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 9, 2018;

**IT IS FURTHER ORDERED** that with letters of credit that contain a specified effective date, as the proffered LOC, the additional mechanism set out in Finding of Fact No. 17 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

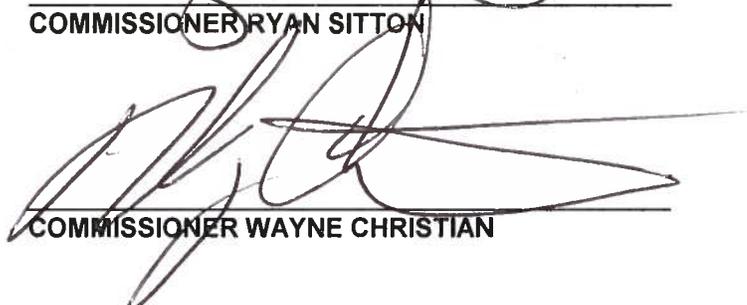
**IT IS FURTHER ORDERED** by the Commission that this order shall not be final and effective until 25 days after a party is notified of the Commission's order. If a timely motion for rehearing is filed by any party of interest, this order shall not become final and effective until such motion is overruled, 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**, on April 4, 2017.

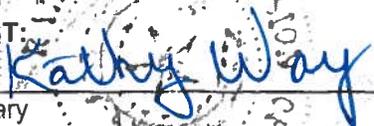
**RAILROAD COMMISSION OF TEXAS**

  
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**CHAIRMAN CHRISTI CRADDICK**

  
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**COMMISSIONER RYAN SITTON**

  
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**COMMISSIONER WAYNE CHRISTIAN**

ATTEST:

  
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Secretary  
Railroad Commission of Texas



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

Permit No.: 38D

Mine Name: Gibbons Creek Lignite Mine

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

This bond does replace an existing bond, described as Self-Bond, dated December 22, 2016, and accepted by the Railroad Commission of Texas on February 23, 2016, in the amount of \$8,300,000.00.

**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 21st day of August, 2001; 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;

**WHEREAS**, in order to provide bond coverage for Permit 38D in the amount of \$18,300,000.00, the Principal-Permittee has submitted to the Railroad Commission of Texas this self-bond in the amount of \$7,450,000.00, and a collateral bond in the amount of \$10,850,000.00;

**THAT** Texas Municipal Power Agency, as Principal-Permittee, is held and firmly bound unto the State of Texas in the full sum of Seven Million Four Hundred Fifty Thousand and No/100 United States Dollars (\$7,450,000.00 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.

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 6 Day of January, 2017.

Texas Municipal Power Agency  
PRINCIPAL-PERMITTEE

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

CGS By:   
Signature

Bob Kahn  
Typed Name

General Manager  
Title

Attest:   
Assistant Secretary to the Board of Directors

Self Bond of Texas Municipal Power Agency (Principal-Permittee)

Accepted: April 4 2017

Christi Claddick

CHAIRMAN, Railroad Commission of Texas

[Signature]

COMMISSIONER, Railroad Commission of Texas

[Signature]

COMMISSIONER, Railroad Commission of Texas

ATTEST:

Kathy Way

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.

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

Permit No.: 38D

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 22, 2015, and accepted by the Railroad Commission of Texas on February 23, 2016, in the amount of \$11,450,000.00.

**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 21st day of August, 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; and

**WHEREAS**, the bound Principal has previously submitted to the Railroad Commission of Texas, Surface Mining and Reclamation Division, a collateral bond for Permit 38D in the amount of \$11,450,000.00 (the "Existing Collateral Bond") and a Self-Bond in the amount of \$8,300,000.00 (the "Existing Self-Bond"); and

**WHEREAS**, in order to provide bond coverage for Permit 38D in the amount of \$18,300,000.00 and in order to replace the Existing Collateral Bond, the bound Principal has submitted to the Railroad Commission of Texas this collateral bond (this "Collateral Bond") in the amount of \$10,850,000.00, and a new Self-Bond, to replace the Existing Self-Bond, in the amount of \$7,450,000.00 (the "New Self-Bond"); and

**WHEREAS**, the New Self-Bond and this Collateral Bond, in the aggregate, provide bond coverage for Permit 38D in the amount of Eighteen Million Three Hundred Thousand and No/100 Dollars (\$18,300,000.00);

**THAT WE**, Texas Municipal Power Agency, as Principal, are held and firmly bound to the State of Texas in the full sum of Ten Million Eight Hundred Fifty Thousand and No/100 United States Dollars (\$10,850,000.00 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 that 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 16 Day of January, 2017.

**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

By: [Signature]  
Signature

By: [Signature]  
Signature

Bob Kahn  
Typed Name

R. Scott Harris  
Typed Name

General Manager  
Title

Senior Vice President  
Title

Attest: [Signature]  
Assistant Secretary of the Board of Directors

Attest: [Signature]

Accepted April 4, 2017

Christi Claddick  
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.

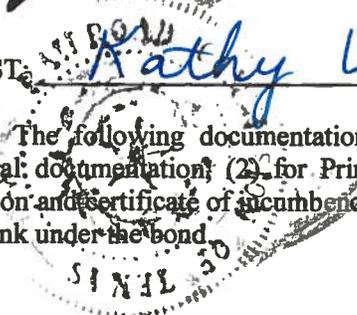


EXHIBIT "A"

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. <u>1504797554</u> , dated January <u>6</u> , 2017.	\$10,850,000

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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.

### Irrevocable Standby Letter Of Credit

**Number :** IS0479755U  
**Issue Date :** January 6, 2017

BENEFICIARY

RAILROAD COMMISSION OF TEXAS  
ATTENTION: SURFACE MINING AND  
RECLAMATION DIVISION  
1701 NORTH CONGRESS AVENUE, 11TH FLOOR  
AUSTIN, TEXAS 78701

APPLICANT

TEXAS MUNICIPAL POWER AGENCY  
12824 FM 244  
ANDERSON, TEXAS 77830

LETTER OF CREDIT ISSUE AMOUNT USD 10,850,000.00 EXPIRY DATE APRIL 9, 2018

LADIES AND GENTLEMEN:

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. 38D, 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 Ten Million Eight Hundred Fifty Thousand and No/100 United States Dollars (\$10,850,000 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. IS0479755U. The Bank agrees that the Letter of Credit shall be irrevocable during its term.



Draft(s) may not be dated or presented to us for payment prior to April 9, 2017 and this Letter of Credit expires at our above office on April 9, 2018 (the "Expiry Date").

Draft(s) must be presented to us 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 Wells Fargo Bank, N.A., Standby Letter of Credit Department, 794 Davis Street, 2nd Floor, San Leandro, California 94577-6922 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.

Very Truly Yours,

WELLS FARGO BANK, N.A.

By. \_\_\_\_\_



Authorized Signature

**MICHELE LEE**  
**ASSISTANT VICE PRESIDENT**

***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, 2nd Floor  
MAC A0283-023,  
San Leandro, CA 94577-6922

**or** 401 N. Research Pkwy, 1st Floor  
MAC D4004-017,  
WINSTON-SALEM, NC 27101-4157

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)

**Together we'll go far**

